TEXT OF PROPOSED RULE

SECTION 1. Chapter PSC 128 is created to read:

CHAPTER PSC 128

WIND ENERGY SYSTEMS

Subchapter I  General

Subchapter II  Developer Requirements

Subchapter III  Political Subdivision Procedure

Subchapter IV  Commission Procedure

Subchapter V  Small Wind Energy Systems

Subchapter I  General

PSC 128.01 Definitions. In this chapter:

(1) “Commercial communications” includes aviation radar, wireless telecommunications, fixed wireless service, global positioning, line-of-sight, microwave, personal communications service, private mobile radio service, weather radar, wireless internet service, and other systems used for emergency and non-emergency purposes for agricultural, business, government, and military uses.

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

(3) “Developer” means any of the following:
(a) A person involved in acquiring the necessary rights, permits and approvals, and/or otherwise planning for the construction and operation of a wind energy system, including agents, contractors, successors, or assigns, 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

(b) An owner and an operator.

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

(a) The above ground portion of a wind energy system, including wind turbines and related facilities, except for access roads if removal has been waived by the property owner.

(b) All below ground facilities, except for underground the following:

1. Underground collector circuit facilities, and

2. Those portions of concrete structures four feet or more below grade.

(45) “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 100 kilowatts.

(6) “Maximum blade tip height” means the nominal hub height plus the nominal blade length of a wind turbine, as listed in the wind turbine specifications provided by the wind turbine manufacturer. If not listed in the wind turbine specifications, “maximum blade tip height” means the actual hub height plus the blade length.

(7) “Nameplate capacity” means the nominal generating capacity of a wind energy system, as listed in the wind turbine specifications provided by the wind turbine manufacturer.

(8) “Nonparticipating property” means real property for which there is no all of the following

apply:
(a) The property is not subject to an agreement between the landowner and developer that permits the construction of any part of a wind energy system on the property.

(b) The property is not the subject of an agreement that specifies in writing that the property is a participating property.

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

(10) “Occupied community building” means a school, church or similar place of worship, daycare facility or public library.

(11) “Operator” means the person responsible for the operation and maintenance of a wind energy system, including agents, contractors, successors, or assigns.

(12) “Owner” means any of the following:

(a) A person with an ownership interest in a wind energy system, including agents, contractors, successors, or assigns, regardless of whether the person was involved in acquiring the necessary rights, permits and approvals or otherwise planning for the construction and operation of a wind energy system.

(b) An operator of a wind energy system, including agents, contractors, successors, or assigns, regardless of whether the person was involved in acquiring the necessary rights, permits and approvals or otherwise planning for the construction and operation of a wind energy system.

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

(a) Real property which is subject to an agreement between the landowner and the developer, or owner, or operator 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 terms:
1. Provides for the payment of monetary compensation to the landowner from the developer or owner or operator regardless of whether any part of a wind energy system is constructed on the property.

2. Specifies in writing that the landowner’s acceptance of payment establishes the landowner’s property as a participating property.

(14) “Participating residence” means residence located on a participating property.

(15) “Personal communications” includes wireless telecommunications, personal communications service, radio, television, wireless internet service, and other systems used for personal use purposes.

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

(17) “Residence” includes a means of an occupied permanent occupied personal residence, hospital, community-based residential facility, residential care apartment complex or similar facility, and a nursing home.

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

Note: A “regulation” does not include a contract between a political subdivision and a developer relating to a wind energy system, so long as the contract does not establish any conditions of the political subdivision’s approval of the wind energy system.

(19) “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 an occupied community building caused by sunlight shining through moving wind turbine blades resulting in alternating changes in light intensity.
“Small wind energy system” means a wind energy system that has a total installed nameplate capacity of 300 kilowatts or less and that consists of individual wind turbines that have an installed nameplate capacity of not more than 100 kilowatts or less.

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

“Wind easement” means a written document that creates a legal interest in real property that restricts the use of the property to avoid interference with the wind resource on another property.

“Wind energy system” has the meaning given in s. 66.0403 (1) (m), Stats., and is used to convert wind energy to electrical energy.

“Wind energy system easement” means a written document that creates a legal interest in real property that permits a developer or owner to place and construct a wind turbine or associated facilities on the property.

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

“Wind energy system emergency” means a condition or situation at a wind energy system that presents a significant threat of physical danger to human life or a significant threat to property or a natural event that causes damage to wind energy system facilities.

“Wind energy system facility” means any component of a wind energy system, such as a wind turbine, collector circuit, access road, electric system interconnection facility, or an operation and maintenance facility.

“Wind energy system lease” means a written agreement between a landowner and a developer, or owner or operator that establishes the terms and conditions associated with the
placement or and construction of a wind turbine or associated facilities or other wind energy system facility on a landowner's property.

PSC 128.02 Applicability. (1) (a) Except as provided in par. (b) or (c), this chapter applies to wind energy systems.

(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 that does not require review by the commission before the effective date of this chapter…[LRB inserts date] under either ss. 196.49 or 196.491, Stats.

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

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

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

3. A wind energy system approved by a political subdivision 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].
5-4. 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 an application for a wind energy system.

(e)(2) If a developer intends to submit an application for the installation or use of a wind turbine with a maximum blade tip height exceeding 500 feet, or for a wind energy system proposed to be located in those portions of Lake Michigan or Lake Superior that are within the jurisdiction of the state, the developer shall file a petition with the commission for the commission to promulgate rules for the use and installation of such wind energy system.

(2)(3) (a) The commission shall consider whether the installation or use of a wind energy system is consistent with the standards specified in this chapter when reviewing an application under s. 196.491, Stats., filed on or after the effective date of this chapter…[LRB inserts date].

(b) The commission may consider whether the installation or use of a wind energy system is consistent with the standards specified in this chapter when reviewing an application under s. 196.49, Stats., filed on or after the effective date of this chapter…[LRB inserts date].

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

(5) All rule provisions except the following apply even if a political subdivision has not enacted an ordinance:

(a) Section PSC 128.18 (4) (b).

(b) Section PSC 128.18 (5) (e).

(c) Section PSC 128.19 (3).
(d) Section PSC 128.19 (5) (b).

(e) The provisions in s. PSC 128.30 (5) (b) that require the notice to include the method and time period for the submission of public comments, and the approximate schedule for review of the application.

(f) Section PSC 128.30 (6) (b) and (c).

(g) Section PSC 128.31 (2)

(h) Section PSC 128.32 (1) (a)

(i) Section PSC 128.32 (3)

(j) Section PSC 128.32 (5) (a) to (c).

(k) Section PSC 128.33.

(L) Section PSC 128.34 (1) (a) and (c).

(m) Section PSC 128.35 (1) (a).

(n) Section PSC 128.36 (1).

(o) Section PSC 128.36 (2) (a).

(p) Section PSC 128.36 (3)

**PSC 128.03 Political subdivision authority.** (1) A political subdivision may not place any restriction, either directly or in effect, on the installation or use of a wind energy system except by adopting an ordinance that complies with this chapter and s. 66.0401, Stats., and is not more restrictive than this chapter.

(2) A political subdivision may indirectly affect the installation or use of a wind energy system by exercising its authorized authority over usual and customary local government matters, except that a political subdivision may not do so to impose a restriction or condition that overtly applies
only to a wind energy system, that applies to a wind energy system in purpose or effect, or that
disparately impacts a wind energy system compared with other types of structures.

**PSC 128.04 Enforcement.** (1) A political subdivision shall be responsible for enforcing its
wind energy system ordinance and permit provisions.

(2) The commission shall enforce its rules and orders under this chapter in the manner prescribed
in s. 196.66, Stats., or by such other means as provided in the statutes or administrative code.

Subchapter II

Developer Requirements

**PSC 128.10 Development of a wind energy system; Notice requirements.** (1) GENERAL NOTIFICATION REQUIREMENTS. (a) At least 270 days before a developer files an
application to construct a wind energy system, or 180 days before the planned start of
construction of a wind energy system, whichever is earlier, a developer shall use commercially
reasonable methods to provide written notice of the planned wind energy system to
landowners all of the following:

(a) Landowners within one mile of the planned wind energy system and to all political turbine
host property.

(b) Political subdivisions within which the wind energy system may be located. For
(c) Emergency first responders and air ambulance service providers serving a large political
subdivision within which the wind energy system, a developer shall file a copy may be located.

(d) The Wisconsin department of the notice with the transportation.
(e) The commission.

(bf) The DNR.

(g) The Wisconsin department of agriculture, trade and consumer protection.

(h) The office of the deputy under secretary of defense.

(2) The developer shall include all of the following in the notice under par. (a):

sub. (1-):

(a) A complete description of the wind energy system, including the number and size of the planned wind turbines.

(b) A map showing the planned location of the all wind energy system facilities.

(c) Contact information for the developer.

(d) A list of all potential permits or approvals the developer anticipates may be necessary for construction of the wind energy system.

(e) 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 90 days before a developer files an application to construct a wind energy system, or 120 days before the start of construction if no application process is required by the political subdivision, the developer shall notify the DNR of the proposed wind energy system and the proposed location of all wind energy system facilities. A developer shall consult with the DNR and incorporate into wind energy system siting decisions required permitting considerations for wetlands, waterways, construction site erosion control, and threatened or endangered resources.
(3) TRANSPORTATION NOTIFICATIONS. (a) At least 90 days before a developer files an application to construct a wind energy system, or 120 days before the start of construction if no application process is required by the political subdivision, the developer shall notify the Wisconsin Department of Transportation of the proposed wind energy system and the proposed location of all wind energy system facilities. The developer 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 minimizes impacts to existing traffic patterns, adheres to established road weight limits and provides for mitigating, assessing and repairing, at the developer, owner or operator’s expense, road damage caused by construction and operation of the wind energy system.

(5) EMERGENCY SERVICE NOTIFICATIONS. (a) At least 90 days before a developer files an application to construct a wind energy system, or 120 days before the start of construction if no application process is required by the political subdivision, the developer shall notify all of the following of the proposed wind energy system:

1. Emergency first responders including fire, police, ambulance and air ambulance services serving the proposed wind energy system location.

2. Emergency first responders of a political subdivision within which the wind energy system may be located.

(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
developer shall file the final plan with the political subdivision, using confidential filing procedures if necessary.

PSC 128.11 Real property provisions. (1) WIND ENERGY SYSTEM EASEMENT- AND WIND ACCESS EASEMENT. (a) A property owner may grant another person a wind energy system easement or wind access easement in the same manner and with the same effect as a conveyance of an interest in real property. A wind easement 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 energy system easement or wind access easement shall be in writing and shall be recorded with the register of deeds for the county in which the property is located. A wind energy system easement or wind access easement shall include the term of the easement and a legal description of the property subject to the wind easement.

(2) WIND LEASE REQUIREMENTS, REQUIRED PROVISIONS. A wind energy system lease shall include provisions that required all of the following:

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

(b) Permit the property owner to terminate the wind energy system lease if the portion of the wind energy system located on the property has not operated for a period of at least 18 months required to be decommissioned under s. PSC 128.19, 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 energy system lease, or if not provided for in the wind energy
system lease, payments at least equal to the periodic payments received by the property owner in the last full 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 or owner may withhold payments from the property owner.

(d) Permit the property owner to rescind an executed wind energy system lease and any related wind energy system easement within 3 business days of signing the wind lease.

(3) WIND LEASE PROHIBITIONS. A wind energy system easement, wind energy system lease, or wind access easement may not include provisions that required any of the following:

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

(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 or owner.

(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.

(4) MITIGATION AGREEMENTS. A developer, owner or operator may not, as a condition of accepting any benefit to settle a noise, signal interference, stray voltage or shadow flicker mitigation issue, or other complaint, require a property owner to keep the existence of the
settlement confidential or require the property owner to waive any right to make a future claim about an unrelated issue.

PSC 128.12 Existing property uses. A developer shall make reasonable efforts to ascertain and accommodate existing land uses and commercial enterprises located on nonparticipating properties within one-half mile of a proposed wind turbine site that exist or for which publicly-available plans for construction are on file with a political subdivision at the time of the wind energy system application. A developer shall monitor filings at a political subdivision to ensure compliance with this section.

PSC 128.13 Siting criteria. (1) SETBACK DISTANCE AND HEIGHT REQUIREMENTS. (a) A developer shall design and construct a wind energy system using the wind turbine setback distances shown in Table 1.
<table>
<thead>
<tr>
<th>Setback Description</th>
<th>Setback Distance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Occupied Community Buildings</td>
<td>3.1 times the maximum blade tip height</td>
</tr>
<tr>
<td>Participating Residences</td>
<td>1.5 times the maximum blade tip height</td>
</tr>
<tr>
<td>Nonparticipating Residences</td>
<td>3.1 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>1.1 times the maximum blade tip height</td>
</tr>
<tr>
<td>Public Road Right-of-Way</td>
<td>1.1 times the maximum blade tip height</td>
</tr>
<tr>
<td>Wetlands; Ordinary High Water Mark of Lakes and Waterways</td>
<td>1.1 times the maximum blade tip height</td>
</tr>
<tr>
<td>Overhead Communication and Electric Transmission or</td>
<td></td>
</tr>
<tr>
<td>Distribution Lines - Not including utility service lines to individual houses or outbuildings</td>
<td>1.1 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 and owners of participating and nonparticipating properties to site wind turbines to minimize individual hardships.

(d) The owner of a participating or nonparticipating residence, or occupied community building or nonparticipating residence may waive the applicable wind turbine setback distances in Table 1 for those structures, except that the setback for a large wind energy system may not be less than a minimum setback distance of 1.5 times the maximum blade tip height, and the setback for a small wind energy system may not be less than. The owner of a participating residence may waive the applicable wind turbine setback distance in Table 1 for those structures to a minimum setback distance of 1.1 times the maximum blade tip height. The owner of a nonparticipating property may waive the applicable wind turbine setback distance in Table 1 from a nonparticipating property line.

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

(b) 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.

(c) A political subdivision may not set height or setback distance limitations for a wind turbine near a public use airport or heliport that are more restrictive than existing airport and airport approach protection provisions under ss. 114.135 and 114.136, Stats. If no provisions have been established for public use airports or heliports under ss. 114.135 or 114.136, Stats., the political
subdivision may adopt wind turbine height or setback distance provisions that are based on, but not more restrictive than, the federal aviation administration obstruction standards in CFR title 14, part 77.

(8) A political subdivision may not set height or setback distance limitations for wind turbines near a private heliport at a medical facility heliport-used for air ambulance service that are based on, but not more restrictive than, federal aviation administration obstruction standards that apply to public use heliports.

(de) A political subdivision may not set height or setback distance limitations for a wind turbine near a private use airport.

(e) 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 heliport except as provided in par. (d).

(3) LINE-OF-SIGHT COMMUNICATION TECHNOLOGIES STANDARD. The developer, owner or operator may not construct wind energy system facilities within the path of existing 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 existing line-of-sight technologies.

PSC 128.14 Noise Criteria. (1) Definitions. In this section, nighttime hours are the hours beginning at 10:00 p.m. and ending at 6:00 a.m. daily and daytime hours are the hours beginning at 6:00 a.m. and ending at 10:00 p.m. daily.
(2) PLANNING. A developer shall comply with the noise standards in this section when making wind turbine siting decisions.

(23) NOISE STANDARD. (a) Compliance with noise limits shall be measured or otherwise evaluated at the outside wall of the nonparticipating residence or occupied community building. If sound level measurements are used to evaluate compliance, those measurements shall be made as near as possible to the outside wall nearest to the closest wind turbine, or at an alternate wall as specified by the resident owner of the nonparticipating residence or occupied community building. The developer or owner may take additional measurements to evaluate compliance in addition to those specified by this section.

(b) Except as provided in sub. (3)(par. (c) and subs. (4)(a) and (d), a developer or owner shall operate the wind energy system in a manner that does not exceed 50 dBA during daytime hours and 45 dBA during nighttime hours at the outside wall nearest to the closest wind turbine at any nonparticipating residence or occupied community building existing on the date of approval of the wind energy system by or for which a building permit has been filed at the time the political subdivision.

(3) MITIGATION. (a) receives notice of the planned wind energy system pursuant to s. PSC 128.10 (1). A developer, owner or operator shall test for compliance with the noise limits upon complaint by a nonparticipating resident. If the complaint relates to noise during nighttime hours, the noise limit for those areas related to the complaint shall be reduced responsible for monitoring building permit filings to 45 dBA during nighttime hours and the developer, owner or operator shall ensure the seasonally-reduced nighttime noise limit is met. For purposes of compliance with 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 community 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, or owner or operator shall promptly take corrective action to permanently 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, under normal operating conditions.

(e) A-4) COMPLIANCE. (a) Upon receipt of a complaint by a nonparticipating resident, a developer or owner shall test for compliance with the noise limits in sub. (3) (b). A political subdivision or monitoring committee established under s. PSC 128.36 (3) may not require additional testing if the developer or owner has provided the results of an accurate test conducted within two years of the date of the complaint showing that the wind energy system is in compliance at the location relating to the complaint.

(b) Methods available for the developer or owner to comply with sub. (3) (b) shall include operational curtailment of one or more wind turbines. Methods available for the developer or owner to comply with sub. (3) (c) shall include curtailment of one or more wind turbines during nighttime hours.
(c) A developer or owner shall evaluate compliance with the noise limits sub. (3) (b) as part of pre- and post-construction noise studies. A developer, or owner or operator shall conduct pre- and post-construction noise studies as described in under the most current version of the noise measurement protocol as described in s. PSC 128.40 (2).

(f) 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.

(g) An owner of an affected residence or occupied community building may relieve the developer or owner of the requirement to meet any of the noise requirements in this section at the affected residence or occupied community building by written contract with the developer or owner. Unless otherwise provided in a contract signed by an owner of an affected nonparticipating residence or occupied community building, a waiver by an owner of an affected nonparticipating residence or occupied community building is an encumbrance on the real property and, runs with the land until the wind energy system is decommissioned, and shall be recorded with the register of deeds for the county in which the property is located.

(5) NOTIFICATION. (a) Before entering into a contract under sub. (4) (d), a developer or owner shall provide written notice of the requirements of this section to the owner of an affected nonparticipating residence or occupied community building.

(b) A developer or owner shall provide notice of the requirements of this section to a potentially-affected owner of a nonparticipating residence or occupied community building before the initial operation of the wind energy system.
PSC 128.15 Shadow flicker. (1) PLANNING. (a) A developer shall consider shadow flicker in wind turbine siting decisions. A developer shall plan the proposed wind energy system in a manner that minimizes shadow flicker at an occupied community building or participating or nonparticipating residence to the extent reasonably practicable.

(b) A developer shall use shadow flicker computer modeling to estimate the amount of shadow flicker anticipated to be caused by a large wind energy system.

(2) SHADOW FLICKER STANDARD. The developer or owner shall design and operate the wind energy system in a manner that computer modeling indicates that no nonparticipating residence would experience more than 30 hours per year of shadow flicker. A developer shall monitor building permit filings to ensure compliance with this subsection.

(3) MITIGATION. (a) A developer, or owner and operator, shall work with an owner of a residence or occupied community building to mitigate the effects of shadow flicker to the extent reasonably practicable.

(b) The developer or owner shall provide reasonable shadow flicker mitigation for a nonparticipating developer’s or owner’s expense for a nonparticipating residence experiencing 20 hours per year or more of shadow flicker.

(c) The developer or owner shall model shadow flicker and a nonparticipating residence is eligible for mitigation if computer modeling shows that shadow flicker exceeds experienced at the nonparticipating residence will be 20 hours per year at the residence or more. The owner of the nonparticipating residence is not required to document the actual hours per year of shadow flicker.
flicker if modeling indicates the nonparticipating residence is eligible for mitigation. A nonparticipating residence that experiences 20 hours per year or more of shadow flicker based on records kept by the resident shall also be eligible for mitigation.

(bd) A developer, owner or operator may provide shadow flicker mitigation for residences experiencing less than 25 hours per year of shadow flicker, any residence or occupied community building in addition to the mitigation required under par. (b).

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

(d) WAIVER. Upon request by a developer, owner or operator, shall provide notification to the owners of potentially affected residences of the provisions of this section before initial operation of the wind energy system.

(e) An owner of an affected residence or occupied community building may relieve the developer or owner of the requirement to meet any of the shadow flicker requirements in this section at the affected residence by written contract waive the developer, owner or operator’s requirement to provide shadow flicker mitigation. With the developer or owner. Unless otherwise provided in a contract signed by an owner of an affected residence or occupied community building, a waiver by an owner of an affected residence or occupied community building is an encumbrance on the real property and runs with the land until the wind energy
system is decommissioned, and shall be recorded with the register of deeds for the county in which the property is located.

(5) NOTIFICATION. (a) Before entering into a contract under sub. (4), a developer or owner shall provide notice of the requirements of this section to individual owners of an affected residence or occupied community building.

(b) A developer or owner shall provide notice of the requirements of this section to a potentially-affected owner of a nonparticipating residence or occupied community building before the initial operation of the wind energy system.

PSC 128.16 Signal interference. (1) PLANNING. (a) A developer shall consider radio, television and cellular telephone signal commercial communications and personal communications interference in wind turbine siting decisions and shall use reasonable efforts to avoid causing such interference with commercial communications and personal communications to the extent practicable.

(b) The developer or owner may not construct wind energy system facilities within existing line-of-sight communication paths that are used by government or military entities to provide services essential to protect public safety. A political subdivision may establish reasonable standards regarding radio, television, cellular telephone interference require a developer to provide information showing that wind turbines and other wind energy system facilities will be in compliance with this paragraph.

(2) RADIO AND TELEVISION COMMERCIAL COMMUNICATIONS INTERFERENCE MITIGATION. A developer, or owner or operator shall use reasonable efforts best commercially available technology to mitigate radio and television signal interference to the extent
practicable interference caused by a wind energy system with commercial communications in use at the time a wind energy system begins operation until the wind energy system is decommissioned. Before implementing remedial mitigation measures, the developer, or owner or operator shall consult with affected residents or parties regarding the preferred reasonable mitigation solution for radio and television commercial communications interference problems. A developer or owner or operator shall mitigate radio and television commercial communications interference caused by the wind energy system by making a resident’s the affected party’s preferred reasonable mitigation solution permanent effective until the wind energy system is decommissioned, except as provided in sub. (4).

(3) CELLULAR TELEPHONE PERSONAL COMMUNICATIONS INTERFERENCE MITIGATION. A developer, or owner or operator shall use reasonable efforts best commercially available technology to mitigate cellular telephone signal interference to the extent practicable. The developer, owner or operator shall work with affected cellular providers to provide adequate coverage in the affected area. Acceptable mitigation techniques for lost or weakened cellular telephone with personal communications 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 in use at the time a structure within the wind energy system begins operation caused by a wind energy system until the wind energy system is decommissioned. Before implementing mitigation measures, the developer or owner shall consult with affected parties regarding the preferred mitigation solution for personal communications interference problems. A developer or owner shall mitigate personal communications interference caused by the wind energy system by making the affected party’s preferred reasonable mitigation solution effective until the wind energy system is decommissioned, except as provided in sub. (4).
(4) MITIGATION PROTOCOL. The commission may, in a protocol established under s. PSC 128.40 (2), require a developer or owner to implement a new mitigation solution that becomes commercially available before the wind energy system is decommissioned to address interference for which mitigation is required under sub. (2) and (3) and for which the original mitigation solution implemented is only partially effective.

PSC 128.17 Stray voltage. (1) STRAY VOLTAGE TESTING REQUIRED. Developer, owner, or operator (a) Except as otherwise specified by commission staff under par. (b) or under a protocol established under s. PSC 128.40 (2), a developer or owner shall work with the local electric distribution company to test for stray voltage at all dairy and confined animal operations within one-half mile of any wind energy system facility, before any wind energy system construction activity that may interfere with testing commences and again after construction of the wind energy system is completed. Before any testing, a 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.

(b) Before any testing under par. (a) begins, a developer or owner shall work with commission staff to determine the manner in which stray voltage testing will be conducted and on which properties. The electric distribution company serving a dairy or confined animal operation where testing is required under par. (a) shall conduct or arrange to conduct all required testing at the expense of the developer. Stray voltage testing under par. (a) shall be conducted following the stray voltage protocol established under s. PSC 128.40 (2).
(2) RESULTS OF TESTING. A developer, owner, or operator or owner and the electric distribution company shall provide to commission staff the results of all stray voltage testing in writing.

(3) REQUIREMENT TO RECTIFY PROBLEMS. A developer, owner, or operator shall work with the electric distribution company and farm owner to rectify any stray voltage problems attributable to the construction and operation of the wind energy system, in compliance with the stray voltage protocol established under s. PSC 128.40 (2).

PSC 128.18 Construction and operation. (1) PHYSICAL CHARACTERISTICS. (a)

A developer, or 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, or owner or operator may not attach any flag, decorative sign, streamers, pennants, ribbons, spinners, fluttering, or revolving devices to a wind turbine. A developer, or owner or operator may attach a safety feature or wind monitoring device to a wind turbine.

(b) A developer, or owner or operator shall ensure that a wind turbine has a neutral, conventional or unobtrusive finish.

(c) A developer, or owner or operator shall install lighting at a wind energy system that complies with standards established by the federal aviation administration. A political subdivision may not establish lighting requirements for a wind energy system that conflict with standards established by the federal aviation administration. A political subdivision may require use of shielding or control systems approved by the federal aviation administration to reduce visibility of lighting to individuals on the ground.
PSC Chapter 128
1-AC-231

(d) A developer, or owner or operator of a wind turbine shall take appropriate measures to ensure that a wind turbine is not readily climbable except by authorized personnel.

(e) A developer or owner or operator of a wind energy system shall ensure that all wind turbine access doors to the wind turbines and electrical equipment are locked when authorized personnel are not present.

(f) A developer, or owner or operator of a wind energy system shall place appropriate warning signage on or at the base of each wind turbine.

(g) A developer or 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 sign within the wind energy system. An A developer or owner or operator shall post these signs at every intersection of a wind energy system access road with a public road and at each wind turbine location.

(h) A developer or owner shall clearly mark guy wires and supports for a wind energy system, meteorological tower or other device for measuring wind speeds so that the wires and supports are visible to low flying aircraft under fair weather conditions.

(2) ELECTRICAL STANDARDS. (a) A developer, or 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 or owner shall construct collector circuit facilities for a wind energy system underground to the extent practicable.
(c) A developer, or 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 and bonded to overhead collector circuit grounding. If third-party facilities are found attached to the overhead collector facilities, developer or owner shall ensure that the third-party facilities are promptly removed.

(3) CONSTRUCTION, OPERATION, AND MAINTENANCE STANDARDS. (a) A developer, or 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, and in a manner that provides for the safeguarding of individuals from injury.

(b) Except for the area physically occupied by the wind energy system and related facilities, including permanent access roads, a developer or owner shall restore the topography, soils and vegetation of the project area to original condition after construction is complete considering any modifications needed to comply with DNR requirements, unless otherwise provided in a contract signed by an affected landowner.

(c) A developer, or 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—TRANSPORTATION PLAN. (a) In this subsection, “A developer shall prepare a transportation plan for construction of the wind energy system emergency” means a condition or situation at a in consultation with the department of transportation and affected political subdivisions that does all of the following:

1. Minimizes impacts to existing traffic patterns.
2. Takes into account highway safety.

3. Plans for the movements of oversize and overweight equipment on highways.

4. Identifies any access points that may be needed between private property and state trunk highways or local roads during construction or operation of the wind energy system that presents a significant threat of physical danger to human life or a significant threat to property. “Wind energy system emergency” includes natural events that cause damage to-

5. Identifies any wind energy system facilities to be located within state trunk highways or local roads.

6. Provides the means for mitigating, assessing and repairing, at the developer’s expense, road damage caused by construction and operation of the wind energy system.

(b) A political subdivision may require a developer to include in a transportation plan under par.

(a) 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 wind energy system, and a process for pre- and post-construction review by the political subdivision.

(5) EMERGENCY PROCEDURES. (a) An owner or operator shall notify a political subdivision within 24 hours of a wind energy system emergency and the nature of the wind energy system emergency, within 24 hours of the wind energy system emergency.

(c) An owner or operator shall establish and maintain liaison with a political subdivision and with fire, police, and other appropriate first responders serving within one-half mile of the wind energy system to do all of the following:

1. Learn the responsibility and resources of each government organization or first responder entity that would respond to a wind energy system emergency.
2. Acquaint the political subdivision and fire, police and other appropriate first responders serving within one-half mile of the wind energy system with the owner and operator’s abilities to respond to a wind energy system emergency and provide annual training for appropriate officials regarding responding to a wind energy system emergency until the wind energy system has been decommissioned. Create effective emergency plans that include all of the following:

3. Identify a list of the types of wind energy system emergencies subject to that require notification under par. (b).

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

(d) An owner or operator of a large.

2. Current emergency contact information for first responders and for the wind energy system shall establish the owner, including names and phone numbers.

3. Procedures for handling different types of wind energy system emergencies, including written procedures that provide for shutting down the wind energy system or a portion of the system, as appropriate, in.

4. Duties and responsibilities of the owner and of first responders in the event of a wind energy system emergency. The procedures shall provide for all of the following:

1. Establishing and maintaining adequate means of communication with a political subdivision and with fire, police, and other appropriate first responders.

2. Advising an affected political subdivision 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.
e. 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 plan for the area within one-half mile of any wind energy system facility due to an, including the location of alternate landing zones for emergency services aircraft.

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

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

6. Notifying a(c) The owner shall review the emergency plan at least annually in collaboration with fire, police and other appropriate first responders to update and improve the emergency plan as needed.

(d) The owner shall distribute current copies of the emergency plan to the political subdivision and fire, police; and other appropriate first responders of a wind energy system emergency and coordinating with planned and actual responses during an emergency as identified by the political subdivision.

(e) A political subdivision may require the owner to provide annual training for fire, police and other appropriate first responders regarding responding to a wind energy system emergency until the wind energy system has been decommissioned.

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

1. Furnish its operator, supervisors and employees who are responsible for emergency action a copy of the latest current edition of the emergency procedures established under par. (d) this subsection to ensure compliance with those procedures.
2. Train the appropriate operating personnel to ensure they have knowledge of the emergency procedures and verify that the training is effective.

3. As soon as possible after the end of a wind energy system emergency, the owner, or operator shall review employee activities to determine whether the procedures were effectively followed.

(5) COMPLAINT PROCESS. (a) A developer or owner shall use reasonable efforts to resolve complaints regarding a wind energy system and shall investigate complaints regarding a wind energy system at the developer’s or owner’s expense. A developer or owner shall develop a complaint resolution process in compliance with this subsection.

(b) 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 one-half mile of the wind energy system. A developer shall include in the notice a detailed description of the requirements for submitting a complaint to the developer or owner, to the political subdivision, and to the commission, and shall include a contact person and telephone number for complaints or concerns during construction, operation, maintenance and decommissioning. A developer shall provide a copy of the notice to any political subdivision within which the wind energy system will be located, and the developer, or owner or operator shall keep the contact person and telephone number up to date current and on file with the political subdivision.

(b) A developer, owner or operator (c) Upon receipt of a complaint, a developer or owner shall provide the complainant with a copy of the notice described in par. (b). Within 30 days of receiving a complaint, a developer or owner shall provide an initial response to the complainant.
A developer or owner shall make a good faith effort to resolve complaints within 45 days of receiving a complaint.

(d) A developer or owner 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, or owner or operator shall make copies of this complaint log available monthly, at no cost, to any either a monitoring committee established under s. PSC 128.36 (3) by a political subdivision in which the wind energy system is located. If, or if a monitoring committee has not been established, the developer, owner or operator shall make a complaint log available to the political subdivision upon request.

(ee) A developer, or owner or operator shall make any complaint log available to the commission upon request.

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.

(e) 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 6 month period. This presumption may be rebutted by for a period of 180 days after the date the wind energy system is presumed to be at the end of its useful life if 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 6 months 180 days after the date the wind energy system is presumed to be at the end of its useful life.

(c) Upon application by the owner or operator, under par. (b) and except as provided in par. (d), a political subdivision shall grant an extension of the time period for returning the wind energy system to service by one or more additional 6-month period 180 day periods if the owner or operator demonstrates an ongoing good faith effort to return it is likely the wind energy system to service. A wind energy system that generates no electricity for a continuous 18-month period is irrebuttably presumed to be at will operate again in the end future and any of its useful life.

(d) When decommissioning is required, 1. The owner submits a plan to the owner or operator shall begin decommissioning within 9 months after the political subdivision that demonstrates an ongoing good faith effort to return the wind energy system has reached the end of its useful life. The owner or operator shall complete decommissioning to service and removal of facilities as necessary to generate electricity.

2. The owner demonstrates that 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 ongoing research or development purposes.
2. The owner demonstrates that the wind energy system is being used for educational purposes.

(d) A political subdivision may deny a request for an extension under par. (c) if the wind energy system has not generated any electricity for a continuous period of 540 days or more and the political subdivision finds that the owner is not capable of returning the wind energy system to service within a reasonable period of time.

(e) A wind energy system is irrebuttably presumed to be at the end of its useful life if the wind energy system generates no electricity for a period of 540 days and any of the following occur:

1. The owner does not request an extension of the time period for returning the wind energy system to service under par. (b).

2. The political subdivision denies a request for an extension under par. (d) and any appeal rights have expired.

(f) When decommissioning is required, the owner shall begin decommissioning within 360 days after the wind energy system has reached the end of its useful life. The owner shall complete decommissioning and removal of the wind energy system within 540 days after the wind energy system has reached the end of its useful life.

(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) A political subdivision may require a developer or owner of a large wind energy system to provide information to the political subdivision that demonstrates proof of the owner’s financial ability to comply with requirements regarding decommissioning before commencing operation of the wind energy system. A developer or owner may...
establish proof of financial responsibility to comply with this section by bond, deposit, escrow
account, irrevocable letter of credit, other financial commitment acceptable to the political
subdivision or some combination of these financial assurances.

(b) A political subdivision may not require a developer or owner to provide financial assurance
under this section in an amount exceeding 10 percent of the cost to construct the wind energy
system. If a political subdivision requires a developer or owner to provide financial assurance
under par. (a), the developer or owner shall provide the political subdivision with reasonable cost
estimates for determining the amount of the assurance to be required.

(c) A political subdivision may condition the political subdivision's approval of a wind energy
system on the developer's or owner's compliance with par. (a), however a political subdivision
may not deny an application to construct a wind energy system for failure to prove the owner's
financial ability to comply with the requirements of this section if the developer meets the
requirements in par. (a).

(d) During the useful life of a wind energy system, the political subdivision may periodically
request information from an owner regarding the industry costs for decommissioning the wind
energy system. If during the useful life of a wind energy system a political subdivision finds that
the future anticipated cost to decommission the wind energy system is at least 10 percent more or
less than the financial assurance on file with the political subdivision, except as provided in par.
(b) the political subdivision may increase or decrease the level of financial assurance required for
a wind energy system. A political subdivision may not adjust the financial assurance under this
paragraph more often than once in a two-year period.

(e) A political subdivision may require a developer or owner to submit to the political
subdivision a substitute instrument under par. (a) upon the occurrence of an event which raises
material concerns regarding the continued viability of the previously-submitted financial assurance.

(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. If a large wind energy system was preconstruction condition including any modifications needed to comply with DNR requirements, unless otherwise provided in a contract signed by an affected landowner.

(b) If a wind energy system was constructed on a brownfield, as defined in s. 560.13(1), Stats., the owner or operator shall restore the property to eliminate effects caused by the wind energy system, except for the effects of environmental remediation activities, as defined in s. 560.13(1)(d), Stats.

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

(b) Within 12 months (360 days) 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 REQUIRED. A developer shall file an application to construct a political subdivision is required for a proposed wind energy system or expansion of an existing with all political subdivisions within which the wind energy system—a will be located.

(2) **CONTENTS OF AN APPLICATION.** 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 showing the locations of all proposed wind energy facilities.

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

(c) **Construction Timeline and process and timeline for constructing the wind energy system.**

(d) **Impact Information regarding anticipated impact of the wind energy system on local infrastructure.**

(e) Information regarding noise attributable to the wind energy system.

(f) Information regarding shadow flicker anticipated to be attributable to the wind energy system.

(g) **Effects Information regarding the anticipated effects of the wind energy system on existing land uses within one-half mile of the wind energy system.**

(h) **Effects on air traffic.**

(i) **Effects(h) Information regarding the anticipated effects of the wind energy system on airports and airspace.**

(i) Information regarding the anticipated effects of the wind energy system on line-of-sight communications.
(j) A list of all state and federal permits required to construct and operate the wind energy system.

(k) Except as provided in sub. (3), information required for a \textit{copy of any transportation plan} developed under s. PSC 128.40-18 (4).

(m) A \textit{copy of all emergency plans developed in collaboration with appropriate first responders} under s. PSC 128.18 (5) (b). A developer or owner may file plans using confidential filing procedures as necessary.

(n) A \textit{copy of all emergency plans developed in collaboration with appropriate first responders} under s. PSC 128.18 (5) (b). A developer or owner may file plans using confidential filing procedures as necessary.

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

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

\textbf{2(3) ACCURACY OF INFORMATION.} The developer shall ensure that information contained in an application is accurate and internally consistent.

\textbf{3 SMALL WIND ENERGY SYSTEM APPLICATIONS.} For a small wind energy system, a developer is not required to file the information required under sub. (1)(k).

\textbf{4 DUPLICATE COPIES.} A political subdivision may specify a reasonable number of copies to be filed. 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.

\textbf{5 NOTICE TO PROPERTY OWNERS.} (a) On the same day a developer files an application for a \textit{large} wind energy system, the developer shall \textit{mail or deliver, under s. 66.0401 (4) (a) 3., Stats., use commercially reasonable methods to provide} written notice of the filing of the
application to property owners and residents located within one-half mile of the proposed turbine host properties or location of any wind energy system facility. The notification shall include all of the following:

1. A complete description of the wind energy system, including the number and size of the wind turbines.
2. A map showing the locations of all proposed wind energy system facilities.
3. The proposed timeline for construction and operation 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 a brief description of the proposed wind energy system and its proposed location, the locations where the application is available for public review, 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 a local library and at the political subdivision’s 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 small wind energy system 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 60 days of receipt of the developer’s notice of intent to file an application.

(b) Except as provided in s. 66.0401(4)(a)2., Stats., 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 90 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) A political subdivision shall determine whether an application is complete applying the detailed
application filing requirements established by the commission under s.s. PSC 128.30 (2) and PSC 128.40–(1).

(b) 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 provided to the developer shall state the reasons for the determination.

(c) 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 refile an application. For incomplete applications, the developer shall provide additional information as specified in the notice.

(d) Subsequent 45-day completeness review periods shall begin the day after the political subdivision receives responses to all items identified in the notice.

(e) 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 necessary to understand the wind energy system 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) A political subdivision may not unreasonably deny an
application for a wind energy system or impose unreasonable conditions.

(b) For a political subdivision that does not have in effect an ordinance as described in s. PSC
128.03 (1) and s. 66.0401 (4) (g), Stats., an application submitted under s. PSC 128.30 (1) shall
be considered automatically approved if any of the following occur:
1. The political subdivision does not enact an ordinance before the first day of the 4th month
after the political subdivision receives the application.
2. The political subdivision notifies the applicant in writing that it does not intend to enact an
ordinance, as described in s. 66.0401 (4) (a) 2., Stats.
(c) Notwithstanding automatic approval of an application under par. (b), a developer or owner of
a wind energy system shall comply with this chapter.

(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. If an application is denied, the decision shall specify the
reason for the denial. 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 decision.
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 if there is a change in the owner or operator of the
wind energy system. A political subdivision may require a developer, an owner or operator to
provide timely notice of any change in the owner or operator of the wind energy system.

(5) FEES. (a) A political subdivision may charge a developer a reasonable application fee or
require a developer to reimburse the political subdivision for reasonable expenses relating to the
review and process of an application for a wind energy system.
(b) A political subdivision’s fee or reimbursement requirement shall be based on the actual and
necessary 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, and other consultants or experts. The political subdivision may by ordinance 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 a developer of a wind energy system to submit up to 50 percent of the total estimated amount of the fee or reimbursement for the wind energy system application under par. (a) before issuing a written decision under sub. (3) (a) if the political subdivision gives written notice to the developer of its intent to do so within 60 days of the date the political subdivision receives a application is deemed complete and the notice under s. PSC 128.10(1) and identifies contains an estimate of the amount of the fee and the relevant reimbursement requirements.

(d) The total fee or reimbursement permitted under this subsection for a wind energy system may not exceed 0.01 percent of the estimated cost of a small wind energy system; 0.03 percent of the estimated cost of a large wind energy system with an installed nameplate capacity of 20 megawatts or less, and; 0.05 percent of the estimated cost of a large wind energy system with an installed nameplate capacity of greater than 20 megawatts.

(e) A political subdivision may require a developer to submit up to 50 percent of the total fee or total estimated reimbursement under this subsection at the time the application is submitted.

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

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

(a) Require information describing how the developer has incorporated consulted with the DNR and other natural resource agencies, whether the developer has implemented current DNR and US Fish and Wildlife Service guidelines for avoiding and minimizing potential impacts to natural resource features and resources and whether the developer has incorporated any project-specific DNR recommendations regarding natural resources not subject to specific DNR permits.

(b) Require a developer or owner of a large wind energy system to cooperate with any state-wide or regional study coordinated by the commission or the DNR of the effects of wind energy systems on bat or migratory bird wildlife populations, including providing access to sites for post-construction bird and bat mortality studies.

(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 or owner to offer agreements that include annual monetary compensation to the owner of a nonparticipating residence if the residence is within one-half mile of a planned wind turbine site. If a political subdivision requires a developer or owner 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 one-half mile of each nonparticipating residence by a per-wind turbine compensatory amount, with annual payments escalating annually. The total annual payment offered to any owner of a
nonparticipating residence **may not to** exceed the amount paid by the developer, or operator to any owner of a turbine host property receiving payment under a wind energy system 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 **under this chapter.**

(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 5 acres in size located within one mile of a wind turbine at the time the wind energy system is constructed. The political subdivision may use this list to track the sale prices of residential real properties of less than 5 acres in size within one mile of a wind turbine.

(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 (4) **Require the developer to submit to the political subdivision copies of all necessary state and federal permits and approvals before the start of construction.**

(5) **Require the owner** 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 large wind energy system 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.

(2) PROHIBITED PROVISIONS. A political subdivision may not include any of the following as a regulation 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 an owner or operator of a wind energy system if the owner or operator satisfies the requirements of this chapter information describing how the developer has consulted with the department of agriculture, trade and consumer protection regarding keeping the wind energy system in good operating condition, guidelines for avoiding and minimizing potential impacts to agricultural productivity and the requirements regarding decommissioning whether the developer has incorporated any project-specific recommendations.

(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) A political subdivision shall keep a complete written record of its decision-making relating to an application for a wind energy system.
(b) 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.

(c) 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 representative copy of all notices issued under ss. PSC 128.10 (1) (a), 128.18 (5) (a6) (b) and 128.30 (5).

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

(d) A record of any public meeting under s. PSC 128.30 (6) (c) and any 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 meeting or hearing participants.

(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 90 days of the date a wind energy system commences operation, the developer, or 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 energy system facilities, geographic information system information showing the location of each wind turbine energy system facilities and current information regarding identifying the developer, and owner and operator of the wind energy system. A developer or owner shall in the filings under this subsection label each wind turbine location with a unique identifier consistent with the information posted at the wind turbine location under s. PSC 128.18 (1) (g).

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 under sub. (1) (b) 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 complaint resolution. (1) MONITORING COMMITTEE. (a) A political subdivision may establish a committee to monitor complaints and procedure to monitor compliance by the developer, or owner or operator with
any conditions to condition an approved large wind energy system or to monitor, assess when wind energy system facilities are not maintained in good repair and operating condition. The procedure may include timelines, provide for payment of reasonable fees for conducting an assessment, and provide for notification to the public.

(b) A political subdivision may require a developer to pay for a third-party inspector to monitor and report to the political subdivision regarding compliance with any local agreements. If a permit requirements during construction. An inspector monitoring committee is established, the political subdivision compliance under this paragraph 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 residing within one mile of the large wind energy system also report to a state permitting authority upon the state permitting authority's request.

(2) DUTIES. A monitoring committee may do all 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.

(3) COMPLAINT RESOLUTION. A developer, owner or operator shall use reasonable efforts to resolve complaints. A developer, owner or operator shall make a good faith effort to resolve complaints within 45 days of receiving a complaint. A developer, owner or operator shall notify the political subdivision of complaints that have not been resolved within 45 days of the date the developer, owner or operator received the original complaint. A political subdivision shall establish a process for determining whether the
developer, owner or operator has met the requirements of this chapter regarding complaint resolution.

(b) A political subdivision may establish a process for determining whether the developer or owner has met the requirements of this chapter regarding complaint resolution.

(3) MONITORING COMMITTEE. (a) A political subdivision may establish a committee to oversee resolution of complaints regarding a wind energy system. If a committee is established under this paragraph, the political subdivision shall include on the committee a member who is a local employee of a developer or owner of a wind energy system and at least one nonparticipating landowner residing within one-half mile of at least one wind turbine in a wind energy system.

(b) A committee established under par. (a) may do any of the following:

1. Maintain a record of all complaints brought to the monitoring committee.

2. Require the developer or owner to respond to any complaint forwarded to the developer by the committee.

3. Recommend to the political subdivision a reasonable resolution to a complaint based upon the committee’s findings.

Subchapter IV

Commission Procedure

PSC 128.40 Detailed application requirements. PSC 128.40 Standards established by the Commission. (1) DETAILED APPLICATION FILING REQUIREMENTS. The commission
shall establish detailed application filing requirements for applications filed 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(4)(j) (2). The commission may revise these requirements as necessary. The commission shall make the filing requirements available to the public on the commission’s website.

(2) COMMISSION PROTOCOLS. (a) The commission may periodically create and revise measurement, compliance, and testing protocols as needed to provide standards for evaluating compliance with this chapter. These protocols may be created and revised to reflect current industry practice, changes in the state of the art, and implementation of new technologies. The commission shall make protocols under this subsection available to the public on the commission’s website.

(b) The Commission may establish protocols in any of the following areas:

1. Noise measurement, compliance and mitigation.
2. Stray voltage testing and remediation.
3. Shadow flicker compliance and mitigation.
4. Communications interference testing and mitigation.
5. Other areas where protocols are appropriate.

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, except the time provisions of that section do not apply.

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

(6) ENVIRONMENTAL ANALYSIS. A docket opened to review a petition under this section is presumed to be a Type III action under s. PSC 4.10 (3).

(7) STANDARD OF REVIEW. The commission may reverse or modify a political subdivision’s decision or enforcement action if the decision or enforcement action does not comply with this chapter or is otherwise unreasonable.

(8) REMAND TO POLITICAL SUBDIVISION. (a) Except as provided in par. (c), if the commission remands any issue to the political subdivision, the political subdivision’s review on remand shall be completed no later than 90 days after the day on which the commission issues its decision.

(b) A political subdivision may extend the 90-day period in par. (a) 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 90 days:

1. An extension of up to 45 days if the political subdivision needs additional information to determine issues on remand.

2. An extension of up to 90 days if a developer makes a material modification to the application after remand.

3. An extension of up to 90 days for other good cause.

(c) If the commission remands a decision or enforcement action and directs the political subdivision to issue a decision consistent with the commission’s decision, the political subdivision shall enter the decision within 2030 business days.
Subchapter V

Small Wind Energy Systems

PSC 128.50 Exemptions from this Chapter. All of the provisions in this chapter apply to a small wind energy system except ss. PSC 128.14(4)(c), PSC 128.14(5)(a), PSC 128.15(1)(b), PSC 128.15(2), PSC 128.15(3)(b) through (3)(e), PSC 128.15(5), PSC 128.16(2) through (4), PSC 128.18(1)(g), PSC 128.18(2)(b) through (c), PSC 128.18(3)(b) through (c), PSC 128.18(4), PSC 128.18(5)(b) through (f), PSC 128.18(6)(c) through (e), PSC 128.19(1)(c) through (e), PSC 128.19(3), PSC 128.19(4), PSC 128.30(2)(k) through (m), PSC 128.33(1) through (3), PSC 128.33(5) through (6), PSC 128.34(3), PSC 128.36(1)(b), and PSC 128.36(2).

PSC 128.51 Modifications to this Chapter. The following provisions in this chapter are modified to apply to a small wind energy system as follows:

(1) Under s. PSC 128.10(1), the notice shall be filed at least 60 days before a developer files an application to construct a wind energy system or 90 days before the planned start of construction if no application process is required by the political subdivision and the notice shall be provided to adjacent landowners and the political subdivisions within which the wind energy system may be located.

(2) Under s. PSC 128.12, a developer shall make reasonable efforts to ascertain and accommodate existing land uses and commercial enterprises located on adjacent nonparticipating properties.
(3) Under s. PSC 128.13(1), a developer shall design and construct a wind energy system using setback distances in Table 2. The owner of an adjacent nonparticipating residence or adjacent occupied community building may waive the applicable turbine setback distances in Table 2.

Table 2

<table>
<thead>
<tr>
<th>Setback Description</th>
<th>Setback Distance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Occupied Community Buildings</td>
<td>1.0 times the maximum blade tip height</td>
</tr>
<tr>
<td>Participating Residences</td>
<td>None</td>
</tr>
<tr>
<td>Nonparticipating Residences</td>
<td>1.0 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>1.0 times the maximum blade tip height</td>
</tr>
<tr>
<td>Public Road Right-of-Way</td>
<td>None</td>
</tr>
<tr>
<td>Overhead Communication and Electric Transmission or</td>
<td></td>
</tr>
<tr>
<td>Distribution Lines - Not including utility service</td>
<td></td>
</tr>
<tr>
<td>lines to individual houses or outbuildings</td>
<td>1.0 times the maximum blade tip height</td>
</tr>
<tr>
<td>Overhead Utility Service Lines - Lines to individual</td>
<td></td>
</tr>
<tr>
<td>houses or outbuildings</td>
<td>None</td>
</tr>
</tbody>
</table>

(4) Under s. PSC 128.14(5)(b), a developer or owner shall provide notice of the requirement of this section to adjacent nonparticipating residence or occupied community building before the initial operation of the wind energy system.
Under s. PSC 128.18(6)(a), an owner shall use reasonable efforts to resolve complaints regarding a wind energy system and must comply with a complaint process established by the political subdivision.

Under s. PSC 128.18(6)(b), the written notice of the process for making complaints shall be provided to all adjacent residents and landowners only.

Under s. PSC 128.19(1), 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 540 day period.

Under PSC 128.30(2)(g), the information regarding the anticipated effects of the wind energy system on existing land uses shall be for parcels adjacent to the wind energy system.

Under s. PSC 128.30(5)(a), written notice of the filing of the application shall be provided only to property owners and residents located adjacent to the wind energy system.

Under s. PSC 128.30(6)(c), a political subdivision may hold at least one public meeting to obtain comments on and to inform the public about a proposed wind energy system.