

COMMENTS by PACIFICORP (dba Rocky Mountain Power)

Minimum Requirements for Wind Farm Permits

Logical Place for this Statute falls in Title 18

No wind farms or individual wind turbines capable of generating more than 0.5 megawatts shall be constructed or operated within the state without approval ACQUIRING A WIND FARM PERMIT FROM of The Board of County Commissioners. The Board of County Commissioners shall require the following information to be submitted with each application for a wind farm or turbine, provided that the Board of County Commissioners may by rule require additional information:

Comment – PacifiCorp proposes the above edit for clarification. Would the approval supersede the requirement for a Conditional Use Permit or be in addition to the requisite County permit?

Additionally, the phrase that “the Board of County Commissioners may by rule require additional information” is vague and ambiguous. Is the reference to duly promulgated rules under the Wyoming Administrative Procedures Act? Additionally, PacifiCorp is concerned this provision is open-ended and does not recognize the limits to the jurisdiction delegated to the counties by the State.

- An application on forms approved by the Board of County Commissioners. The applications shall include evidence satisfactory to the board that the proposed wind farm or turbine complies with any applicable zoning or local land use regulations;

Comment – For clarity, PacifiCorp requests that this provision specifically set forth the various components to be included in the application, beyond the evidence outlined below. For example- proposed site plan, applicant information, etc.

- Evidence sufficient to the Board of Commissioners to determine that:
 - The proposed site has adequate legal access or the ability to obtain legal access.

Comment – PacifiCorp proposes the above edit and language for clarification.

PacifiCorp questions what is meant by the term “adequate” and if it is intended that “site” includes transmission line extensions or transmission interconnection facilities required to support the project. It would not be untypical that transmission rights-of-way for a transmission line or fee land purchases for transmission interconnection facilities are not finalized at the time of application. It also would not be untypical, even if legal site access has been acquired, that the point for construction access remains

subject to process (e.g., an access permit from the Wyoming Department of Transportation).

- o The owner of record or legal owner consents to the project on their property.
- o Notice has been given to ADJACENT land owners ~~within (2) miles of any project component~~. Notice shall include any Town or City within (25) miles of the proposed project.

Comment – This notice requirement is overly burdensome and excessive and PacifiCorp questions the rationale behind this arbitrary buffer. PacifiCorp proposes the following language:

The Applicant(s) shall give written notice to the persons or entities of public record owning the lands adjacent to the project boundary.

- o FOR THOSE PROJECTS NOT SUBJECT TO REVIEW BY THE INDUSTRIAL SITING COUNCIL, the Applicant shall NOTIFY ~~request recommendations~~ Federal and State Land Management and Resource Agencies, Municipalities, and other community stakeholders as required by the County Commissioners. The recommendations shall be completed within sixty (60) days of the Applicants documented request. All comments received during the reviews shall be presented to the Board of County Commissioners with the application.

Comment—Initially, PacifiCorp objects to, and proposes deletion of, this provision in that the county does not have authority to require recommendations from federal or state agencies or municipalities. County zoning is limited to the unincorporated areas of the county. *See W.S. § 18-5-201.*

Additionally, recommendations by state agencies as well as counties and municipalities is provided for pursuant to the Industrial Development Information and Siting Act (IDISA), therefore, PacifiCorp requests an exemption for those projects subject to the jurisdiction of the Act.

Those state agencies providing information relative to the impact of the proposed facility as it applies to each agency's area of expertise include:

- (i) Wyoming department of transportation;
- (ii) Public service commission;
- (iv) Game and fish department;
- (v) Department of health;
- (vi) Department of education;

- (vii) Office of state engineer;
- (ix) Wyoming state geologist;
- (x) Wyoming department of agriculture;
- (xi) Department of environmental quality;
- (xiv) The University of Wyoming;
- (xv) Department of revenue; and
- (xvi) The Wyoming business council.

W.S. § 35-110(b).

- o ~~An sufficient~~ emergency management plan exists for emergency services to the proposed site. The emergency management plan shall be submitted by the Applicant for review and comment to the County Fire Warden, County Emergency Management Coordinator and County Sheriff no less than sixty (60) days prior to the public hearing on the application.

Comment— PacifiCorp proposes the above edit for clarification. The term “sufficient” is vague and ambiguous.

An emergency management plan could be a condition of the permit and could be required prior to the start of construction, but it should not be required 60 days before the public hearing. An emergency management plan required that early would only have preliminary project layout data which could cause confusion during an actual emergency during construction. The plan would also have incomplete contact data, since the general construction contractor is typically not hired until after the main project permits have been approved.

- FOR PROJECTS NOT SUBJECT TO JURISDICTION OF THE INDUSTRIAL SITING COUNCIL, a study evaluating the impacts of constructing and operating the proposed project, AND the decommissioning of the project. ~~and the adequacy and safety of the construction and operation of all project components.~~ The decommissioning study will not be required of regulated public utilities. The study shall address, at a minimum, the following issues:

Comment – PacifiCorp proposes an exemption for projects subject to review by the Industrial Siting Council, as this proposed State legislation is redundant with existing State legislation for such large projects. Among the comprehensive permit requirements under W.S. § 35-12-109, the IDISA requires an applicant to provide:

(xiii) Preliminary evaluations of or plans and proposals for alleviating social, economic or environmental impacts upon local government or any special districts which may result from the proposed facility, which evaluations, plans and proposals shall cover the following:

- (A) Scenic resources;
- (B) Recreational resources;
- (C) Archaeological and historical resources;
- (D) Land use patterns;
- (E) Economic base;
- (F) Housing;
- (G) Transportation;
- (H) Sewer and water facilities;
- (J) Solid waste facilities;
- (K) Police and fire facilities;
- (M) Educational facilities;
- (N) Health and hospital facilities;
- (O) Water supply;
- (P) Other relevant areas.

Additionally, as a regulated public utility, the Public Service Commission of Wyoming (PSC) has authority over the decommissioning of assets. PacifiCorp requests an exemption for regulated public utilities, as defined in W.S. § 37-1-101(a).

Finally, PacifiCorp proposes deletion of the phrase concerning “the adequacy and safety of the construction and operation of all project components” because the issue of adequacy is beyond the scope of county inquiry into the project.

- o The socioeconomic impacts to the affected areas of the proposed project, including but not limited to housing plans for construction and operation of project and a solid waste plan for both the construction phase as well as the decommissioning or repowering phase of the project.

Comment - PacifiCorp proposes an exemption for projects subject to review by the Industrial Siting Council since socioeconomic impacts, housing plans, solid waste and decommissioning are all areas within the Industrial Siting Council’s purview. Again, this is redundant to existing review of such projects under existing State law. Additionally, PacifiCorp comments that the PSC has authority over the decommissioning of assets held by regulated public utilities.

- o Any local wildlife and environmental considerations.

Comment - Exclusive jurisdiction over wildlife issues has been granted by the legislature to the Wyoming Game and Fish Department. PacifiCorp proposes an exemption for projects subject to review by the Industrial Siting Council since wildlife issues are within the Industrial Siting Council's purview and the Wyoming Game and Fish Department has their recommendations directly solicited through notice as part of the IDISA.

- Any cultural, archeological and historic considerations.

Comment—PacifiCorp is unaware of any authority for this provision. PacifiCorp proposes an exemption for projects subject to review by the Industrial Siting Council since cultural, archeological and historic considerations are issues within the Industrial Siting Council's purview and the State Historic Preservation Office has their recommendations directly solicited through notice as part of the IDISA.

- Visual resource considerations.

Comment—PacifiCorp proposes an exemption for projects subject to review by the Industrial Siting Council since visual considerations are within the Industrial Siting Council's purview and a visual assessment is commonly included in applications made to the Industrial Siting Council pursuant to the IDISA.

- Documentation satisfactory to the Board of County Commissioners that ~~adequate~~ access has been provided, OR CAN BE PROVIDED; to the proposed site and that any COUNTY ~~public~~-roadways proposed conform to minimum standards adopted by the Board of County Commissioners. All PRIVATE roads in the proposed project shall be clearly marked that roadways are private roads. The County is under no obligation to repair, maintain or accept any dedication of such roads to the public use. A traffic study of the COUNTY ~~public~~-roadways leading to the proposed site and surrounding ancillary roads shall be submitted with the application for permit. In addition, a road use agreement between the County and the Applicant ~~shall be submitted with the application.~~ PRIOR TO COMMENCEMENT OF CONSTRUCTION.

Comment - As an initial matter, PacifiCorp notes that the county's jurisdiction is limited to its own county roads. Additionally, haul routes are determined by the manufacturer and are often not known at the application stage. PacifiCorp does not object to entering into road maintenance agreements with the county but requests that the provision be revised as stated to better reflect the timing of when information required for such agreements is available.

- The Applicant shall submit a ~~detailed~~ PRELIMINARY site plan with the application for permit indicating all proposed roadways, proposed tower locations, proposed substation locations, transmission, collector and gathering lines and other ancillary project components.

Comment - At the application stage, the site plan is preliminary due to the nature of the micro siting process. To allow for design changes common to such projects, applicants should be allowed the flexibility in these regulations to submit preliminary site plans followed by “AS BUILT” specifications.

- The Applicant shall develop and submit to the appropriate conservation district or districts for review and comment ~~an acceptable~~ a site reclamation plan THAT DOES NOT CONFLICT WITH SITE LANDOWNER REQUIREMENTS. Comments on the reclamation plan shall be provided to the Board of County Commissioners not less than (60) days prior to the public hearing on the application. The plan approved by the Board of County Commissioners shall be placed on file for the public with the County Clerk.

Comment – PacifiCorp proposes the above edits for clarification.

The term “acceptable” is vague and ambiguous. PacifiCorp also comments that requirements for reclamation are most often contractually established in pre-existing private land leases, state leases and/or subject to future determination by the land owner. A county does not have authority over state lands and PacifiCorp comments that a county should not establish reclamation requirements that attempt to supersede any landowner right.

Additionally, PacifiCorp does not believe that Conservation Districts are the appropriate body to develop and enforce reclamation standards of site plans. Traditionally, Conservation Districts do not have regulatory or enforcement authority for environmental standards. In addition, it would be difficult to achieve consistency across the state for wind projects given the diversity and number of conservation districts around the state.

- No proposed project shall be approved by the BOCC unless the site plan clearly indicates a minimum set back for tower placement and spacing as follows:
 - 110% of the maximum height of the tower and blade set back from project perimeter
 - 110% of the maximum height of the tower and blade set back from public and county road right of way
 - A one quarter mile set back from a platted subdivision
 - A one quarter mile set back from a residence or occupied structure
 - A one half mile set back from any incorporated limits of a Town or Municipality

Comment – PacifiCorp does not object generally to setback requirements but requests more specificity and definition since arbitrary setbacks can have unintended adverse consequences to the landowner in utilization of their land.

Project sites are rarely of a uniform nature and, therefore, flexibility to set reasonable setbacks on a site by site basis is necessary.

PacifiCorp proposes language as currently being proposed by the Natrona County Planning Department:

- (a) No WECS Tower shall be located closer than 1.10 times the WECS Tower Height to a Primary Structure(s), third party transmission line(s), THIRD PARTY communication tower(s) or PRIVATE road(s). (Primary Structure is a defined term)
- (b) All WECS Project structures shall be set back a distance not less than 1.10 times the WECS Tower Height from approved WECS Project Site boundaries.
- (c) Notwithstanding any provisions to the contrary set forth herein, all WECS Project Site boundaries shall be set back a distance of not less than one-half mile from the then-current municipal boundary of any incorporated municipality, unless waived by the municipality.
- (d) WECS Project towers shall be set back from the boundary of a WECS Project Site a distance not less than 1.10 times the applicable Tower Height.
- (e) Setback distances may be modified at the discretion of the Board if the following standards are met:
 - (i) Affected adjacent property owner(s) have waived applicable setback requirement(s), together with recordation of such waiver(s) at the Office of the Natrona County Clerk.
- (f) Setback Waivers
 - (i) Setback waivers obtained by Applicant(s) pursuant to the provisions of this section shall clearly identify the specific setback being waived. The waiver shall include the legal description (section, township and range) of the parcel affected by the waiver. The waiver shall be signed by a party authorized to waive the setback requirement and shall be notarized. A copy of the recorded waiver shall be furnished by Applicant(s) to the Department prior to commencement of any WECS-related construction.

A Board of County Commissioners can waive any setback at the sole discretion of the Board of County Commissioners.

- FOR PROJECTS THAT ARE NOT OWNED BY REGULATED PUBLIC UTILITIES, documentation satisfactory to the Board of County Commissioners

that the Applicant has an adequate decommissioning plan. The approved decommissioning plan shall be kept on file with the County Clerk.

Comment—As a regulated public utility, all of PacifiCorp’s assets, including wind projects owned by PacifiCorp, are subject to the jurisdiction of PSC. The PSC has “general and exclusive power to regulate and supervise every public utility within the state in accordance with the provisions of this act.” W.S. § 37-2-112. In its exercise of power, the PSC monitors the financial condition of utilities, to ensure they remain viable to provide safe, adequate and reliable service. This would include the ability to perform all of the requirements of the Permit, to include decommissioning. Additionally, the sale or transfer of PacifiCorp’s assets is regulated by the PSC.

PacifiCorp proposes an exemption from this requirement for a public utility regulated by the PSC.

- There shall be no advertising or promotion, beyond a manufacturer’s logo OR OWNER’S LOGO on a wind turbine.

Comment—It is not uncommon for the owner of a wind project to have their logo on a wind turbine in addition to, or in lieu of, a manufacturer’s logo.

The Board of County Commissioners shall hold at least one public hearing following the required comment period, but no later than Sixty (60) days after close of comment period or upon a recommendation from the Planning and Zoning Commission. Notice of the time and place of the hearing shall be given by one publication in a newspaper of general circulation in the county at least fourteen (14) days before the date of the hearing. No later than Thirty (30) days after the public hearing has been held, the board shall vote on the proposed project. No project shall be approved unless a majority of the Board of County Commissioners votes in favor thereof.

Comment – PacifiCorp is unclear as to whether the process outlined in this proposed legislation is in addition to the county conditional use permit process. It is also unclear where, within the process, a planning and zoning commission would make its recommendation to the Board.

Also, the County permitting process runs concurrently with, and is an integral component to, the ISC and applicable pre-construction PSC processes. Therefore, PacifiCorp requests more certainty as to the timing of the county process. As proposed, the process is lengthy, appearing to require up to five months to complete, in addition to the time to prepare the application. PacifiCorp proposes a timeline similar to that adopted by Carbon County for the CUP process wherein the application is submitted, a hearing held within sixty (60) days and a decision rendered within sixty-five (65) days.

Any fees or costs for industrial development permitting, BUILDING PERMITS OR OTHER COUNTY REQUIREMENTS shall be set by the Board of County Commissioners on a per application ~~tower~~ basis AND SHALL BE APPLICABLE TO ALL APPLICATIONS FOR INDUSTRIAL DEVELOPMENT IN THE COUNTY. The fees shall be reasonable,

CUSTOMARY, NON DUPLICATIVE and shall correspond to the COUNTY resources DOCUMENTED AS DIRECTLY allocated toward the review of the application for ANY SUCH permit AND ASSOCIATED WITH APPLICATION ELEMENTS WITHIN THE COUNTY'S JURISDICTIONAL PURVIEW.

Comment – PacifiCorp proposes the above edits. PacifiCorp does not object to reasonable permitting fees intended to reimburse a county for their documented direct costs in processing an application and submits that any such permitting fees should be applicable to all applications for industrial development in a county and should not single out wind farms or their associated infrastructure. As such, and since each industrial development has unique characteristics, PacifiCorp recommends that a “per application” fee be established instead of a “per tower” fee.

While PacifiCorp does not object to permitting fees that are subject to the referenced reasonableness standard and that are not intended to generate net incremental revenue or serve as an in lieu of tax, PacifiCorp comments that it objects to uncapped fees, fees that do not meet an objective reasonableness standard or fees that are not generally applicable to all applications for industrial development.

In the event of any inconsistent requirements in the permitting of a wind farm project, the final Order of the Industrial Siting Council shall be supersede and the conditions of the Industrial Siting Permit shall control development.

Comment- PacifiCorp proposes an exemption for projects subject to ISC authority to avoid duplication and the risk of inconsistent requirements.

Needs an effective date: July 1, 2010

Violation: Separate Statute:

No person or entity shall locate, erect, construct, reconstruct, enlarge any wind farm in violation of State Statute _____ or any land use regulation adopted by the Board of County Commissioners. Each day's continuation of such violation is a separate offense and shall be punishable by a fine of not more than \$750.00 for each tower site.

Planning and Zoning Commission review applications: Separate Statute:

The Board may designate the county planning and zoning commission as the proper agency to receive and evaluate applications for wind farm permits. After completing its evaluation, the planning and zoning commission shall make findings and recommendations to the Board of County Commissioners after all required comments have been received. If no action is taken by the planning and zoning commission, the application currently pending is deemed to be approved by the planning and zoning commission.

Comment – While PacifiCorp does not generally object to this provision, the last sentence is ambiguous and creates confusion. As noted earlier, action on the application should take place on an established timeline.