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Move calls state's approach to wind energy projects into question

Duke Energy disputes taxes

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CASPER — Property taxes are one of the main selling points that wind energy companies have used to convince counties there will be a payoff for accepting up-front impacts to local services.

But when the tax bill came due for Duke Energy this year, the company went back on its promise, according to Converse County officials.

This summer, Duke Energy filed appeals of the state's property tax assessments on all four of its wind energy projects in Wyoming: Silver Sage and Happy Jack in Laramie County and Campbell Hill and Top of the World in Converse County.

Yet the state's tax assessment was almost identical to Duke's own estimates, which were presented in testimony to the Wyoming Industrial Siting Council leading up to the construction of its wind projects.

Based on Duke's testimony to the council, Converse County officials expected to receive $2.8 million in property taxes per year and $13 million over the next five years. Then the state's calculation agreed.

But now the company believes it owes about half as much as it previously estimated, according to documents Duke submitted to the State Board of Equalization.

"We're saying, you told us that was your best estimate. Are you just stupid, or are you trying to mislead us?" said Converse County Commission Chairman Ed Werner. "Duke has been one of the best companies we've worked with on the ground. But from a corporate tax structure level, they threw us a curve ball."

Duke Energy spokesman Greg Efthimiou said the notion that the company pulled a bait-and-switch is an "unfair characterization."

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"We were asked to provide an estimate, and that's what we did," Efthimiou said. "The reason that we are appealing the property tax assessment is due to the methodology for calculating that tax assessment."

Legal wrangling

During a recent hearing of the Legislature's Joint Revenue Interim Committee, co-chairman John Schiffer, R-Kaycee, said he believes Duke may have knowingly supplied false information under oath in its past testimony to the Industrial Siting Council.

"Now it appears the people who testified for Duke Energy were not straightforward with their testimony, and I object to that," Schiffer said.

Dan Neal, executive director of the Equality State Policy Center, said he believes counties may launch a protest and ask the council to reopen a permit and examine whether it should be revoked based on false materials or statements.

Duke claims it provided the best information available at the time. The company contends that the state, in its property tax assessment, failed to remove intangible costs, which can include long-term contracts for the delivery of power. The state's assessment also failed to recognize all forms of depreciation, among other things, according to Duke.

"Duke Energy, like any other wind developer, is obligated to pay its fair share of property tax. And we intend to so," Efthimiou said.

While Duke's attorneys argue the matter with the State Board of Equalization, about half of the $41.7 million owed to Laramie and Converse counties in property taxes — according to the state — remains in escrow. That means millions of dollars are not going to hospital districts and other public services — services directly impacted by the construction and ongoing operation of those wind energy facilities.

The case could have a ripple effect beyond Duke Energy and its four Wyoming wind farms, Werner said. At least seven wind farms have been constructed in Wyoming in recent years, and there are plans for many more.

"What if they're right and they only owe half? What's that do to our economic model?" Werner said.

Rethinking exemptions

State lawmakers are studying a tax structure for the wind energy industry. The Legislature recently passed a $1-per-megawatt-hour generation tax on wind energy. But the entire tax landscape for the industry could change before that law goes into effect in 2012.

In the meantime, the promise of a big property tax payment is paramount in wind energy development in Wyoming because the industry has enjoyed a sales and use tax exemption set up several years ago as an incentive to develop Wyoming's world-class wind resources.

Wyoming's Industrial Siting Act allows the state to take sales and use taxes generated during the construction of a qualifying industrial project — power plants, for example — and quickly divert those revenues back to the communities most affected by the construction.

But with a sales and use tax exemption, there's no revenue stream from wind energy to make those impact payments. And there are other exemptions. The oil and gas industry, for example, pays sales and use taxes. But the industry is exempt from the Industrial Siting Act itself, so those taxes cannot be converted into impact assistance payments.

Schiffer said he believes it's time to rethink tax exemptions and the Industrial Siting Act.

The sales and use tax exemption for commercial wind energy will expire in 2011, presumably providing an opportunity to divert revenues to impacted communities. But there's still no structure to make impact assistance payments to communities that may find themselves in an oil boom targeting the Niobrara formation in southeast Wyoming.

"Why do they need an exemption?" Schiffer said. "Does anybody think they're not going to develop in southeast Wyoming?"

Finding its way back into the energy tax structure conversation in Wyoming is a study by former University of Wyoming professor Shelby Gerking, which suggested modest tax increases on the mineral extraction industry have little or no negative effect on production or jobs.

Schiffer said the same may be true of tax exemptions intended to attract wind energy development.

"What we found in wind energy is a tax exemption may not make any difference. It's the quality of wind that makes a difference,"

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Schiffer said.

Neal said he's impressed, so far, with the Joint Revenue Interim Committee's willingness to be creative when it comes to establishing a tax structure for wind energy. Some members, for example, have suggested a state loan program in which counties could receive impact assistance payments up front based on estimated sales and use tax revenue. Then the wind developer could pay back the state over time.

"I wonder if our measly 6 percent sales tax would really be a bar to business for most (wind energy) companies," Neal said. "These communities and counties being impacted by wind need cash up front. We also believe, over time, wind should not simply pay its way, but help us be stronger, more vibrant communities."

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