Wis. court: Regulators properly approved wind farm

TODD RICHMOND - Associated Press - Associated Press

Wisconsin regulators properly approved a Madison-based utility's plan to build a wind farm in southern Minnesota, the state Supreme Court ruled Wednesday in a decision that dramatically lightens the regulatory burden for utilities' out-of-state projects.

The Citizens Utility Board and the Wisconsin Industrial Energy Group contended the Public Service Commission approved Wisconsin Power & Light's plan to build a massive, 200-megawatt wind farm north of Albert Lea under the wrong statutes.

The groups said the PSC issued a so-called certificate of authority rather than a certificate of public convenience and necessity, which would have required a far more stringent review. For example, the CPCN route requires a public hearing as well as PSC determinations that the project is in the public interest, won't cause undue harm to the environment and won't increase rates without increasing the value of a utility's service. The certificate of authority doesn't include any of those requirements, according to a chart the court's liberal-leaning minority included in a dissenting opinion.

The consumer groups argued the CPCN process must apply when a project produces more than 100 megawatts and would have offered ratepayers more protection.

Dane County Circuit Judge John C. Albert ruled the PSC properly applied the certificate of authority. The Supreme Court voted 5-2 to uphold Albert's ruling, saying the PSC's decision was reasonable.

The CPCN process includes provisions that allow projects to pre-empt local ordinances and require the PSC to review site-specific impacts, notify county clerks and libraries near the project of applications and hold any contested case hearings in that area, Roggensack noted. Those conditions could infringe on another state's sovereignty or create absurd burdens on Wisconsin agencies, she wrote.

A CPCN's primary purpose is to require a more thorough review, not provide greater ratepayer protections, she said. The court must give the PSC's decision due weight because the commission took comments from stakeholders and weighed them against its experience with utilities' project applications, she added.

"Any unreasonable or absurd results are avoided by the PSC's construction of the CPCN law as applying exclusively to facilities in this state," Roggensack wrote.

The court's liberal-leaning minority, Justice Ann Walsh Bradley and Chief Justice

Shirley Abrahamson, dissented. Bradley wrote a PSC administrator has the ability to approve a project under the certificate of authority, muting ratepayers.

"When Wisconsin ratepayers will fund the costs of large facilities, whether in-state or out-of-state, it is sensible to require a hearing and scrutiny by the commission that is empowered by statute to regulate Wisconsin energy," Bradley wrote.

The PSC approved the $446.7 million Bent Tree farm in 2009. When the project was approved, WP&L hoped to recover $91.7 million electric and natural gas rate increase. That breaks down to about $9 more per month for electricity and $2.40 more per month for gas for a typical residential customer.

CUB Executive Director Charlie Higley said he was disappointed with the court's decision.

"Ratepayers lose their voice," he said.

Steve Schultz, a spokesman for Alliant Energy Corp., WP&L's parent company, didn't immediately respond to a telephone message seeking comment on the decision. PSC spokesman Matt Pagel said the commission was pleased with the ruling.

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