LEGAL UPDATE

Legal Services Division

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Ground Floor, State Capitol Building Des Moines, Iowa 50319 515.281.3566

IOWA SUPREME COURT DECISION - IOWA UTILITIES BOARD LEGAL STANDARD FOR WIND PROJECTS

Mathis v. Iowa Utilities Board
Filed May 3, 2019
No. 18-1184
www.iowacourts.gov/iowa-courts/supreme-court/supreme-court-opinions/case/18-1184

Purpose. *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

Factual and Procedural Background. Palo Alto Wind Energy, L.L.C. (PAWE) submitted a site plan to Palo Alto County for a wind energy project consisting of 170 wind turbines over an area of about 80 square miles. On December 5, 2017, Bertha and Stephen Mathis (the Mathises) filed a petition for declaratory order with the Iowa Utilities Board (IUB), seeking a ruling that the wind energy project was a single site with a total capacity of 25 megawatts of electricity or more within the meaning of the term "facility" under Iowa Code section 476A.1(5), which would require PAWE to obtain a certificate of public convenience, use, and necessity from the IUB in order to move forward with the wind energy project. The IUB issued its declaratory order and ruled in favor of PAWE, relying on an interpretation first established in 1997 that defines "facility" to mean wind turbines connected to a common gathering line at a single site.

The Mathises filed a petition for judicial review in district court, arguing that the term "facility" means the entire wind energy project, not a single common gathering line. The district court affirmed the IUB's declaratory order, finding no substantial evidence or reason why it should not give deference to the IUB's interpretation of the meaning of the term "facility." The district court also found the IUB's analysis was rational and reasonable, noting that the IUB had followed the common gathering line standard in previous decisions and that changes to Iowa Code chapter 476A (electric power generation and transmission) since 2001 evidenced the General Assembly's intent to broaden the IUB's authority with respect to promoting alternative energy projects.

The Mathises appealed the district court's decision to the Iowa Supreme Court (Court).

Issue on Appeal. Whether the IUB's interpretation of the term "facility" under Iowa Code section 476A.1(5) to mean wind turbines connected to a common gathering line at a single site is based upon an erroneous interpretation of law.

Holding. The Court held that the IUB's common gathering line standard in its definition of "facility" under Iowa Code section 476A.1(5) is not based upon an erroneous interpretation of the law because it is consistent with underlying statutory language and legislative policy goals, and is further supported by a longstanding administrative interpretation by the IUB, legislative acquiescence, and the General Assembly's endorsement of a similar interpretation in other wind energy statutes.

Analysis. As a preliminary matter, the Court examined whether the General Assembly has provided interpretive authority to the IUB to determine what a "single site" is within the meaning of Iowa Code section 476A.1(5). The Court noted that it has previously held that language authorizing an agency to adopt rules "necessary to implement" a chapter of law does not by itself amount to a vesting of interpretive authority. The Court further explained that in recent years, it has generally not deferred to IUB interpretations of statutory terms. The Court concluded that the IUB has not been clearly vested with legislative authority to interpret the term "single site" as used in Iowa Code section 476A.1(5), and reviewed the IUB's interpretation of "single site" for errors at law.

The Court noted that although the phrase "single site" is ambiguous, the phrase appears in a similar federal rule regarding the definition of facilities issued by the Federal Energy Regulatory Commission (FERC). The FERC rule specifies that facilities are considered to be located at a single site if they are located within one mile of each other. Therefore, the FERC has found that a wind project consists of more than one facility where two portions of the project were separated by more than one mile, even though the owner represented the project as a single wind energy facility, the two portions shared a common interconnection to the grid, and the owner was pursuing a single permit for the combined facilities. The FERC also has authority to modify the one-mile rule for "good cause." The Court reasoned that the FERC rule demonstrates that it is not self-evident to the federal government what a "single site" constitutes and that it has addressed the problem with a rule that provides a workable, middle-of-the-road standard. The Court determined that the IUB's interpretation of a "facility" in this case incorporates a similarly pragmatic approach and provides a clear legal standard for the IUB to apply.

The Court analyzed the IUB's common gathering line standard within the context of other applicable provisions of Iowa law and legislative policy goals, including Iowa Code section 476A.15, which allows the IUB to waive certificate requirements if the public interest would not be adversely affected, and Iowa Code section 476.41, which declares it is the official policy of the state to encourage the development of alternate energy production facilities. The Court determined that the IUB's interpretation is consistent with Iowa Code sections 476A.15 and 476.41 because it minimizes the regulatory burden on wind farm development. The Court further noted that longstanding administrative interpretations such as in this case, established and applied since 1997, are entitled to weight in statutory construction.

The Court next looked to legislative history in reviewing the IUB's common gathering line standard. The Court observed that since the establishment of the common gathering line standard in 1997, the General Assembly amended Iowa Code chapter 476A in 2001 without attempting to modify the standard, and the General Assembly has not otherwise taken action to repudiate the standard since 2001. The Court reasoned that the General Assembly's inaction constitutes tacit approval of the IUB's common gathering line standard. In addition, the Court noted that in 2008, the General Assembly endorsed a similar approach to the common gathering line standard in Iowa Code chapter 476B, concerning wind energy production tax credits, by focusing on the capacity served by a common gathering line to determine the eligibility of a "facility."

In their arguments for a more expansive definition of "single site" to encompass the entire wind project, the Mathises relied on a 1984 Court case which examined the issue of whether an electric utility's landfill was subject to county zoning regulations when it is not located on the same site as the generating facility. In that case, the Court ruled that the landfill was an essential component of the generating facility and therefore exempt from county zoning regulations, even though the landfill was located several miles away. In this case, the Court reasoned that the underlying issue in the 1984 case involving the exercise of unitary jurisdiction to avoid conflicting state and local regulation was different and not relevant to the issue in this case, which involves how to treat an alternative energy project that produces power over a large area. The Court also rejected arguments that certain IUB administrative regulations supported the more expansive definition, finding that such regulations were either inapplicable to wind energy projects or silent as to the meaning of a "single site." The Court was further unpersuaded by the Mathises' argument that the entire project should be deemed a "single site" because PAWE submitted a single site plan to the county, explaining that the county ordinance required PAWE to submit a single plan regardless of whether the project was limited to a "single site."

LSA Staff Contacts: Rachele Hjelmaas, Legal Services (515.281.8127) rachele.hjelmaas@legis.iowa.gov

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