

Wind Energy: Alaska Appellate Court Addresses Whether Turbine Installer was Required to Be Licensed as a Construction Contractor



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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One of the issues addressed by a recent Supreme Court of Alaska opinion was whether a renewable energy contractor was required to obtain a construction contractor license from the State of Alaska. See *Daggett v. Feeney* 2017 WL 2609223 (June 16, 2017).

The lower court had concluded that the renewable energy contractor was required to be licensed by the State of Alaska and had misrepresented its licensing status.

Richard Feeney entered into a contract with Alaskan Wind Industries (“AWI”) for the sale and installation of a wind turbine on Feeney’s property in Homer, Alaska.

AWI is described as a “renewable energy contractor.” The renewable energy contractor agreed to provide and install a:

- Wind turbine
- 49-foot tower
- Inverter

The contract is stated to have expressly affirmed that AWI was:

... qualified by law as a licensed steel erector in the state of Alaska. . .

The property owner later cancelled the contract and sued AWI to recover a down payment. AWI filed a counterclaim for breach of contract.

During the lower court hearing Feeney and AWI’s testimony disagreed as to whether there was a discussion about AWI’s status as a licensed and bonded contractor.

One of the principals of an AWI affiliate testified that she and her husband believed wind energy installers were not required to be licensed as construction contractors. She stated it was industry standard not to carry a license at the time, claiming that none of their competitors did so. Further, she stated that the State of Alaska had been contacted and indicated there was no North American Industry Classification System code for “renewable energy installers.” Instead, a state licensing inspector is stated to have told AWI that renewable energy contractors would be required to be licensed beginning in 2011.

The lower court concluded that wind energy installers were required to be licensed as steel erection contractors because tower-mounted wind turbines qualify as “steel towers and pylons” under certain

state regulations. This court therefore found that AWI had been “neither licensed nor bonded as a ‘steel erection contractor’” when the contract was executed. The court also referenced evidence that AWI had known it needed to be licensed because it had previously held a specialty contractor license which had expired.

The Alaska appellate court upheld the lower court holding it was not error to conclude that AWI was required to be registered as a specialty contractor. It rejected AWI’s argument that it was exempted by an express exemption covering contractors who install “finished products.”

The appellate court undertakes an analysis of the Alaska statute requiring the registration of a “contractor.” The analysis includes a discussion of the term “contractor” and 37 categories of “specialty contractor” that have been adopted by the Alaska Department of Commerce. The appellate court addresses the argument that the wind turbine kit was a finished product and the work “would simply have been putting the pieces together and installing [the turbine] on Feeney’s property” (i.e., arguing that this work constituted the sale and installation of a finished product).

In addressing this argument the court references what it characterizes as the only Alaskan decision addressing the exemption. See *Industrial Power & Lighting Corp. v. Western Modular Corp.* (“Industrial Power”). *Industrial Power* is stated to have confirmed that the finished products exemption did not apply to the assembly and installation of prefabricated houses on-site. As a result, these activities did trigger a requirement to register as a contractor.

The appellate court deems the *Industrial Power* decision relevant and states that the wind turbine kit that would have been assembled and installed to become a free-standing fixed structure (i.e., similar to constructing a prefabricated house). As a result, it determines that the finished product exemption does not apply to AWI’s proposed work.

The appellate court also addressed AWI’s argument that an Alaska official had informed them that renewable energy installers did not need to be registered as contractors. This argument was based upon an AWI employee’s testimony.

The appellate court notes that whether Alaska interpreted contract registration requirements to exclude renewable energy contractors is a question of fact. It looked to the absence of testimony by representatives of the state and verbiage in the AWI contract. Based on this review, it held that the lower court did not clearly err in discounting testimony that renewable energy installers were not required to be registered or in concluding that there was no in-practice exemption from the registration requirement.

[A copy of the opinion can be downloaded here.](#)