April 24, 2014

Connecticut Lawmakers Approve Wind Regulations

On Earth Day, April 22, the Connecticut Legislative Review Committee approved proposed regulations that will allow for the siting of wind turbines in the state. The new regulations would end what has effectively been a three-year moratorium on new wind power projects in Connecticut.

In 2011, the Connecticut General Assembly passed Public Act No. 11-245, *An Act Requiring the Adoption of Regulations for the Siting of Wind Projects* (the "Act"). The Act directed the Connecticut Siting Council (the "Siting Council"), the state entity with jurisdiction over the siting of power and telecommunications facilities, to adopt regulations for the siting of wind turbines on or before July 1, 2012. The Act further stated that no wind turbine could be sited before the new regulations were adopted. The Siting Council has been working since that time to promulgate regulations and has had multiple versions rejected by the Legislative Review Committee before this latest version was approved.

The wind regulations will become effective when they are filed with the secretary of state. To access the wind legislation, please see here.

Of note, the wind regulations were promulgated nearly four months after the deadline for wind projects to take certain actions constituting the commencement of construction in order to qualify for the Federal Production Tax Credit. Without a change in that deadline, the new Connecticut regulations may be of limited use to new projects in the state that would not be economic without that tax credit.

Summary of New Siting Regulations

The new wind regulations inform wind turbine applicants and petitioners of the information required to be submitted in applications for Certificates of Environmental Compatibility and Public Need and petitions for declaratory rulings for wind turbine facilities. The regulations would require that the Siting Council hold a public hearing for any proposed wind turbine facility or modification to an existing facility, to evaluate its compliance with these regulations.

- **Minimum Setback Distance.** A minimum setback distance would be required of 2.5 times the wind turbine height from all property lines at the proposed site for projects with a capacity of more than 65 megawatts and a minimum setback distance of 1.5 times for projects with a capacity of less than 65 megawatts. If the wind turbine manufacturer's recommended setback distances are greater than these, the project would have to comply with those recommendations.
- **Shadow Flicker.** Shadow flicker, the intermittent shadows created by the wind turbine blades passing through the light of the sun, would be prohibited from occurring for more than 30 total annual hours at any off-site occupied structure.
- **Waivers.** The setback and shadow flicker requirements may be varied by agreement with abutting property owners of record or by a vote of two-thirds of the Siting Council members, although the setback requirements may not be reduced below the manufacturer's recommendations or 1.5 times the wind turbine height.
- **Decommission Plan.**Applicants would be required to submit a Decommission Plan that would include:

- the projected useful life of the wind turbines;
- identification of any circumstances that would trigger decommissioning of the facility in advance of the projected useful life of the wind turbines;
- a description of how the facility will be dismantled and removed;
- a description of how the site will be restored as near as possible to its original condition;
- an estimate of the total cost of implementing the Decommission Plan; and
- financial assurance that sufficient funds are available for decommissioning the facility.

- **Siting Reports.** Applicants would be required to submit a number of siting reports, as follows:

  - A Visual Impact Evaluation Report would provide information on the visibility of the proposed wind turbines from varying distances, depending upon the height of the wind turbines.
  - A Noise Evaluation Report would provide information on potential noise levels from the wind turbines at the nearest receptor locations.
  - An Ice Drop and Ice Throw Evaluation Report would detail conditions in which ice might be dropped or thrown from the wind turbine blades and the area that would be impacted.
  - A Blade Shear Evaluation Report would provide information on the risk of blade shear and the impacted area around the wind turbines.
  - A Shadow Flicker Evaluation Report would describe the shadow-flicker producing features of the proposed wind turbines and the location, intensity, frequency, times and durations of any shadow flicker events.
  - A Natural Resource Impact Evaluation Report would analyze the impact of the wind project on the topography, geology, vegetation, soil types, water resources and avian, terrestrial and marine wildlife habitats and would detail how the wind project would comply with state and federal environmental laws.

  Each report would also include potential mitigation measures to minimize the impact of the risk evaluated.

The changes created by these much-anticipated regulations may impact your company. For further information about the new wind regulations, please contact any of the attorneys listed above.