

SITING AND DECOMMISSIONING OF COMMERCIAL WIND FARMS - BACKGROUND MEMORANDUM

House Bill No. 1456 requires the study of the siting and decommissioning of commercial wind farms. The study must include:

- Identification of key issues of public and industry concern;
- Solicitation of public input from local government officials, electric utilities, the wind industry, landowners, farm organizations, and other concerned interests;
- Review of laws and policies of other jurisdictions;
- Recommendations concerning laws or policies needed in this state to address wind farm siting and reclamation of wind farm sites; and
- The decommissioning of wind farm sites.

As introduced, House Bill No. 1456 required the Public Service Commission to conduct the same study. The legislative history reveals that two of the reasons for the change in the placement of the study were budgetary concerns of the Public Service Commission and the Legislative Assembly being the policymaking branch of government, not the Public Service Commission. The main issue discussed in the legislative history was at what level should siting be within the jurisdiction of the Public Service Commission; so much so that the House Natural Resources Committee considered an amendment reducing the threshold for Public Service Commission jurisdiction over siting from 100 megawatts to 50 megawatts.

The impetus for the bill came from a wind farm in Spring Valley Township in Dickey County. Because the facility was below the threshold for Public Service Commission jurisdiction and the county did not have or make zoning regulations, the township was forced to make zoning regulations for the siting of a wind farm.

2007 LEGISLATION

A major piece of legislation affecting siting and decommissioning approved during the 2007 legislative session was House Bill No 1317. House Bill No. 1317 allowed the Public Service Commission to adopt rules governing the decommissioning of a commercial wind energy conversion facility. The bill provided that the rules may address:

1. The anticipated life of the project.
2. The established decommissioning cost in current dollars.
3. The method and schedule for updating the cost of decommissioning and restoration.
4. The method of ensuring that funds will be available for decommissioning and restoration.

5. The anticipated manner in which projects will be decommissioned and the site restored.

In addition, the bill reduced the taxable valuation of a centrally assessed wind turbine electric generation unit with a nameplate capacity of 100 kilowatts or more from 3 percent to 1.5 percent of assessed value if construction of the unit is completed after June 30, 2007, and before January 1, 2011. The dates were changed in House Bill No. 1018 to allow the reduced taxation for the construction of a unit completed after June 30, 2006, and before January 1, 2011.

In addition, House Bill No. 1363, which failed to pass the House, would have provided for the Public Service Commission to have jurisdiction over the decommissioning of a commercial wind energy conversion facility. In particular, the bill would have given the commission authority to require a bond or other assurance from the owner or operator of the wind farm for the faithful performance of all the requirements of decommissioning a commercial wind farm. The bill would have provided for a presumption of when a wind farm needs to be decommissioned and placed the cost of decommissioning on the owner and operator. The bill would have defined what must be done during the decommissioning and would have allowed the commission to require a performance bond to guarantee the complete decommissioning and removal of a commercial wind farm.

PRESENT LAW

Present law relating to wind energy conversion siting is contained in North Dakota Century Code (NDCC) Chapter 49-22, which relates to the siting of any energy conversion and transmission facility that meets the criteria of the chapter. In particular, under Section 49-22-03, to be an energy conversion facility, the plant must be designed for or capable of generating 100,000 kilowatts or more of electricity. In short, a commercial wind farm must produce 100 megawatts or more of electricity to be regulated by the Public Service Commission. House Bill No. 1283 (2005) increased the threshold of an energy conversion facility from a facility that generates 50,000 kilowatts or more of electricity to a facility that generates 100,000 kilowatts of electricity. Siting that is not within the jurisdiction of the Public Service Commission falls within the zoning jurisdiction of counties and townships. Generally the county has zoning jurisdiction unless there is an organized township with zoning regulations.

Once the jurisdiction of the Public Service Commission is engaged under NDCC Chapter 49-22, a utility needs a certificate of site compatibility from the Public Service Commission under Section 49-22-07. The procedure to receive this certificate

begins with a letter of intent from the utility to the commission followed by an application for a certificate under Section 49-22-08. The application requires information on the facility, including the environmental impact of the facility, the need for the facility, a comprehensive analysis supporting why the location is best suited for this facility, mitigative measures for foreseen adverse impacts, and other information. There are a number of statutory factors under Section 49-22-09 which the commission must consider when evaluating and designating sites. These factors include:

1. The effect of the site on public health and welfare, natural resources, and the environment.
2. The effects of new energy conversion technologies and systems designed to minimize adverse environmental effects.
3. The potential for beneficial uses of waste energy from the proposed facility.
4. Adverse direct and indirect environmental effects which cannot be avoided.
5. Alternatives.
6. Irreversible and irretrievable commitments of natural resources.
7. The direct and indirect economic impacts of the proposed facility.
8. Existing plans for other developments in the vicinity of the site.
9. The effect of the proposed site on scenic areas, historic sites and structures, and paleontological and archaeological sites.
10. The effects of the site which are unique because of biological wealth or because of rare or endangered species.
11. Other problems raised by governmental entities.

After notice and a public hearing, the commission may designate a site for the proposed facility. Under NDCC Section 49-22-13, the commission must hold public hearings in the county in which any site is proposed to be located. Under Section 49-22-16 the issuance of a certification of site compatibility is the sole site approval required to be obtained by the utility. However, a certificate of site compatibility does not supersede or preempt any local land use, zoning, or building rules and a site may not be designated which violates these rules. In addition, utilities subject to Chapter 49-22 must obtain state permits required to construct and operate energy conversion facilities and must follow the rules of any state agency. The Public Service Commission is required to adopt rules in conformity with the chapter and may enforce the chapter through criminal and civil penalties.

PREVIOUS STUDIES

The North Dakota Energy Conversion and Transmission Facility Siting Act came as a recommendation of the 1973-74 interim Natural Resources "A" Committee. The committee determined that regulation was needed to control the

siting of energy conversion and related transmission facilities to minimize the adverse environmental and agricultural effects of poorly planned siting. The committee had great concern for organizing the siting, especially of transmission facilities through the Public Service Commission, so that corridors could be organized to concentrate transmission lines with less overall detriment to the environment and agriculture.

During the 2003-04 interim, the Advisory Commission on Intergovernmental Relations received testimony on the siting of wind turbines. The commission received testimony from a representative of the American Wind Energy Association regarding issues that may arise upon decommissioning of a wind turbine. The commission was informed that there may be a value in addressing the cleanup of a decommissioned site of initial site determination and initial contracts. Options for dealing with decommissioning include state regulation, front-end incentive provisions, establishment of escrow accounts, and specific contract provisions.

OTHER STATES

Some states have facility siting guidelines. According to the American Wind Energy Association, of the states with guidelines, the following states have the listed thresholds for state jurisdiction:

- Colorado - 2 megawatts.
- Connecticut - 1 megawatt.
- Iowa - 25 megawatts.
- Maine - Over 20 acres.
- Maryland - 70 megawatts.
- Minnesota - 5 megawatts.
- Nevada - 150 kilowatts.
- New Hampshire - 30 megawatts.
- New York - 80 megawatts.
- Ohio - 50 megawatts.
- Oregon - 105 megawatts.
- South Dakota - 100 megawatts.
- Vermont - All.
- Washington - 350 megawatts.
- Wisconsin - 100 megawatts.

SUGGESTED STUDY APPROACH

Political subdivisions have experienced growing pains resulting from the relatively new industry of wind farms in this state. These local authorities have had to adopt regulations without much expertise in wind turbine siting. However, as experience is gained in wind turbine siting, tools have been developed for these local authorities.

The *Wind Energy Guide for County Commissioners*, a document sponsored by the United States Department of Energy's Office of Energy Efficiency and Renewable Energy, lists eight elements that have been identified for commercial wind farm development that provide effective agency review, meaningful public involvement, and timely defensible decisions. These elements are:

1. Significant public involvement.

2. Issue-oriented process.
3. Clear decision criteria.
4. Coordination of permitting process.
5. Reasonable timeframes.
6. Advance planning.
7. Efficient administrative and judicial review.
8. Active compliance monitoring.

The *Wind Energy Guide for County Commissioners* recommended *Permitting of Wind Energy Facilities - A Handbook*, by the National Wind Coordinating Committee, and "Planning and Zoning for Wind Power Facilities," by the American Planning Association, in a February 2003 *Zoning News* article.

These documents provide local zoning authorities tools to mitigate impacts on wind turbines which are generally local in nature.

The committee may wish to review the application of the law in place to see if any changes need to be made and provide input in the rulemaking process. The policy decision that has been made by the Legislative Assembly is a wind farm's impact is a local impact until it reaches 100 megawatts. As for decommissioning, the Legislative Assembly has authorized the Public Service Commission to adopt rules for decommissioning.