Prepared for the Task Force on Wind Energy

by Duke Energy

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DRAFT
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Note: this draft incorporates changes that the ISD staff proposed and it contains Duke's comments about several provisions.

2010 - STATE OF WYOMING

HOUSE BILL 000__

Industrial Development Information and Siting Act – wind energy

Sponsored by:

A BILL

for

AN ACT relating to industrial development and siting; amending W.S. 35-12-102(a); TO BE UPDATED WHEN DRAFT IS FINAL; and providing for an effective date.

Be it enacted by the Legislature of the State of Wyoming

Section 1. W.S. 35-12-102(a) is amended to read: TO BE UPDATED WHEN DRAFT IS FINAL

35-12-102. Definitions.

(a) As used in this chapter:

(vii) "Industrial facility" or "facility" means any industrial facility with an estimated construction cost of at least ninety-six million nine hundred thousand dollars ($96,900,000.00) as of May 30, 1987. Exempt activities shall not be included in the estimated construction cost of an industrial facility. The council shall adjust this amount, up or down, each year using recognized construction cost indices as the council determines to be relevant to the actual change in construction cost applicable to the general type of construction covered under this chapter. "Facility" also includes, regardless of construction cost:

(E) Any wind generation facility that:

(I) Consists of thirty or more wind towers; or

(II) Has the potential to generate greater than or equal to fifty (50) megawatts of electricity.

Note; the ISD proposed the following language, but Duke does not agree with it. Duke believes that it is contrary to good public policy to give discretionary powers to agencies to decide whether Duke has to incur the substantial time and expense of an ISD application and process.

"(F) At the request of a board of county commissioners, the council may require a permit for a wind energy project regardless of the estimated construction cost or size of the wind energy project. The council shall have authority to require a permit prior to the construction of the wind energy project in conformity with requirements of the act, but the provisions of W.S. 39-15-111 and W.S. 39-16-111 shall not apply."

(xi) "Person" includes an individual, group, firm, partnership, corporation, cooperative, association, **the parent company, partnership or holding company for wind energy projects that are contiguous or within a five mile radius,** or other entity excluding the state, federal government and local government;

Note: Duke proposes the following change to the amendment:

(xi) "Person" includes an individual, group, firm, partnership, corporation, cooperative, association, **the parent company, partnership or holding company for wind energy projects that are ~~contiguous or~~ within a five mile radius *of the nearest wind tower of an existing wind project,*** or other entity excluding the state, federal government and local government;

35-12-109. Application for permit; form; fee; financial accounting.

(a) An application for a permit shall be filed with the division, in a form as prescribed by council rules and regulations, and shall contain the following information:

(iii) Certification that all local governments within the area of site influence, as determined by the administrator, were provided notification and a detailed description of the proposed project at least thirty (30) days prior to submission of the application.

(b) At the time of filing an application or a written request for a waiver of the application provisions of this chapter as provided in W.S. 35-12-107, or as subsequently required by the director, an applicant shall pay a fee to be determined by the director based upon the estimated cost of investigating, reviewing, processing and serving notice of an application**,** ~~and~~ holding a hearing in case of a request for waiver**: inspection and compliance activities and processing updates to the application**. The fee shall be credited to a separate account and shall be used by the division as required to investigate, review, process and serve notice of the application and to hold a hearing in case of a request for waiver. Unused fees shall be refunded to the applicant. The maximum fee chargeable shall not exceed one-half of one percent (0.5%) of the estimated construction cost of the facility or one hundred thousand dollars ($100,000.00), whichever is less.

(c) The director shall provide the applicant with a full financial accounting, including but not limited to all materials, labor and overhead costs relating to the expenditures of the fee at the time of the council's decision as provided in W.S. 35-12-113 **or at the completion of construction, whichever occurs later**.

(d) The applicant shall pay a fee, as determined by the director, for costs of additional meetings and hearings of the council associated with resolving compliance matters associated with the permit conditions.

(i) The director shall provide the applicant with a full financial accounting, including but not limited to all materials, labor and overhead costs at the conclusion of the council meeting or hearing.

Note: Duke Energy is still considering the implications of the fess and processes proposed above and will have further discussions with the ISD about these subsections.

35-12-110. Service of notice of application; information and recommendations; application deficiencies; procedure; jurisdiction; hearing.

(b) The division shall obtain information and recommendations from the following state agencies relative to the impact of the proposed facility as it applies to each agency's area of expertise:

(xviii) Workforce Services;

(xix) Office of State Lands and Investment;

(xx) Department of Employment;

(xxi) State Historical Preservation Office;

(xxii) Department of Fire Prevention and Electrical Safety;

35-12-118. Penalties for violations; civil action by attorney general.

(a) No person shall:

(i) Commence to construct a facility after the effective date of this chapter without first obtaining a permit required under this chapter;

(ii) Operate or maintain an industrial facility without having first obtained a permit required under this chapter.

35-12-119. Exemptions; information required.

(c) The construction, operation and maintenance of the following activities are exempt from this chapter:

(i) Electric transmission **and collector** lines **less than** ~~not exceeding five~~ **one** hundred **sixty** thousand (**160**~~500~~,000) volts; **except all transmission and collector lines, regardless of size, associated with a jurisdictional ISA project shall not be exempt;**

Note: Duke Energy proposes an amendment to the above subsection:

(i) Electric transmission **and collector** lines **less than** ~~not exceeding five~~ **one** hundred **sixty** thousand (**160**~~500~~,000) volts; **except:**

(A) All transmission and collector lines, regardless of size, associated with a jurisdictional ISA project shall not be exempt;

(B) A wind energy project that is not a jurisdictional ISA project does not become jurisdictional because it has electric transmission and collector lines that are greater than one hundred sixty thousand (160,000) volts.

Rationale: A non-jurisdictional project (say 20 turbines) does not become jurisdictional merely because its collector lines that run from the substation to the transmission intertie are 230KV lines, which is the size of most such lines.

SECTION 2. This Act is effective on July 1, 2010.

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