



## Regulation of Wind Energy Facilities

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Under Wisconsin law, authority over wind energy facilities is generally split between state and local governments. While the state's Public Service Commission (PSC) reviews the siting of large electric generating facilities (i.e., facilities with a capacity of 100 megawatts or greater), smaller facilities are primarily regulated at the local level. However, this local authority is subject to various limitations created under [2009 Wisconsin Act 40](#). This issue brief discusses the regulatory framework established under this act, the resulting PSC wind siting rules, and the PSC's review of electric generating facilities.

### 2009 WISCONSIN ACT 40

2009 Wisconsin Act 40 created a framework for limited and generally uniform local regulation of wind energy systems. To this end, the act specified procedures that a political subdivision must follow in reviewing an application for a wind energy system. [[s. 66.0401 \(4\), Stats.](#)] The act also provided an appeal process for a party aggrieved by certain local actions related to a wind energy system. [[s. 66.0401 \(5\), Stats.](#)] Certain actions may be appealed through a political subdivision's administrative review process, with the possibility of subsequent appeal to the PSC, or through appeal directly to the PSC. Under either option, judicial review is precluded until the PSC has completed its review of the appeal.

In addition to establishing procedural requirements, 2009 Wisconsin Act 40 directed the PSC to promulgate rules specifying the maximum restrictions that a political subdivision may impose on the installation or use of wind energy systems. Under the act, these rules must include setback requirements that provide reasonable protection against potential health effects of wind turbines. Additionally, the rules must address the decommissioning of wind energy systems and may address a variety of other subjects at the PSC's discretion. [[s. 196.378 \(4g\) \(b\), Stats.](#)] Further discussion of the requirements established under PSC rules is provided later in this issue brief.

To advise rulemaking, the act established a wind siting council in the PSC, with membership specified under [s. 15.797, Stats.](#) Under the act, the council is directed to survey research regarding the health impacts of wind energy systems and to study state and national regulatory developments. The council is also required to submit a report to the Legislature every five years describing research and regulatory developments and including any recommendations of the council for legislation based on these developments.<sup>1</sup> [[s. 196.378 \(4g\) \(e\), Stats.](#)]

Notwithstanding the act's limitations on local authority, the act maintained provisions under existing law that allow restrictions under certain conditions. Specifically, [s. 66.0401 \(1m\), Stats.](#), provides that a restriction must satisfy one of the following conditions:

- The restriction serves to preserve or protect the public health or safety.
- The restriction does not significantly increase the cost of the system or significantly decrease its efficiency.
- The restriction allows for an alternative system of comparable cost and efficiency.

In a ruling preceding the enactment of 2009 Wisconsin Act 40, the Wisconsin Court of Appeals interpreted this provision to disfavor local authority over wind energy systems. Specifically, the court determined that the allowances provided in [s. 66.0401 \(1m\), Stats.](#), require a case-by-case approach. A local unit of government may not promulgate an ordinance under these conditions that sets a "one size fits all" regulatory scheme for wind energy systems. [*Ecker Brothers v. Calumet Cty.*, 2009 WI App 112.]

## PSC WIND ENERGY RULES

Pursuant to 2009 Wisconsin Act 40, the PSC promulgated [ch. PSC 128, Wis. Adm. Code](#), detailing the extent to which local governments may regulate wind energy systems. These rules establish criteria related to wind energy system siting, including setback criteria, noise criteria, and shadow flicker limits. Notably, the rules are generally less protective of “participating” properties and residences relative to “nonparticipating” properties and residences. The rules define a “participating property” as a turbine host property or any real property subject to an agreement that does all of the following:

- Provides for the payment of monetary compensation to a landowner from the owner of a wind energy system regardless of whether any part of the wind energy system is constructed on the property.
- Specifies in writing any waiver of a requirement or right under ch. PSC 128, Wis. Adm. Code, and specifies that the landowner’s acceptance of payment establishes the landowner’s property as a participating property. [[s. PSC 128.01 \(13\), Wis. Adm. Code.](#)]

In addition to technical criteria governing wind energy siting, the PSC rules include requirements related to the construction, operation, and decommissioning of wind energy systems. The chapter also elaborates upon the procedural requirements established under 2009 Wisconsin Act 40.

## PSC REVIEW REQUIREMENTS

In addition to the wind siting laws detailed above, certain wind energy facilities may also require PSC approval. Under Wisconsin law, any electric generating facility with a capacity of 100 megawatts or greater must receive a certificate of public convenience and necessity (CPCN) from the PSC before construction.<sup>2</sup> [[s. 196.491 \(3\) \(a\) 1., Stats.](#)] In granting a CPCN, the PSC must consider whether a proposed facility is consistent with the siting standards in ch. PSC 128, Wis. Adm. Code. [[s. 196.491 \(3\) \(dg\), Stats.](#)] Additionally, the PSC must also make various determinations regarding the project, many of which may be affected by a facility’s siting. For example, when issuing a CPCN, the PSC must determine that a facility’s design and location are in the public interest, taking into account individual hardships. Similarly, the PSC must find that the proposed facility will not unreasonably interfere with the orderly land use and development plans for the area involved. [[s. 196.491 \(3\) \(d\), Stats.](#)] When approving a CPCN application, the PSC may impose conditions necessary to ensure that a proposed facility complies with the requirements specified under state law. [[s. 196.491 \(3\) \(e\), Stats.](#)] Further information on PSC review, including a flowchart illustrating the process, may be found in Legislative Council, [Regulation of Solar Generation Facilities](#), Information Memorandum (October 2021).

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<sup>1</sup> Though the first report prepared by the council was submitted in October 2014, it does not appear that a subsequent report has been submitted.

<sup>2</sup> Wind energy systems with a capacity of less than 100 megawatts may alternatively require a certificate of authority (CA) from the PSC. However, only projects constructed by a public utility require a CA. Additionally, the PSC’s CA review process generally focuses on impacts to ratepayers and utility finances, rather than issues of siting. [[s. 196.49 \(3\) \(b\), Stats.](#)]