

Lawmakers weigh state and county powers over the industry

Wind energy regs a balancing act

By DUSTIN BLEIZEFFER - Star-Tribune energy reporter | Posted: Wednesday, November 11, 2009 12:00 am |

Wyoming's Wind Energy Task Force has delivered a 78-page report to state lawmakers outlining how the state and counties might regulate the fledgling wind energy industry.

One of the toughest policy decisions for lawmakers may be how to offer counties some measure of control over wind development without superseding the authority of the state.

"This is a matter of expressed powers. Counties are governments with limited powers. If you grant to the counties the ability to enact whatever regulations they want, then have you delegated to them your legislative power?" asked Larry Wolfe, attorney for the Cheyenne firm Holland & Hart.

Members of the Joint Minerals, Business and Economic Development Interim Committee accepted the report on Tuesday, and said they await direction from the legislative management council regarding whether the minerals committee -- or some other committee -- will pursue the two draft bills generated by the report.

"If asked, I would suggest we can handle it," said committee chairman Rep. Tom Lockhart, R-Casper.

Balancing state and counties

One bill outlines a set of changes to Wyoming's Industrial Siting Act, and the second attempts to establish statewide minimum standards allowing counties to set more stringent rules if they so choose.

Members of the Wind Energy Task Force said the two bills should be considered in tandem.

Minimum standards include notification requirements to nearby neighbors and communities, specific setbacks for roads and structures, a waste management plan and coordination with emergency responders.

The state's Industrial Siting Council has permitting jurisdiction over most major industrial projects. Projects with a construction cost of \$175.5 million or more must go through the industrial siting analysis process and gain permits from the council. While some businesses are required to go through the process regardless of cost, others are exempt.

Oil and gas facilities, for example, are exempt from the Industrial Siting Act.

Wind Energy Task Force members said the threshold for qualifying wind energy projects should be somewhat lower. Wind projects with 30 turbines or more, or 50 megawatts of maximum electrical generation or more, would meet the Industrial Siting Council threshold, according to the draft bill.

Below that threshold, counties could either apply their own rules through the county planning and zoning process or request that the Industrial Siting Council take jurisdiction of the project.

"We didn't want to take away counties' ability to be more restrictive," said Rep. Tim Stubson, R-Casper. "There is still the potential for some inconsistency in this regime. But we felt, ultimately, it was worth letting counties have their say."

Counties, for example, could waive setback requirements if property owners come to an agreement with the wind developer.

Wolfe, along with Holland & Hart client Duke Energy, prepared a separate draft bill and offered it to the minerals committee. He said the draft was crafted with statewide standards in mind, because that gives wind developers the highest level of certainty for planning.

He warned against relinquishing too much leeway to counties, particularly regarding decommissioning, or reclamation, standards.

Wolfe noted that wind turbines don't get built -- particularly for a merchant developer -- until there's a customer who signs a contract for the power. So it's not likely that wind turbines are going to be left abandoned.

"Do you need financial assurance on day one? I think the answer is no," said Wolfe, adding that the state should set the reclamation standards. "We don't want 23 counties, each one having their own decommissioning regulations."

Converse County Commissioner Ed Werner, who also serves on the Wyoming County Commissioners Association's wind energy committee, asked that counties have some say in wind development.

"Counties often say they want local control. This is a time for counties to step up and take responsibility," Werner said.

Impact payment 'mess'

One of the main reasons for the Industrial Siting Act was to quickly channel sales tax generated from large construction projects directly to the communities affected by the construction.

The formula is to measure sales tax revenues from specific communities before construction begins and compare it to sales tax revenues after construction begins. The incremental increase is considered to be related to the construction project, setting the monetary calculation for community impact assistance payments.

But with the economy struggling, sales tax revenues are dwindling. So under the current formula, Industrial Siting Council projects would generate only a fraction of the impact assistance payments they would during a stable economy.

Wind Energy Task Force member Sen. Drew Perkins, R-Casper, said the formula could be changed to an estimate of the construction cost.

"Because it's not working. Some counties have been hit harder than others," Perkins said.

Wolfe said the wind industry doesn't really have a preference for how impact assistance payments are calculated other than it satisfies nearby communities.

"Everyone agrees it's a mess. But nobody agrees on how to fix it," Wolfe said.

Legislative timing

Although several Wyoming counties already have wrestled for years with how to regulate wind farms, a legislative answer may not be forthcoming. The upcoming legislative session is a budget session, and the issues of regulation, taxation and siting of wind facilities are complex.

Yet there's still a big push to at least begin legislative action.

"If we don't deal with some of these issues, I think we'll get behind the 8-ball and it will be too late to do it right," said Sen. Eli Bebout, R-Riverton.

Wind Energy Task Force member Sen. Marty Martin, D-Superior, said the recommendations set forth in the draft bill represent what the counties said are the most urgent issues facing their communities.

However, members of the wind energy industry said there's plenty of time for more thorough consideration.

Scott Zimmerman of the Interwest Energy Alliance, an association of renewable energy companies, said the build-out of wind energy in Wyoming will be limited by interstate electrical transmission issues for several years. And within the year the federal government is likely to issue several key decisions regarding energy corridors for transmission and whether to list the sage grouse as a threatened or endangered species.

Besides, Wyoming might benefit from taking more time in considering how to tax wind energy, Zimmerman said.

"I think there is time to really look at this issue thoroughly," Zimmerman said. "I think it would be better to come before the Legislature with one package rather than in piecemeal fashion."

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