

WYOMING INFRASTRUCTURE AUTHORITY BOARD MEETING

APRIL 27, 2010

LARAMIE, WYOMING

Wind Energy Regulatory Panel Discussion

Summary of Points by:

Lawrence J. Wolfe

Holland & Hart LLP, Cheyenne, Wyoming

lwolfe@hollandhart.com; 307-778-4218, cell 307-631-0616

The wind regulatory bills grew out of the work of the Wind Energy Task Force. HB 72, County regulation, was considered by the Task Force and Rep. Tim Stubson agreed to develop the draft and sponsor it. SF 66, Industrial Siting Administration amendments, was Sen. Drew Perkins' responsibility. All interested parties met in late January 2010 to work through the initial drafts and agreed on the main principles for each bill. Both bills generally moved through the session without opposition, although both were slightly amended.

County Regulation - HB 72, 2010 Wyo. Session Laws Chapter 0097

The wind industry started from the position that it wanted to draw bright lines between county permitting and ISD permitting. If the project is jurisdictional to the ISD the industry did not want the county to duplicate that effort.

The bill is a hybrid, which the industry hopes is workable. Projects that are not subject to ISD permitting (less than 30 turbines) are required to submit a detailed summary of any "significant adverse environmental, social or economic effects . . . together with any preliminary plan developed to alleviate any of the adverse effects". W.S. 18-5-503(a)(xi).

Even if the project is ISD jurisdictional, the developer still must get permits from every county. W.S. 18-5-502(b). Industry wanted to limit the county permit to the one county with the majority of the facilities. It lost that battle - each county must issue one.

Permits must be in compliance with all land use and zoning regulations. Several counties have adopted such regulations but others have not. Converse County is spending \$50K to develop wind regulations.

Counties can adopt more stringent set backs. This is a concession by the industry, which hopes that the counties will not do that.

There were several amendments in the Senate dealing with the set back distances from subdivisions and residences. W.S 18-5-504. The Senate ended up at 5.5 times maximum tower height (for 80 meter towers this is about 1320 feet).

Prepared by: Lawrence J. Wolfe, Holland & Hart, LLP. lwolfe@hollandhart.com; 307-778-4218; cell 307-631-0616.

The law provides for an application process with fixed time limits to determine if the application is complete, when a public hearing will be held and when the Board of County Commissioners will issue its decision. W.S. 18-5-505 through 18-5-508. The counties and the wind industry supported this time line.

Reclamation plan. Must conform with the rules adopted by the ISD (see below). The plan is updated every five years.

Referral process from County to ISD. W.S. 18-5-509 and 510. The wind industry was not fond of this provision, but it ended up being limited to a fairly narrow set of circumstances when the board “finds there are potentially significant adverse environmental, social or economic issues which the . . . board does not have the expertise to consider or authority to address.” The DEQ Director has complete discretion whether or not to accept a referral. There is no appeal from a decision to deny acceptance of the referral.

The law provides for penalties and fees. It provides for revocation or suspension of the county permit for failure to transmit electricity for two years or failure to maintain land rights.

Rulemaking. The bill gives to the ISD the sole authority to develop rules dealing with reclamation and decommissioning and posting financial assurance. The counties are preempted from regulating in this area. This was an important issue for the wind industry and the Legislature agreed.

The bill appropriates \$335,754 to the DEQ for the biennium to carry out the purposes of the bill. The Act is effective July 1, 2010.

Industrial Siting Act Amendments – SF 66, 2010 Wyo. Session Laws Chapter 0047

The main accomplishment of this bill is to define a jurisdictional threshold for Industrial Siting permitting of wind facilities. W.S. 35-12-102(a)(vii)(E). The Legislature chose 30 turbines, which the industry supported. The original drafts also had an MW limit (50MWs) but that was dropped when the bill was introduced. It is important to note that wind facilities, unlike all other facilities, are not subject to a cost threshold.

The bill also defines “collector systems”, those lines that run between the wind generation project and the long distance transmission lines. W.S. 35-12-102(a)(xiv).

The bill includes in Section 3 the rule making authority on decommissioning, site reclamation and financial assurance that is also in HB 72. This law adds a provision requiring the ISC to adopt rules on notification to “record owners of mineral rights located on or under the lands where the proposed facility will be constructed.” W.S. 35-12-105(f).

Under the fast track permitting provisions in W.S. 35-12-107 and the regular permitting process under Section 109, the Legislature added a requirement that project developers have provided notice of the project to local governments thirty (30) days prior to

submission of the application. W.S. 35-12-107(b)(xii), 35-12-109(a)(xix). Also included is a requirement that the decommissioning and reclamation plan be updated every five years, and that the developer provide information “demonstrating the applicant’s financial capability to construct, maintain, operate, decommission and reclaim the facility.” What this last requirement means in practice will only become clear over time. If the developer does not have a power purchase agreement to sell the power, or there is no transmission in the area (and it won’t be there for several years) can a developer meet this test? W.S. 35-12-107(b)(xiv), 35-12-107(h)(iii), 35-12-109(a)(xx) & (xxi).

The Legislature added subjects that must be evaluated by the permit applicant, including agriculture, terrestrial and aquatic wildlife, and threatened, endangered and rare species or other species of concern (identified in an “action plan” by the G&F). W.S. 35-12-109(a)(xiii).

A number of State agencies were added to the list of agencies that are given an opportunity to comment. W.S. 35-12-110(b).

The definition of party to the proceeding was broadened to include “any person holding record title to lands directly affected by the construction of the facility.” W.S. 35-12-111(a)(iii).

The permit can be conditioned on posting a **bond or other financial assurance** to cover the cost of decommissioning and reclaiming the facility. W.S. 35-12-113(h). The industry view is likely to be that such a bond should not be required during the first 10-15 years of the project, because the value of the equipment far exceeds the costs of decommissioning and reclamation, and if the project has a PPA it is not going to be shut down.

The law lowered the threshold for jurisdiction over transmission lines from 500 KV to 160 KV (but the project still must meet the cost threshold). Any collector system, regardless of voltage, is jurisdictional if associated with a wind energy facility that must be permitted.

This Act is effective immediately. It appropriates \$20,000 more than HB 72 (\$355,754).

4799844_1