Chapter PSC 128

WIND ENERGY SYSTEMS

Subchapter I  General

Subchapter II  Developer Requirements

Subchapter III  Political Subdivision Procedure

Subchapter IV  Commission Procedure

Subchapter I

General

PSC 128.01  Definitions. In this chapter:

(1) “Commission” means the public service commission.

(2) “Developer” means a person involved in acquiring the necessary rights, permits and approvals, and otherwise planning for the construction and operation of a wind energy system, regardless of whether the person will own or operate the wind energy system. “Developer” includes, prior to completion of construction of a wind energy system, an owner or operator.

[Check who (developer, owner or operator) is responsible for, or subject to, all requirements in following substantive provisions.]

(3) “Decommissioning” means removal of all of the following:

(a) The above ground portion of a wind energy system, including the wind turbine and related facilities.
(b) All below ground facilities, except for concrete structures and underground collector circuit facilities four feet or more below grade.

(4) “DNR” means the Wisconsin department of natural resources.

(5) “Large wind energy system” means a wind energy system with an installed nameplate capacity of greater than or equal to _________.

(6) “Maximum blade tip height” means the nominal hub height plus the nominal blade length, as listed in the wind turbine specifications provided by the wind turbine manufacturer.

(7) “Nameplate capacity” means ....

(8) “Nonparticipating property” means real property for which there is no agreement between the landowner and a developer that permits the construction of any part of a wind energy system on the property.

(9) “Nonparticipating residence” means an occupied permanent residence located on a nonparticipating property.

(10) “Occupied building” means a school, hospital, church, or public library.

(11) “Owner or operator” means a person involved in the operation or maintenance of a wind energy system, or with a direct or indirect ownership interest in a wind energy system, or both.

(12) “Participating property” means any of the following:

(a) Real property which is subject to an agreement between the landowner and the developer for the construction of any portion of a wind energy system on the property.

(b) Real property that is the subject of an agreement that includes all of the following:

1. Provides for the payment of monetary compensation to the landowner from the developer notwithstanding that no part of a wind energy system may be constructed on the property.
2. Specifies in writing that the landowner’s acceptance of payment establishes the landowner’s property as a participating property.

(13) “Political subdivision” has the meaning given in s. 66.0401 (1e) (c), Stats.

(14) “Regulation” includes any ordinance or resolution adopted by the governing body of a political subdivision relating to a wind energy system or any contract or agreement entered into by a political subdivision and a developer relating to a wind energy system.

[Use of this term, or a similar term, needs to be made consistent in the draft. Currently, terms like ordinance, resolution, or agreement may appear in the draft.]

(15) “Shadow flicker” means a pattern of changes in light intensity resulting from the shadow of rotating wind turbine blades being cast on a residence or occupied building.

(16) “Small wind energy system” means a wind energy system that has an installed nameplate capacity of less than ___________.

(17) “Turbine host property” means real property which is subject to an agreement between a landowner and a developer for the construction of one or more wind turbines.

(18) “Wind easement” means …[to be added].

(19) “Wind energy system” has the meaning given in s. 66.0403 (1) (m), Stats.

(20) “Wind lease” means …[to be added]

PSC 128.02 Applicability. (1) (a) This chapter applies to all wind energy systems, except as noted in this section and in s. 196.491 (3) (dg), Stats.

(b) This chapter does not apply to any of the following:

1. A wind energy system for which a certificate of public convenience and necessity application has been filed with the commission before the effective date of this chapter…[LRB inserts date].
2. A wind energy system for which construction began before the effective date of this chapter … [LRB inserts date].

3. A wind energy system placed in operation before the effective date of this chapter … [LRB inserts date].

4. A wind energy system approved by a political subdivision before the effective date of this chapter … [LRB inserts date].

5. A wind energy system proposed by a developer in an application filed before the effective date of the chapter … [LRB inserts date] with a political subdivision that has an established procedure for review of applications for wind energy systems.

(c) If a developer intends to submit an application for the installation or use of a wind turbine with a maximum blade tip height exceeding 450 feet or for a wind energy system proposed to be located in a waterway or wetland, the developer shall file a petition with the commission for the commission to promulgate rules for the use and installation of such wind energy systems.

(2) Nothing in this chapter shall preclude the commission from giving individual consideration to exceptional or unusual situations and applying requirements to individual wind energy systems that may be lesser, greater, or different from those provided in this chapter.

Subchapter II
Developer Requirements

PSC 128.10 Development of a wind energy system; Notice requirements. (1) GENERAL NOTIFICATION REQUIREMENTS. (a) At least [nnn] days before a developer files an application to construct a large wind energy system or before the planned start of construction of
a large wind energy system, whichever is earlier, and at least \[nnn\] days before a developer files
an application to construct a small wind energy system or before the planned start of construction
of a small wind energy system, whichever is earlier, a developer shall provide notice of the
planned wind energy system to landowners within \[x\] mile(s) of the planned wind energy system
and to all political subdivisions within which the wind energy system may be located. For a
large wind energy system, a developer shall file a copy of the notice with the commission.
(b) The developer shall include all of the following in the notice under par. (a):
1. A description of the wind energy system.
2. A description of the planned location of the wind energy system.
3. Contact information for the developer.
4. A list of all potential permits or approvals the developer anticipates may be necessary for
construction of the wind energy system.
5. Whether the developer is requesting a joint application review process under s. PSC 128.30(7)
and the names of any other political subdivision that may participate in the joint review process.
(2) DNR NOTIFICATION. (a) At least \[nn\] days before a developer files an application to
construct a wind energy system or before the planned start of construction of a wind energy
system, whichever is earlier, the developer shall notify the DNR of the proposed wind energy
system. A developer shall consult with the DNR and incorporate into wind turbine siting
decisions required permitting considerations for wetlands, waterways, and threatened or
endangered resources.
(3) HISTORICAL SOCIETY NOTIFICATION. At least \[nn\] days before a developer files an
application to construct a wind energy system or before the planned start of construction of a
wind energy system, whichever is earlier, the developer shall notify the Wisconsin Historical
Society of the proposed wind energy system. A developer shall consult with and follow the recommendations of the Wisconsin Historical Society to minimize impacts on archeological and other historic resources.

(4) TRANSPORTATION NOTIFICATIONS. (a) At least \[nn\] days before a developer files an application to construct a wind energy system or before the planned start of construction of a wind energy system, whichever is earlier, the developer shall notify the Wisconsin Department of Transportation of the proposed wind energy system and shall also notify the highway department of any political subdivision within which the wind energy system may be located.

(b) For a large wind energy system, a developer shall prepare a transportation plan, in consultation with the Department of Transportation and affected political subdivisions, that takes traffic patterns and road weight limits into account and provides for repair of road damage related to construction and operation of the wind energy system at the developer, owner or operator’s expense.

(5) EMERGENCY SERVICE NOTIFICATIONS. (a) At least \[nn\] days before a developer files an application to construct a wind energy system or before the planned start of construction of a wind energy system, whichever is earlier, the developer shall notify first responders and air ambulance services serving any political subdivision within which the wind energy system may be located of the proposed wind energy system.

(b) For a large wind energy system, the developer shall consult and coordinate with local first responders and air ambulance services regarding the development of an emergency evacuation plan, including the locations of alternate landing zones for emergency services aircraft. The plan shall include provisions for public inspection of the plan, as appropriate. The developer shall file the final plan with the political subdivision, using confidential filing procedures if necessary.
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PSC 128.11 Encumbrances on real property. (1) WIND EASEMENT OR WIND LEASE. (a) A property owner may grant another person a wind easement or wind lease in the same manner and with the same effect as a conveyance of an interest in real property. A wind easement or wind lease shall be in writing and shall be filed with the register of deeds for the county in which the property is located.

(b) A wind easement or wind lease may not be signed by the property owner until at least [nn] business days after the property owner receives the first proposed wind easement or wind lease.

(2) WIND EASEMENT OR WIND LEASE REQUIREMENTS. A wind easement or wind lease shall include provisions to do all of the following:

(a) Require the developer, owner and operator of the wind energy system to comply with all federal, state and local laws and regulations associated with the wind energy system.

(b) Permit the property owner to terminate the wind easement or wind lease if the portion of the wind energy system located on the property has not operated for a period of at least [nnnn] days unless the property owner receives the normal minimum payments that would have occurred if the wind energy system had been operating during that time. In this paragraph, “normal minimum payments” means the minimum payments as provided in the wind easement or wind lease, or if not provided for in the wind easement or wind lease, payments at least equal to the

[The wind lease and wind easement language needs work. If two separate types of documents, and possibly three as the wind easement may apply to two different situations, they need to be clearly described and differentiated. Later provisions in the rule should be reviewed to ensure they apply to the correct type of document.]
periodic payments received by the property owner in the last calendar year that the wind energy
system was in full operation.

(c) Specify the circumstances under which the developer, owner or operator of the wind energy
system may withhold payments from the property owner.

(3) WIND EASEMENT OR WIND LEASE PROHIBITIONS. A wind easement or wind lease
may not include provisions that do any of the following:

(a) Require the parties to maintain the confidentiality of any terms of a proposed wind lease or
wind easement except that the parties may include a confidentiality agreement regarding the
compensation terms contained in the final signed wind easement or wind lease.

(b) Make the property owner liable for any property tax associated with the wind energy system
or other equipment related to the production of electricity by the wind energy system.

(c) Make the property owner liable for any violation of federal, state or local laws and
regulations by the developer, owner or operator of the wind energy system.

(d) Make the property owner liable for any damages caused by the wind energy system or the
operation of the wind energy system, including liability or damage to the property owner or to
third parties.

PSC 128.12 Developer Considerations. (1) EXISTING PROPERTY USES. (a) A developer
shall make reasonable efforts to ascertain the existing land uses of and commercial enterprises
located on nonparticipating properties within [nmmn feet or x mile(s)] of a proposed wind
turbine site.
PSC 128.13 Siting criteria. (1) LOCATION AND HEIGHT REQUIREMENTS. (a) A developer shall design and construct a wind energy system using the wind turbine setbacks shown in Table 1.
<table>
<thead>
<tr>
<th>Setback Description</th>
<th>Setback Distance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Occupied Buildings</td>
<td>n feet or x times the maximum blade tip height</td>
</tr>
<tr>
<td>Participating Residences</td>
<td>n feet or x times the maximum blade tip height</td>
</tr>
<tr>
<td>Nonparticipating Residences</td>
<td>n feet or x times the maximum blade tip height</td>
</tr>
<tr>
<td>Participating Property Lines</td>
<td>None</td>
</tr>
<tr>
<td>Nonparticipating Property Lines</td>
<td>x times the maximum blade tip height</td>
</tr>
<tr>
<td>Public Road Right-of-Way</td>
<td>x times the maximum blade tip height</td>
</tr>
<tr>
<td>Cemetery Property Line</td>
<td>n feet</td>
</tr>
<tr>
<td>Wetlands; Ordinary High Water Mark of Lakes and Waterways</td>
<td>n feet</td>
</tr>
<tr>
<td>Overhead Communication and Electric Transmission or Distribution Lines - Not including utility service lines to individual houses or outbuildings</td>
<td>x times the maximum blade tip height</td>
</tr>
<tr>
<td>Overhead Utility Service Lines - Lines to individual houses or outbuildings</td>
<td>None</td>
</tr>
</tbody>
</table>
(b) Wind turbine setback distances shall be measured as a straight line from the vertical centerline of the wind turbine tower to the nearest point on the permanent foundation of a building or residence or to the nearest point on the property line or feature, as applicable.

(c) A developer shall work with a political subdivision to site wind turbines to minimize individual hardships.

(d) The owner of a participating residence, occupied building or nonparticipating residence may waive the wind turbine setbacks in Table 1 for those structures, except that the setback shall not be less than \([x]\) times the maximum blade tip height.

(2) POLITICAL SUBDIVISION CRITERIA. (a) A political subdivision may not establish location or height requirements different than those in this chapter.

(b) For a wind energy system with a maximum blade tip height less than 100 feet, a political subdivision may establish wind turbine setback requirements from occupied buildings and participating and nonparticipating residences that are less restrictive than those in Table 1, except that the setback from an occupied building, participating residence or nonparticipating residence may not be less than \([x]\) times the maximum blade tip height.

(c) A political subdivision may not set height or location limitations for a wind turbine near a public use airport or heliport that are more restrictive than existing airport and airport approach protection limitations under ss. 114.135 and 114.136, Stats. If no limitations have been established under ss. 114.135 or 114.136, Stats., the political subdivision may adopt wind turbine height or location limitations that are based on, but not more restrictive than, the federal aviation administration obstruction standards in CFR title 14, part 77.
(d) A political subdivision may not set height or location limitations for wind turbines near a
private medical facility heliport used for air ambulance service that are more restrictive than
federal aviation administration obstruction standards that apply to public use heliports.

(e) A political subdivision [may / may not] set height or location limitations for a wind turbine
near a private use airport.

(f) A political subdivision may not establish long-term land use planning requirements or
practices that preclude the construction of a wind turbine or a wind energy system within the
political subdivision’s jurisdiction.

(3) LINE-OF-SIGHT COMMUNICATION TECHNOLOGIES STANDARD. The developer,
owner or operator may not construct wind energy system facilities within the path of line-of-
sight communication technologies. A political subdivision may require a developer to provide
information showing that wind turbines and other wind energy system facilities will not be
placed within the path of line-of-sight technologies.

PSC 128.14 Noise Criteria. (1) PLANNING. A developer shall consider the noise standards in
this section in wind turbine siting decisions.

(2) NOISE STANDARD. (a) Compliance with noise limits shall be measured or otherwise
evaluated at the outside wall of the nonparticipating residence or occupied building. If sound
level measurements are used to evaluate compliance, those measurements shall be made at the
outside wall nearest to the closest wind turbine, or at an alternate wall as specified by the
resident. The developer may take additional measurements to evaluate compliance in addition to
those specified by this section.
(b) A developer shall operate the wind energy system in a manner that does not exceed [nn] dBA at any nonparticipating residence or occupied building existing on the date of approval of the wind energy system by the political subdivision.

(3) MITIGATION. (a) Upon complaint by an affected nonparticipating resident or occupied building owner, the developer, owner or operator shall test for compliance with the noise limits. If the noise limit is exceeded at a nonparticipating residence or hospital during nighttime hours, the noise limit for those areas related to the complaint shall be reduced to [nn] dBA during nighttime hours and the developer, owner or operator shall ensure the seasonally-reduced nighttime noise limit is met. For purposes of this paragraph, nighttime hours are the hours between 10:00 p.m. to 6:00 a.m. daily, from April 1 to September 30.

(b) Methods available for the developer, owner or operator to comply with noise limits shall include operational curtailment of a wind turbine.

(c) A developer shall provide notification of the requirements of this section to potentially-affected owners of nonparticipating residences and occupied buildings before the initial operation of the wind energy system.

(d) In the event audible noise due to wind energy system operations contains a steady pure tone, such as a whine, whistle, screech, or hum, the developer, owner or operator shall promptly take corrective action to eliminate the cause of the steady pure tone. Operational curtailment of a wind turbine during nighttime hours may be used to comply with this paragraph until the cause of the steady pure tone can be permanently eliminated. This paragraph does not apply to rhythmic sound that may be generated by the rotation of wind turbine blades.

(e) The commission shall establish a noise measurement protocol, which shall contain minimum requirements for pre- and post-construction noise studies. The commission may revise the noise
measurement protocol as necessary. The commission shall make the noise measurement
protocol available to the public on the commission’s website.

(f) A developer shall evaluate compliance with the noise limits as part of pre- and post-
construction noise studies. A developer shall conduct a noise study as described in the most
current version of the noise measurement protocol.

(g) An affected resident may relieve the developer of the requirement to meet any of the noise
requirements in this section by written contract with the developer. Unless otherwise provided in
a contract signed by an affected resident who is the owner of the affected real property, a waiver
by an affected resident is not an encumbrance on the resident’s real property and does not run
with the land.

PSC 128.15 Shadow flicker. (1) PLANNING. A developer shall consider shadow flicker in
wind turbine siting decisions. A developer shall plan the proposed wind energy system in a
manner that avoids causing shadow flicker at an occupied building or participating or
nonparticipating residence to the extent reasonably practicable. A developer shall use shadow
flicker computer modeling to estimate the amount of shadow flicker anticipated to be caused by
the wind energy system.

(2) STANDARD. The developer shall design a wind energy system so that computer modeling
indicates that no nonparticipating residence would experience more than [nn] hours annually of
shadow flicker.

(3) MITIGATION. (a) A developer, owner and operator shall work with a landowner to mitigate
the effects of shadow flicker. The developer shall provide shadow flicker mitigation for a
residence experiencing [nn] hours per year or more of shadow flicker. The developer shall
model shadow flicker and a residence is eligible for mitigation if computer modeling shows that
shadow flicker exceeds [nn] hours per year at the residence. The property owner of the
residence is not required to document the actual hours per year of shadow flicker if modeling
indicates the residence is eligible for mitigation. A residence that exceeds [nn] hours per year of
shadow flicker based on records kept by the resident shall also be eligible for mitigation.

(b) A developer, owner or operator may provide shadow flicker mitigation for residences
experiencing less than [nn] hours per year of shadow flicker.

(c) The requirement under par. (a) to mitigate shadow flicker at an eligible residence is triggered
when the developer, owner or operator receives a complaint regarding shadow flicker. If shadow
flicker mitigation is required, the developer, owner or operator shall allow the resident to choose
a preferred reasonable mitigation technique, including installation of blinds or plantings at the
developer, owner or operator’s expense.

(d) A developer shall provide notification to potentially-affected residents of the provisions of
this section before initial operation of the wind energy system.

(e) An affected resident may by written contract waive the developer, owner or operator’s
requirement to provide shadow flicker mitigation. A waiver by an affected resident is not an
encumbrance on the resident’s real property and does not run with the land.

PSC 128.16 Signal interference. (1) PLANNING. A developer shall consider radio, television
and cellular telephone signal interference in wind turbine siting decisions and shall plan the
proposed wind energy system in a manner that avoids causing such interference to the extent
practicable. A political subdivision may establish standards regarding radio, television, cellular
telephone interference by ordinance or by agreement with a developer, owner or operator on a

case by case basis.

(2) RADIO AND TELEVISION INTERFERENCE MITIGATION. Before implementing

remedial measures, the developer, owner or operator shall consult with affected residents

regarding the resident’s preferred reasonable mitigation solution for radio and television

interference problems. A developer, owner or operator shall mitigate interference by making a

resident’s preferred reasonable mitigation solution permanent.

(3) CELLULAR TELEPHONE INTERFERENCE MITIGATION. The developer shall work

with affected cellular providers to provide adequate coverage in the affected area. Acceptable

mitigation techniques for lost or weakened cellular telephone communications shall include

installing an additional micro cell, cell, or base station facility to fill in the affected area. The

micro cell, cell, or base station may be installed on a structure within the wind energy system.

PSC 128.17 Stray voltage. (1) A developer shall work with the local electric distribution

companies to test for stray voltage at all dairy operations within \[x \text{ mile(s)}\] of any wind energy

system facility, before construction and again after construction of the wind energy system is

completed. A developer, owner or operator shall work with the electric distribution utilities and

farm owners to rectify any stray voltage problems arising from the construction and operation of

the wind energy system. Before any testing, the developer, owner or operator shall work with

commission staff to determine the manner in which stray voltage measurements will be

conducted and on which properties. A developer shall provide to commission staff the results of

stray voltage testing.
PSC 128.18 Construction and operation. (1) PHYSICAL CHARACTERISTICS. (a) A developer, owner or operator may not display advertising material or signage other than warnings, equipment information, or indicia of ownership on a wind turbine. A developer, owner or operator may not attach any flag, decorative sign, streamers, pennants, ribbons, spinners, fluttering, or revolving devices to a wind turbine. A developer, owner or operator may attach a safety feature or wind monitoring device to a wind turbine. (b) A developer, owner or operator shall ensure that a wind turbine has a neutral finish. (c) A developer, owner or operator shall install lighting that complies with standards established by the federal aviation administration. (d) A developer, owner or operator of a wind turbine shall ensure that the wind turbine is not climbable except by authorized personnel. (e) For a wind turbine mounted on a climbable lattice tower, the developer, owner or operator shall ensure that access to the tower base is restricted by a fence not less than eight feet in height. The owner or operator shall ensure that the gate of the fence is locked whenever authorized personnel are not present. (f) An owner or operator of a wind energy system shall ensure that all access doors to the wind turbines and electrical equipment are locked when authorized personnel are not present. (g) A developer, owner or operator of a wind energy system shall place appropriate warning signage on or at the base of each wind turbine. (h) An owner or operator of a wind energy system shall post and maintain up-to-date signs containing a twenty-four hour emergency contact telephone number, information identifying the owner or operator, and sufficient information to identify the location of the wind energy system and the location of each identified wind turbine within the wind energy system. An owner or
operator shall post these signs at every intersection of a wind energy system access road with a
public road.

(2) ELECTRICAL STANDARDS. (a) A developer, owner or operator shall construct, maintain,
and operate collector circuit facilities in a manner that complies with the national electrical safety
code and Wis. Admin. Code ch. PSC 114 and shall construct, maintain, and operate all wind
energy system facilities in a manner that complies with the national electrical code.
(b) A developer shall construct collector circuit facilities underground to the extent practicable.
(c) A developer, owner or operator shall establish an inspection schedule for all overhead
collector circuits to ensure that third-party facilities such as cable television and
telecommunications cables are not attached to and bonded to overhead collector circuit
grounding. The inspection schedule shall provide for visual inspection of the overhead facilities
at least once monthly. If third-party facilities are found attached to the overhead collector
facilities, developer shall ensure that the third-party facilities are promptly removed.

(3) CONSTRUCTION, OPERATION, AND MAINTENANCE STANDARDS. (a) A developer,
owner or operator shall construct, operate, repair, maintain and replace wind energy system
facilities as needed to keep the wind energy system in good repair and operating condition.
(b) Except for the area occupied by the wind energy system and related facilities, including
permanent access roads, a developer shall restore the topography, soils and vegetation of the
project area to original condition after construction is complete.
(c) A developer, owner or operator of a wind energy system shall carry general liability
insurance relating to claims for property damage or bodily injury arising from the construction or
operation of the wind energy system and shall include turbine host property owners as additional
insured persons on the policy.
(4) EMERGENCY PROCEDURES. (a) In this subsection, “emergency” means a condition or situation at the wind energy system that presents a significant threat of physical danger to human life or a significant threat to property.

(b) An owner or operator shall notify a political subdivision within [nn] hours of an emergency.

(c) An owner or operator shall establish and maintain liaison with appropriate fire, police, and other public officials to do all of the following:

1. Learn the responsibility and resources of each government organization that would respond to a wind energy system emergency.

2. Acquaint the fire, police and other public officials with the owner and operator’s abilities to respond to a wind energy system emergency and provide annual training for such officials regarding responding to a wind energy system emergency.

3. Identify the types of wind energy system emergencies of which the developer notifies fire, police, and other public officials.

4. Plan how the owner or operator and fire, police, and other public officials can engage in mutual assistance to minimize hazards to life or property.

(d) An owner or operator of a large wind energy system shall establish written procedures that provide for shutting down the wind energy system or a portion of the system, as appropriate, in the event of an emergency. The procedures shall provide for all of the following:

1. Establishing and maintaining adequate means of communication with appropriate fire, police, and other public officials.

2. Advising affected political subdivisions of a wind energy system emergency.

3. Prompt and effective response to a notice of any of the following types of emergencies:

   a. Mechanical failure of wind turbine facilities.
b. Fire associated with a wind turbine or associated facilities.

c. Emergency situations requiring the evacuation of a person or persons from the wind energy system.

d. Natural disaster.

e. Police actions, such as a request or order by police or fire officials to interrupt operation of any wind energy system facility due to an emergency.

4. Actions directed toward protecting people first and then property.

5. Making safe any actual or potential hazard to people or property.

6. Notifying appropriate fire, police, and other public officials of wind energy system emergencies and coordinating with them both planned and actual responses during an emergency.

(e) An owner or operator of a large wind energy system shall do all of the following:

1. Furnish its supervisors and employees who are responsible for emergency action a copy of the latest edition of the emergency procedures established under par. (c) to ensure compliance with those procedures.

2. Train the appropriate operating personnel to ensure that they are knowledgeable of the emergency procedures and verify that the training is effective.

3. As soon as possible after the end of an emergency, the developer, owner, or operator shall review employee activities to determine whether the procedures were effectively followed in each emergency.

(5) COMPLAINT PROCESS. (a) Before construction of a wind energy system begins, a developer shall provide written notice of the process for making complaints and obtaining mitigation measures to all residents and landowners within [x mile(s)] of the wind energy system.
system. A developer shall include a contact person and telephone number for complaints or concerns during construction, operation, maintenance and decommissioning. The developer, owner or operator shall keep the contact person and telephone number up-to-date and on file with the political subdivision. A developer shall provide a copy of the notice to the political subdivision.

(b) A developer, owner or operator shall maintain a log of all complaints received regarding the wind energy system. The log shall include the name and address of the complainant, the nature of the complaint, and the steps taken to resolve the complaint. A developer, owner or operator shall make copies of this complaint log available, at no cost, to any monitoring committee under s. PSC 128.36 that is established by a political subdivision in which the wind energy system is located.

PSC 128.19 Decommissioning. (1) REQUIREMENT TO DECOMMISSION. (a) Except as provided in par. (e), the owner or operator of a wind energy system shall decommission and remove a wind energy system when the system is at the end of its useful life.

(b) A developer shall include in an application to construct a wind energy system a decommissioning and site restoration plan that provides reasonable assurances that the developer, owner or operator will be able to comply with this section.

(c) A wind energy system is presumed to be at the end of its useful life if the wind energy system generates no electricity for a continuous $n$ month period. This presumption may be rebutted by the owner or operator by submitting to the political subdivision a plan outlining the steps and schedule for returning the wind energy system to service within $n$ months after the date the wind energy system is presumed to be at the end of its useful life. Upon application by the
owner or operator, a political subdivision shall grant an extension of the time period for returning
the wind energy system to service for an additional \[n\] month period if the owner or operator
demonstrates an ongoing good faith effort to return the wind energy system to service. A wind
energy system that generates no electricity for a continuous \[n\] month period is irrebuttably
presumed to be at the end of its useful life.

(d) When decommissioning is required, the owner or operator shall begin decommissioning
within \[n\] months after the wind energy system has reached the end of its useful life. The owner
or operator shall complete decommissioning and removal of the wind energy system within \[n\]
months after the wind energy system has reached the end of its useful life.

(e) A political subdivision may grant a temporary deferral of the requirement to decommission
and remove a wind energy system if it is likely the wind energy system will operate again in the
future and if any of the following apply:

1. The wind energy system is part of a prototype or other demonstration project being used for
research or development purposes.

2. The wind energy system is being used for educational purposes.

(2) DECOMMISSIONING REVIEW. A political subdivision may establish a decommissioning
review process to determine when a wind energy system has reached the end of its useful life.

(3) FINANCIAL RESPONSIBILITY. A developer, owner or operator of a wind energy system
with a maximum blade tip height of 100 feet or greater shall provide information to the political
subdivision that demonstrates proof of the owner’s financial ability to comply with requirements
regarding decommissioning in sub. (1).

(4) SITE RESTORATION. If a wind energy system was constructed on land owned by a person
other than the owner or operator of the wind energy system, the owner or operator of the wind
energy system shall ensure that the property is restored so that the topography, soils, and vegetation are consistent with or similar to that of immediately adjacent properties at the time of decommissioning. This subsection does not apply to a wind energy system constructed on a brownfield, as defined in s. 560.13 (1) (a), Stats.

(5) DECOMMISSIONING COMPLETION. (a) An owner shall file a notice of decommissioning completion with the political subdivision when a wind energy system approved by the political subdivision has been decommissioned and removed.

(b) Within [n] months of receiving a notice of decommissioning, a political subdivision shall determine whether the wind energy system has satisfied the requirements of subs. (1)(a) and (4).

Subchapter III

Political Subdivision Procedure

PSC 128.30 Application and notice requirements. (1) CONTENTS OF AN APPLICATION. If approval by a political subdivision is required for a proposed wind energy system or expansion of an existing wind energy system, a developer seeking the political subdivision’s approval shall complete and file with the political subdivision an application that includes all of the following:

(a) Wind energy system description and maps.

(b) Technical description of wind turbines and wind turbine sites.

(c) Construction process and timeline.

(d) Impact on local infrastructure.

(e) Information regarding noise.

(f) Information regarding shadow flicker.
(g) Effects on farm lands within [x mile(s)] of the wind energy system.

(h) Effects on air traffic

(i) Effects on line-of-sight communications.

(j) Except as provided in sub. (4), information required under s. PSC 128.40.

(k) Any other information necessary to understand the proposed wind energy system.

(m) Information related to the wind energy system requested by the political subdivision.

(2) ACCURACY OF INFORMATION. The developer shall ensure that information contained in an application is accurate and internally consistent.

(3) SMALL WIND TURBINE APPLICATIONS. For a wind energy system with a maximum blade tip height of less than 100 feet, a developer is not required to file the information required under sub. (1)(j).

(4) DUPLICATE COPIES. A developer shall file with the political subdivision two original copies of an application. Each copy shall include all worksheets, maps, and other attachments included in the application. A political subdivision may permit a developer to file an application electronically.

(5) NOTICE TO PROPERTY OWNERS. (a) On the same day a developer files an application for a wind energy system, the developer shall mail or deliver written notice of the filing of the application to property owners and residents located within [x mile(s)] of the proposed wind energy system. The notification shall include all of the following:

1. A brief description of the proposed wind energy system location.

2. The size of the proposed wind energy system.

3. The proposed timeline for construction of the wind energy system.

4. Locations where the application is available for public review.
5. Developer contact information.

(b) After a political subdivision receives an application for a wind energy system, the notice required to be published by the political subdivision under s. 66.0401 (4) (a), Stats., shall include the method and time period for the submission of public comments to the political subdivision and the approximate schedule for review of the application by the political subdivision.

(6) PUBLIC PARTICIPATION. (a) A political subdivision shall make an application for a wind energy system available for public review at the local library and at the political subdivision business office or some other publicly-accessible location. A political subdivision may also provide public access to the application electronically.

(b) A political subdivision shall establish a process for accepting and considering written public comments on an application for a wind energy system.

(c) Except as provided in this paragraph, a political subdivision shall hold at least one public meeting to obtain comments on and to inform the public about an application. A political subdivision is not required to hold a public comment meeting on an application to construct a wind energy system that has a maximum blade tip height of up to 100 feet and that is to be located entirely on land owned by the developer.

(7) JOINT APPLICATION REVIEW PROCESS. (a) If the wind energy system is proposed to be located in the jurisdiction of more than one political subdivision, the political subdivisions involved may conduct a joint application review process on their own motion or upon request. If a developer requests a joint application review, the developer shall include the request in its notice of intent to file an application with the political subdivision under s. PSC 128.10(1). If the developer requests a joint application review process, the political subdivisions involved shall
consider this request within [nn] days of receipt of the developer’s notice of intent to file an application.

(b) If political subdivisions elect to conduct a joint application review process, the process shall be consistent with this chapter and the political subdivisions shall establish the process within [nn] days of the date the political subdivisions receive the developer’s notice of intent to file an application. A political subdivision may follow the review process of another political subdivision for purposes of conducting a joint application review process concurrently with the other political subdivision. If a joint application review process is adopted, the developer shall file the application with all of the political subdivisions participating in the joint review process.

PSC 128.31 Application completeness. (1) INCOMPLETE APPLICATIONS. A political subdivision shall determine whether an application is complete. The political subdivision shall notify the developer in writing of the completeness determination no later than 45 days after the day the application is filed. An application is considered filed the day the developer notifies the political subdivision in writing that all the application materials have been filed. If a political subdivision determines that the application is incomplete, the notice shall state the reasons for the determination. A developer may file a supplement to an application that the political subdivision has determined to be incomplete. There is no limit to the number of times that the developer may re-file an application. For incomplete applications, the developer shall provide additional information as specified in the notice. Subsequent 45-day completeness review periods shall begin the day after the political subdivision receives responses to all items identified in the notice. If a political subdivision does not make a completeness determination within the applicable review period, the application is considered to be complete.
(2) REQUESTS FOR ADDITIONAL INFORMATION. A political subdivision may request additional information after determining that an application is complete. A developer shall provide additional information in response to all reasonable requests. A developer shall respond to all inquiries made subsequent to a determination of completeness in a timely, complete, and accurate manner.

PSC 128.32 Political subdivision review of a wind energy system. (1) APPROVAL BY POLITICAL SUBDIVISION. (a) Except as provided in par. (b), a political subdivision may require a developer to obtain approval from the political subdivision before constructing any of the following:

1. A wind energy system.

2. An expansion of an existing or previously-approved wind energy system.

(b) A political subdivision may not require a developer to obtain approval from the political subdivision under this chapter for any of the following:

1. A wind energy system placed in operation before the effective date of this chapter … [LRB inserts date].

2. A wind energy system for which construction began before the effective date of this chapter … [LRB inserts date].

3. A wind energy system approved by the political subdivision before the effective date of this chapter … [LRB inserts date].

4. A wind energy system proposed by a developer in an application filed before the effective date of the chapter … [LRB inserts date] with a political subdivision that has an established procedure for review of applications for wind energy systems.
(2) STANDARD FOR APPROVAL. A political subdivision shall approve an application for a wind energy system if [standards for approval or for denial need to be added].

(3) WRITTEN DECISION. (a) A political subdivision shall issue a written decision to grant or deny an application for a wind energy system. The written decision shall include findings of fact supported by evidence in the record. An approval may be subject to the conditions in s. PSC 128.33(1).

(b) 1. A political subdivision shall provide its written decision to the developer and to the commission. If a political subdivision approves an application for a wind energy system, the political subdivision shall provide the developer with a duplicate original of the approved application.

2. The developer shall file the duplicate original of a decision approving an application with the register of deeds for the county in which the wind energy system is located.

(4) EFFECT OF OWNERSHIP CHANGE ON APPROVAL. Approval by a political subdivision of a wind energy system remains in effect despite changes in ownership or operation of the wind energy system. A political subdivision may require a developer, owner or operator to provide timely notice of any change in the ownership or operation of the wind energy system.

(5) FEES. (a) A political subdivision may charge a reasonable application fee or require a developer to reimburse the political subdivision for reasonable expenses relating to the review of an application for a wind energy system.

(b) A political subdivision’s fee or reimbursement requirement shall be based on the actual cost of the review of the wind energy system application, and may include the cost of services necessary to review an application that are provided by outside engineers, attorneys, planners, environmental specialists, or other consultants or experts. The political subdivision may set
standardized application fees based on the size and complexity of a proposed wind energy system.

(c) A political subdivision may only charge a fee or require reimbursement if the political subdivision gives written notice to developer of its intent to do so within [nn] days of the date the political subdivision receives a notice under s. PSC 128.10(1) and identifies the amount of the fee and the relevant reimbursement requirements.

(d) A political subdivision may not charge a developer, owner or operator an annual fee or other fees to operate or maintain a wind energy system.

(6) CONFLICTS OF INTEREST. A political subdivision shall disclose conflicts of interest.

[This provision needs to be fleshed out. What is a conflict of interest? Who has the conflict? What is a person with a conflict required to do? To who is a conflict disclosed? When? How? Can a conflict be waived?]

PSC 128.33 Political subdivision provisions. (1) PERMITTED PROVISIONS. A political subdivision may include any of the following as an ordinance provision or as a condition for approval of an application to construct a wind energy system:

(a) Require a developer to provide information in an application describing how the developer has incorporated into the wind energy system design DNR recommendations regarding natural resources not subject to specific DNR permits, such as unique or high quality natural areas.

(b) Require a developer, owner or operator to cooperate with any state-wide or regional study of the effects of wind energy systems on bat or migratory bird populations.

(c) For a large wind energy system, may require a developer to include in a transportation plan the proposed type and period of use of local roads, a proposed process for mitigation of any
damage to local roads related to construction and operation of the large wind energy system, and provision for a pre- and post-construction review by the political subdivision.

(d) For a large wind energy system, may require a developer to offer agreements that include annual monetary compensation to the owner of a nonparticipating residence if the residence is within \([x \text{ mile(s)}]\) of a planned wind turbine site. If a political subdivision requires a developer to offer such an agreement, the amount of annual monetary compensation shall be calculated by multiplying the number of installed wind turbines in the wind energy system located within \([x \text{ mile(s)}]\) of each nonparticipating residence by a per-wind turbine compensatory amount, with annual payments escalating annually. The total annual payment to any owner of a nonparticipating residence may not exceed the amount paid by the developer, owner or operator to any owner of a turbine host property receiving payment under a wind lease for one wind turbine. An agreement offered under this paragraph shall specify in writing whether the landowner’s acceptance of payment establishes the landowner’s property as a participating property.

(e) For a large wind energy system, may require a developer, owner or operator to provide the political subdivision with a list of the tax parcel numbers of tracts of residential real property less than \([n]\) acres in size located within \([x \text{ mile(s)}]\) of a wind turbine in the wind energy system at the time the wind energy system is constructed. The political subdivision may use this list to track the sale prices of residential real property of less than \([n]\) acres in size within \([x \text{ mile(s)}]\) of a wind turbine in the wind energy system.

(f) Specify provisions regarding blasting to protect against groundwater contamination, including notification requirements, timing limitations, plan requirements, and whether blasting may occur within the political subdivision.
(g) May establish a procedure for assessing when wind energy system facilities are not maintained in good repair and operating condition. The procedure may include timelines, provide for payment of fees for conducting an assessment, and provide for notification to the public.

(h) May require the developer, owner or operator of a large wind energy system to file an annual report with the political subdivision documenting the operation and maintenance of the wind energy system during the previous calendar year.

(i) Establish reasonable requirements for the manner in which a developer, owner or operator of a wind energy system with a maximum blade tip height of 100 feet or greater may demonstrate proof of financial responsibility to ensure the availability of funds sufficient to keep the wind energy system in good repair and operating condition and to comply with decommissioning requirements.

(j) Require a developer, owner or operator to provide compensation to farm operators on nonparticipating properties within [x mile(s)] of a wind turbine site if the farm operator demonstrates that the farm operator had a history of aerial spraying practices before the wind energy system was proposed and that the farm operator has a reduction in crop production or increased application costs as a result of the wind energy system’s effect on aerial spraying practices.

[Some of these provisions may be better only as ordinance/regulation provisions and some as approval conditions, rather than for both.]

(2) PROHIBITED PROVISIONS. A political subdivision may not include any of the following as an ordinance provision or as a condition for approval of an application to construct a wind energy system:
(a) Require a developer, owner or operator to conduct a study of property value impacts.

(b) Except as provided in sub. (1)(d), require a developer, owner or operator to provide monetary compensation to landowners relating to property values.

(c) Impose a penalty on a developer, owner or operator of a wind energy system if the owner satisfies the requirements of this chapter to keep the wind energy system in good operating condition and the requirements regarding decommissioning.

(d) Restrict wind turbine sites based on impacts to aerial spraying on participating properties.

(e) Establish structure lighting requirements for a wind energy system that conflict with standards established by the federal aviation administration.

128.34 Record of decision. (1) RECORDKEEPING. A political subdivision shall keep a complete written record of its decision-making related to an application for a wind energy system. If a political subdivision denies an application, the political subdivision shall keep the record for at least seven years following the year in which it issues the decision. If a political subdivision approves an application, the political subdivision shall keep the record for at least seven years after the year in which the wind energy system is decommissioned.

(2) RECORD CONTENTS. The record of a decision shall include all of the following:

(a) The approved application and all subsequent additions or amendments to the application.

(b) A copy of all notices issued under [specify cross-references]

(c) A copy of any notice or correspondence that the political subdivision issues related to the application.

(d) A record of any public hearing related to the application. The record may be an electronic recording, a transcript prepared from an electronic recording, or a transcript prepared by a court.
reporter or stenographer. The record shall include any documents or evidence submitted by

hearing participants. [Question: What if only minutes are kept of a public hearing?]

(e) Copies of any correspondence or evidentiary material that the political subdivision considered

in relation to the application, including copies of all written public comments filed under s. PSC

128.30(6)(b).

(f) Minutes of any board or committee meetings held to consider or act on the application.

(g) A copy of the written decision under s. PSC 128.32(3)(a).

(h) Other materials that the political subdivision prepared to document its decision-making

process.

(i) A copy of any local ordinance cited in or applicable to the decision.

(3) POST-CONSTRUCTION FILING REQUIREMENT. Within [nn] days of the date a wind

energy system commences operation, the developer, owner or operator shall file with the

political subdivision and the commission an as-built description of the wind energy system, an

accurate map of the wind energy system showing the location of each wind turbine, and current

information regarding the developer, owner and operator of the wind energy system.

PSC 128.35 Modifications to an approved wind energy system. (1) MATERIAL CHANGE.

(a) A developer may not make a material change in the approved design, location or construction

of a wind energy system without the prior written approval of the political subdivision that

authorized the wind energy system.

(b) A developer shall submit an application for a material change to an approved wind energy

system to the political subdivision that authorized the wind energy system.
(2) REVIEW LIMITED. A political subdivision that receives an application for a material change to a wind energy system may not reopen the merits of the earlier approval but shall consider only those issues relevant to the proposed change.

PSC 128.36 Monitoring and mitigation. (1) MONITORING COMMITTEE. A political subdivision may establish a committee to monitor complaints and to monitor compliance by the developer, owner or operator with any conditions to the approved wind energy system or with any local agreements. If a monitoring committee is established, the political subdivision shall include on the monitoring committee a member who is a local employee of a developer, owner or operator of a wind energy system and at least one nonparticipating landowner.

(2) DUTIES. A monitoring committee may do any of the following:

(a) Maintain a record of all complaints brought to the monitoring committee.
(b) Require the developer, owner or operator to investigate, at the developer, owner or operator’s expense, any complaint forwarded by the committee.
(c) Recommend a reasonable resolution to a complaint based upon the committee’s findings.

128.35 Computation of time. [This is a placeholder for description of how to count days in timeline of political subdivision’s review, if necessary.]

Subchapter IV

Commission Procedure
PSC 128.40 Detailed application requirements. The commission shall establish detailed application filing requirements for political subdivision review of a wind energy system, which shall contain a detailed description of the information required to satisfy the filing requirements for applications under s. PSC 128.30(1)(j). The commission may revise these requirements as necessary. The commission shall make the filing requirements available to the public on the commission’s website.

PSC 128.41 Commission review. (1) APPEALS TO THE COMMISSION. An appeal under s. 66.0401(5)(b), Stats., shall be treated as a petition to open a docket under s. PSC 2.07.

[This provision may be revised to establish a quicker process.]

(2) PETITIONER FILING REQUIREMENTS. An aggrieved person under s. 66.0401(5)(a), Stats., may file a petition with the commission. The petition shall be submitted to the commission in writing or filed using the commission’s electronic filing system and shall contain all of the following:

(a) The petitioner’s name, address, and telephone number.

(b) The name, address, and telephone number of the political subdivision that is the subject of the petition.

(c) A description of the wind energy system that is the subject of the petition.

(d) A description of the petitioner’s relationship to the wind energy system.

(e) The information specified in s. PSC 2.07 (2).

(3) POLITICAL SUBDIVISION FILING REQUIREMENTS. (a) A political subdivision shall file a certified copy of the information under s. 66.0401(5)(c) Stats., using the commission’s electronic regulatory filing system.
(b) The commission may require the political subdivision to file up to 25 paper copies of the record upon which it based its decision.

(c) The commission may require the political subdivision to file additional information.

(4) SERVICE AND NOTICE. (a) A developer, owner or operator submitting a petition under sub. (2)(intro.) shall serve a copy of the petition on the political subdivision and on any other person specified in s. PSC 2.07 (3).

(b) Any person other than a developer, owner or operator submitting a petition under sub. (2)(intro.) shall serve a copy of the petition on the developer, owner or operator, the political subdivision, and any other person specified in s. PSC 2.07 (3).

(c) A political subdivision that is subject to a petition under sub. (2)(a) shall make a copy of the petition available for public inspection and, in the manner in which it is required to publish notice of a public meeting, publish notice of that availability.

(5) COMMISSION HEARING DESCRETIONARY. The commission may review a petition under this section with or without a hearing.

(6) STANDARD OF REVIEW. [To be added.]

(7) REMAND TO POLITICAL SUBDIVISION. (a) If the commission remands any issue to the political subdivision, the political subdivision’s review on remand shall be completed no later than [nn] days after the day on which the commission issues its decision.

(b) Under this paragraph, a political subdivision may extend the [nn]-day period if the political subdivision authorizes the extension in writing. Any combination of the following extensions may be granted, except that the total amount of time for all extensions granted may not exceed [nn] days:
1. An extension of up to [nn] days if the political subdivision needs additional information to determine issues on remand.

2. An extension of up to [nn] days if a developer makes a material modification to the application after remand.

3. An extension of up to [nn] days for other good cause.

[We may need to distinguish between completeness determination remands and other types of remands and set the time limits accordingly.]