



# Public Service Commission

## State of North Dakota

### COMMISSIONERS

Susan E. Wefald, President  
Kevin Cramer  
Tony Clark

May 13, 2008

Executive Director  
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408  
Bismarck, North Dakota 58505-0480  
web: www.nd.gov/psc  
e-mail: ndpsc@nd.gov  
TTY 800-366-6888 or 711  
Fax 701-328-2410  
Phone 701-328-2400

Mr. John Walstad, Code Revisor  
Legislative Council  
State Capitol  
Bismarck, ND 58505

RE: Public Service Commission  
Accounting, Electric and Gas  
Rulemaking  
Case No. PU-06-486

Public Service Commission  
Public Utilities – Siting  
Rulemaking  
PU-06-501

Public Service Commission  
Wind Turbine Decommission  
Rulemaking  
PU-07-642

Dear Mr. Walstad:

Enclosed please find a copy of the Commissioners' February 27, 2008 order and newly-adopted rules and amended rules under Article 69 concerning accounting rules for electric and gas utilities, siting application fees, and wind turbine decommission. The Commission's February 27, 2008 order includes a summary of the comments and the written record of the agency's consideration of all comments and the rules. No changes were made in the rules subsequent to submission to the Attorney General.

By letter dated May 6, 2008, the Attorney General approved the proposed rules as to their legality. A copy of these letters are also enclosed, as well as copies of relevant analyses statements and testimony. On May 7, 2008 the Public Service Commission adopted the rules as approved, and is now submitting the rules for publication in the North Dakota Administrative Code.

Thank you for your attention to this matter.

33 **PU-07-642** Filed: 5/13/2008 Pages: 33  
**Submission of Order, and Rules to Legislative  
Council for Publication in Administrative Code**

Public Service Commission

Sincerely,

Illona A. Jeffcoat-Sacco  
Executive Director

IJS/jm  
Enclosures:

1. Copy of Attorney General Opinion
2. Copy of Order Adopting Rules
3. Copy of Proposed Rules
4. Copy of the Regulatory Analysis, Takings Assessment, and Small Entity Regulatory Analysis
5. Copy of Testimony

21 **PU-06-501** Filed: 5/13/2008 Pages: 33  
**Submission of Order, and Rules to Legislative  
Council for Publication in Administrative Code**

Public Service Commission

33  
**PU-06-486** Filed: 5/13/2008 Pages: 33  
**Submission of Order, and Rules to Legislative  
Council for Publication in Administrative Code**

26

Public Service Commission



Wayne Stenehjem  
ATTORNEY GENERAL

STATE OF NORTH DAKOTA  
**OFFICE OF ATTORNEY GENERAL**

STATE CAPITOL  
600 E BOULEVARD AVE DEPT 125  
BISMARCK, ND 58505-0040  
(701) 328-2210 FAX (701) 328-2226  
www.ag.nd.gov

RECEIVED

OPINION

MAY 07 2008

May 6, 2008

PUBLIC SERVICE COMMISSION

Ms. Ilona A. Jeffcoat-Sacco  
Executive Director  
North Dakota Public Service Commission  
600 E Boulevard Ave Dept 408  
Bismarck, ND 58505-0480

Dear Ms. Jeffcoat-Sacco:

The Office of Attorney General has examined the proposed amendments to N.D.A.C. ch. 69-09-05.1 concerning accounting rules for electric and gas utilities (Case No. PU-06-486), along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was not issued or requested, 3) a takings assessment was prepared, 4) a small entity regulatory analysis and an economic impact statement were not prepared because the rules do not affect small entities, and 5) the proposed rules are within the agency's statutory authority.

These administrative rules are in compliance with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

Thomas L. Trenbeath  
Chief Deputy Attorney General

eee/vkk

cc: John Walstad, Legislative Council



Wayne Stenehjem  
ATTORNEY GENERAL

STATE OF NORTH DAKOTA  
OFFICE OF ATTORNEY GENERAL

STATE CAPITOL  
600 E BOULEVARD AVE DEPT 125  
BISMARCK, ND 58505-0040  
(701) 328-2210 FAX (701) 328-2226  
www.ag.nd.gov

RECEIVED

OPINION

MAY 07 2008

May 6, 2008

PUBLIC SERVICE COMMISSION

Ms. Ilona A. Jeffcoat-Sacco  
Executive Director  
North Dakota Public Service Commission  
600 E Boulevard Ave Dept 408  
Bismarck, ND 58505-0480

Dear Ms. Jeffcoat-Sacco:

The Office of Attorney General has examined the proposed new N.D.A.C. § 69-06-01-05 concerning siting fee refunds (Case No. PU-06-501), along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was not issued or requested, 3) a takings assessment was prepared, 4) a small entity regulatory analysis and an economic impact statement were prepared, and 5) the proposed rules are within the agency's statutory authority.

These administrative rules are in compliance with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

Thomas L. Trenbeath  
Chief Deputy Attorney General

eee/vkk

cc: John Walstad, Legislative Council



Wayne Stenehjem  
ATTORNEY GENERAL

STATE OF NORTH DAKOTA  
**OFFICE OF ATTORNEY GENERAL**  
STATE CAPITOL  
600 E BOULEVARD AVE DEPT 125  
BISMARCK, ND 58505-0040  
(701) 328-2210 FAX (701) 328-2226  
www.ag.nd.gov

OPINION

RECEIVED

MAY 07 2008

May 6, 2008

PUBLIC SERVICE COMMISSION

Ms. Ilona A. Jeffcoat-Sacco  
Executive Director  
North Dakota Public Service Commission  
600 E Boulevard Ave Dept 408  
Bismarck, ND 58505-0480

Dear Ms. Jeffcoat-Sacco:

The Office of Attorney General has examined the proposed new chapter to N.D.A.C. art. 69-06 concerning wind turbine decommission (Case No. PU-07-642), along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was issued, 3) a takings assessment was prepared, 4) a small entity regulatory analysis and an economic impact statement were prepared, and 5) the proposed rules are within the agency's statutory authority.

These administrative rules are in compliance with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

Thomas L. Trenbeath  
Chief Deputy Attorney General

eee/vkk

cc: John Waistad, Legislative Council

31

PU-07-642

Filed: 5/7/2008

Pages: 1

Opinion - Rules in Compliance and Approved as to their Legality

Attorney General

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Accounting, Electric and Gas  
Rulemaking**

**Case No. PU-06-486**

**Public Service Commission  
Public Utilities - Siting  
Rulemaking**

**Case No. PU-06-501**

**Public Service Commission  
Wind Turbine Decommissioning  
Rulemaking**

**Case No. PU-07-642**

**ORDER SUBMITTING PROPOSED RULES TO ATTORNEY GENERAL**

**February 27, 2008**

**Appearances**

**Commissioners Susan Wefald, Kevin Cramer, and Tony Clark.**

**William Binek, Chief Counsel, as Hearing Officer**

**Preliminary Statement**

On October 3, 2007, the North Dakota Public Service Commission (Commission) issued its notice of proposed rulemaking proposing to revise several sections of the Administrative Code including the following two cases:

**Accounting, Electric and Gas: Case No. PU-06-486**

The proposed rules will require regulated gas and electric companies to use a standard system of accounts prescribed by the Federal Energy Regulatory Commission and will limit the amount a utility can capitalize for the cost of funds used during the construction of assets.

**Public Utilities - Siting: Case No. PU-06-501**

The proposed rule sets forth administrative procedures for returning siting application fees that were not needed for processing energy conversion or transmission facility siting applications in accordance with N.D.C.C. section 49-22-22.

### **Wind Turbine Decommissioning: Case No. PU-07-642**

The proposed rule change in Case No. PU-07-642 would establish a new Chapter 69-09-10 of the North Dakota Administrative Code with requirements for the decommissioning of commercial wind turbines. N.D.C.C. section 49-02-27 provides that the Commission may adopt rules governing the decommissioning of commercial wind energy conversion facilities and that the rules may address:

1. The anticipated life of the project;
2. The estimated decommissioning costs in current dollars;
3. The method and schedule for updating the costs of the decommissioning and restoration;
4. The method of ensuring that funds will be available for decommissioning and restoration; and
5. The anticipated manner in which the project will be decommissioned and the site restored.

### **Public Hearing**

A public hearing on the proposed rule changes was noticed for and held at 1:00 p.m. November 26, 2007. The hearing was held in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The notice of rulemaking was published once in all official county newspapers as evidenced by the affidavit of publication on file with the Commission. The notice was also forwarded to the Legislative Council for publication at least 30 days in advance of the November hearing.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until December 6, 2007, during which data, views, or oral arguments concerning the proposed rulemaking could be received by the Commission and made a part of the rulemaking record to be considered by the Commission. Additionally, a follow-up work session requested in Case No. PU-07-642 was conducted on January 8, 2008.

The following discusses the comments that were received:

### **Accounting, Electric and Gas: Case No. PU-06-486**

Commission staff testified at the hearing to explain that regulated gas and electric companies have been using the Federal Energy Regulatory Commission's system of accounts for a long time. The proposed rule simply codifies what is already occurring. The capitalization of Allowance for Funds Used During Construction (AFUDC) is not new, but the proposed rule would establish a limitation in that it would not permit the capitalization of AFUDC on

---

projects costing less than \$10,000 and taking less than 30 days to complete. Staff understands that the current practices of regulated utilities within North Dakota are within this limitation.

Staff further explained that AFUDC provides a method for capitalizing all finance costs related to a particular asset and then amortizing those costs over the in-service life of the asset. In this way, the beneficiaries of new asset pay for the asset and finance costs rather than charging some previous generation of customers for finance costs that occurred during the construction phase of an asset. The dollar and time limit of this proposed rule recognizes that smaller jobs are occurring on a regular basis and therefore any associated finance costs do not need to be capitalized and are appropriately expensed when incurred.

#### **Public Utilities - Siting: Case No. PU-06-501**

Commission staff testified at the hearing to explain that North Dakota Century Code Section 49-22-22 requires every applicant for a certificate of site compatibility, a certificate of corridor compatibility or a waiver of siting procedures to pay an application fee. The Commission must deposit application fees into the Siting Process Expense Recovery Fund established in the state treasury. All moneys deposited in the fund are appropriated on a continuing basis to the Commission to pay expenses incurred in the siting process. The Commission must refund the portion of fees collected which exceeds the expenses incurred for the evaluation and designation process and the proposed rule would establish a process for doing so. No other comments were received.

#### **Wind Turbine Decommissioning – Case No. PU-07-642**

##### Comments Received

##### Commission staff:

Commission staff testified at the hearing that the proposed rules would require owners and operators of new and existing commercial wind energy conversion facilities with total nameplate generating capacity ratings of 500 kW or more to decommission all such facilities to a depth of four feet below ground level and be responsible for all costs of decommissioning and reclaiming the land when a project has reached the end of its useful life. A facility is presumed to be at the end of its useful life if it generates no electricity for a continuous period of twelve months, unless the Commission approves a plan for returning the facility to service. Decommissioning would be required to begin within 8 months and be completed within 18 months after the facility reaches the end of its useful life.

The proposal would require Commission approval of a decommissioning plan prior to construction of new facilities. For existing facilities the plan would need to be filed within one year after the rules become effective. The Commission would have six months to act on a filed plan. The plan would describe how the owner or operator will ensure resources are available to pay for decommissioning. After the 10<sup>th</sup> year of operation the Commission could order a performance bond or other form of financial assurance to cover the anticipated costs of decommissioning. If decommissioning were not completed then the commission could take action as necessary to complete the decommissioning, including forfeiture of the bond.

Basin Electric Power Cooperative:

Basin Electric Power Cooperative (Basin Electric) commented that under proposed section 69-09-10-03 twelve months of non-production is too short of a period for assuming a turbine is at the end of its useful life and suggested 24 months would be better given long lead times sometimes experienced for repairs. Basin Electric was further concerned that reclaiming original top soil quality under proposed section 69-09-10-05 could require stockpiling of the original topsoil and suggested that the area disturbed be reclaimed on a best engineering practice basis with a goal of achieving comparative topsoil quality and topography. Basin Electric further requested greater specify in options for demonstrating financial assurance under proposed section 69-09-10-08. Basin preferred that corporate guarantees be available to companies that meet certain financial worthiness standard.

Cass County Electric Cooperative:

Cass County Electric Cooperative (Cass Electric) concurred with proposed section 69-09-10-05 with the exception of the requirement to remove underground cables to a depth of 48 inches. Cass Electric commented that removal of abandoned underground power cables is a time-consuming and expensive process that yields little benefit and might be more detrimental to the land than any benefit gained. Cass Electric recommended not requiring cable removal beyond a depth of 36 inches in the immediate site area of a wind turbine and not beyond a depth of 24 inches outside of the immediate site area.

FPL Energy, LLC:

FPL Energy, LLC (FPL Energy) questioned the Commission's authority to regulate wind farms with less than 100 MW of generating capacity and requested the Commission conduct a working session, in which interested parties may participate, to consider comments being submitted by FPL Energy and others. FPL Energy requested that section 69-09-10-05 be revised to clarify that underground cables and other structures need only be removed to a depth of four feet. FPL Energy was concerned that reclaiming original top soil quality was impractical as it could require stockpiling of the original topsoil and suggested that the standard for reclamation be set instead at "good or prudent engineering practices." FPL Energy was further concerned with the requirement for Commission approval of a decommissioning plan under proposed

section 69-09-10-06. Specifically, FPL Energy questioned what happens if a plan is disapproved and noted that there were no standards proposed for approving or disapproving a plan. FPL Energy also suggested that creditworthiness standards should be established for the qualification of corporate guarantees as sufficient financial assurance under proposed section 69-09-10-08.

North Dakota Chapter of The Wildlife Society:

North Dakota Chapter of The Wildlife Society (The Wildlife Society) commented in general support of the proposed rules, but recommended there be a requirement that disturbed areas of native prairie be reseeded with a high-diversity native seed mixture to minimize the invasion of non-native species. The Wildlife Society questioned how the 10 year indicator for determining whether to require bonds or other financial assurance under proposed section 69-09-10-08 was chosen and why financial assurance would not be required from start-up. Additionally, The Wildlife Society proposed strengthening the wording in section 69-09-10-08 be changed from "may require a performance bond..." to "will require a performance bond..." and recommended the bond be sufficient to complete reclamation to state standards.

Otter Tail Corporation:

Otter Tail Corporation d/b/a Otter Tail Power Company (Otter Tail) commented that the requirements for reclamation to a depth of four feet under section 69-09-10-05 would be unnecessarily burdensome in view of new structure footing designs and should be reduced to a reclamation depth of three feet below the surface.

### Commission Discussion

In response to jurisdictional questions raised by FPL Energy, the Commission sent a letter to the Attorney General's Office requesting an opinion on whether the Commission has authority to establish decommissioning rules for facilities with less than 100 MW of generating capacity. A response to that request is pending.

Proposed Section 69-09-10-03:

The Commission agrees with concerns raised by Basin Electric and the assumption of when a turbine is at the end of its useful life is revised from 12 months of non-production to 24 months as Basin Electric proposed.

Proposed Section 69-09-10-05:

The Commission agrees with Otter Tail's concerns that reclamation to a depth of four feet would be burdensome and the depth is revised to 36 inches for everything except the removal of underground cables. For underground cables the Commission agrees with Cass Electric's concern that removal at depths greater than 24 inches for areas outside the immediate project area would be unnecessarily burdensome and could do more harm to the land than benefit. The Commission does not find it necessary or practical to define boundaries for different depth requirements and the

proposed rule is revised to require removal of underground cable only to a depth of 24 inches.

The Commission agrees with FPL Energy and Basin Electric that proposed language regarding top soil restoration was impractical and could infer that stockpiling would be necessary. Therefore, the proposed rule is revised to clarify that the area need only be returned to the same general topography with topsoil to a depth similar to what it was before the project.

The Commission agrees with The Wildlife Society that more specific reseeded requirements are needed and proposed section 69-09-10-05 is revised to incorporate reseeded requirements commonly specified by the Commission for other site reclamations.

Proposed Section 69-09-10-06:

The Commission agrees with FPL Energy that there are no formal standards or consequences proposed for approval or disapproval of decommissioning plans and so Commission approval of plans should not be required. Proposed section 69-09-10-06 is revised to require that plans be filed for Commission review rather than for approval.

Proposed Section 69-09-10-08:

The Commission agrees with FPL Energy and Basin Electric that creditworthiness standards for accepting corporate guarantees should be established. Standards currently being used for accepting corporate guarantees for financial assurance in coal mine reclamation were discussed during the January 8<sup>th</sup> workshop and a resulting modified version is incorporated into proposed section 69-09-10-08.

**Order**

The Commission orders that the revised proposed changes to the North Dakota Administrative Code, as attached to and made a part of this order, be submitted to the Attorney General for an opinion that the rules are in compliance with North Dakota Century Code Section 28-32-14 and are approved as to their legality.

**PUBLIC SERVICE COMMISSION**

		
Tony Clark Commissioner	Susan E. Wefald President	Kevin Cramer Commissioner

**PU-06-486**  
**PROPOSED ACCOUNTING RULES FOR ELECTRIC AND GAS**  
**REGULATORY ANALYSIS OF PROPOSED ACCOUNTING RULES**  
**STAFF TESTIMONY**

**Proposed Accounting Rules for Electric and Gas**

**Four new Sections to Chapter 69-09-05.1:**

**69-09-05.1-02. Accounting practices - Rate regulated gas companies.** The system of accounts used by all North Dakota natural gas distribution companies subject to rate regulation by the commission must conform to the uniform system of accounts set forth in title 18, Code of Federal Regulations, part 201, prescribed by the Federal Energy Regulatory Commission.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-02-12

**69-09-05.1-03. Accounting practices - Rate regulated electric companies.** The system of accounts used by all North Dakota electric companies subject to rate regulation by the commission must conform to the uniform system of accounts set forth in title 18, Code of Federal Regulations, part 101, prescribed by the Federal Energy Regulatory Commission.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-02-12

**69-09-05.1-04. Accounting practices - Allowance for funds used during construction for rate regulated gas companies.** A North Dakota natural gas

distribution company subject to rate regulation by the commission may not capitalize allowance for funds used during construction (AFUDC) as prescribed in title 18, Code of Federal Regulations, part 201 for projects costing less than \$10,000 and taking less than 30 days to complete.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-02-12

**69-09-05.1-05. Accounting practices - Allowance for funds used during construction for rate regulated electric companies.** A North Dakota electric company subject to rate regulation by the commission may not capitalize allowance for funds used during construction (AFUDC) as prescribed in title 18, Code of Federal Regulations, part 101 for projects costing less than \$10,000 and taking less than 30 days to complete.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-02-12

# Memo

**To:** Illona Jeffcoat-Sacco

**From:** Mike Diller, Annette Bendish

**Date:** December 7, 2006

**Re:** Regulatory Analysis of Proposed Accounting Rules (PU-06-486)

---

According to Section 28-32-08 of the Administrative Agencies Practice Act, the commission is required to complete a regulatory analysis if a proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars. The accounting rules proposed in this case do not require a regulatory analysis.

Staff believes the proposed rules to require electric and gas companies to use the Uniform System of Accounts as prescribed by the Federal Energy Regulatory Commission will have no impact, financial or otherwise, on the regulated community. The rule merely formalizes the current accounting practice of the regulated utilities and ensures its continued use.

Staff believes that the proposed rules for the capitalization of Allowance for Funds Used During Construction (AFUDC) will not have significant impact on the regulated community.

While the limitations the rule imposes on the capitalization of AFUDC may be different than what is currently being used by some of the regulated utilities, the capitalization or non-capitalization of finance costs are recovered through rates one way or another. In other words, ratepayers can pay the utility companies now or they can pay them later but in the end the utility companies will be paid based on the actual cost of service. If more finance costs are capitalized initially during the construction of the asset, ratepayers will pay less initially and more over the life of the asset. On the other hand, if less costs are capitalized initially, ratepayers will pay more initially and less over the life of the asset. Either way, when taking the time value of money into consideration, one is equal to the other and there is no financial impact to the regulated community over time.

# Memorandum

**To:** Illona Jeffcoat-Sacco  
**CC:** Commissioners, Public Utility Division & Regulated Companies  
**From:** Mike Diller  
**Date:** 9/13/2007  
**Re:** Accounting Rules (Case No. PU-06-486)

---

According to the Administrative Agencies Practice Act, a regulatory analysis for any proposed rule is required if the governor or member of the legislative assembly requests it or if the proposed rule is expected to impact the regulated community by more than \$50,000. On December 6, 2006, I issued a memo concluding that the proposed accounting rules do not require a regulatory analysis. See attached rules and analysis.

The Administrative Act also requires that the agency consider the impact of its proposed rules on small entities as well as a "takings" assessment. If adopted, the proposed rules will not impact small entities nor will it limit the use of private real property. See attached rules and analysis.

## Reason for Purposed Rules

Staff is advocating a standard system of accounts for North Dakota's regulated gas and electric companies to ensure comparability of financial data from one year to the next as well as between different entities. Using a standard system of accounts makes auditing, training of employees, finding information, movement of personnel and the preparation of financial statements easier and better. Staff is advocating standard rules for the capitalization of AFUDC for similar reasons with comparability and financial reporting being foremost in staff's consideration.

**STATE OF NORTH DAKOTA**

**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Accounting, Electric and Gas  
Rulemaking**

**Case No. PU-06-486**

**STAFF TESTIMONY**

*November 26, 2007*

My name is Mike Diller. I am Director of Accounting, responsible for the commission's accounting and data processing operations and any assigned public utility matters. I have about 24 years of public utility regulatory experience with both the Oklahoma Corporation Commission and now the North Dakota Public Service Commission. I received a Bachelor of Science Degree in Accounting from Oklahoma Christian College in Edmond, Oklahoma in 1981. I am a Certified Public Accountant licensed in the state of Oklahoma, and I am a member of the American Institute of Certified Public Accountants.

I am appearing today to testify in support of the accounting rules proposed by staff, Case No. PU-06-486. The rules require regulated gas and electric companies to use a standard system of accounts and a prescribed method for capitalizing the cost of funds used during the construction of assets. To my knowledge, no one is opposed to these proposed rules.

The regulated gas and electric companies have been using the Federal Energy Regulatory Commission's system of accounts for a long time. The proposed rule simply codifies what is already occurring. The FERC has spent a lot of time over the years developing and refining its system of accounts. Further, most people in the industry recognize the value of using this one standard system. Using a standard system of accounts ensures comparability of financial data from one year to the next as well as between different entities. Using a standard system of accounts makes auditing, training of employees, finding information and the preparation of financial statements easier and more productive.

With regard to the capitalization of Allowance for Funds Used During Construction (AFUDC) by the regulated gas and electric companies of North

Dakota, the AFUDC is nothing new. The only "new" thing about staff's proposal is the limitation for using AFUDC. The proposed rule does not permit the capitalization of AFUDC on projects costing less than \$10,000 and taking less than 30 days to complete. Staff understands that the current practices of regulated utilities within North Dakota are within this limitation.

The capitalization of AFUDC, or the cost of funds used to construct an asset, is tied to an old regulatory principle known as "used and useful". The idea behind AFUDC is to match the cost of providing service to the customers using the service. Accordingly, AFUDC provides a method for capitalizing all finance costs related to a particular asset and then amortizing those costs over the in-service life of the asset. In this way, the beneficiaries of the new plant pay for the plant and finance costs rather than charging some previous generation of customers for finance costs that occurred during the construction phase of an asset. The dollar and time limit of this rule recognizes that smaller jobs are occurring on a regular basis and therefore any associated finance costs do not need to be capitalized and are appropriately expensed when incurred.

A small entities analysis under N.D.C.C. section 28-32-08 was prepared with the conclusion that any costs of small entity compliance with this proposed rule are minimal or non-existent.

A regulatory analysis under N.D.C.C. section 28-32-08 was not performed because no requests were received and because the proposed rule is not expected to have an impact on the regulated community in excess of fifty thousand dollars.

A takings assessment under N.D.C.C. section 28-32-09 was prepared with the conclusion that the proposal will not impact the use of private real property.

This concludes my testimony.

**PU-06-501  
PROPOSED SITING RULE  
REGULATORY ANALYSIS, TAKINGS ASSESSMENT AND SMALL ENTITY ANALYSIS  
STAFF TESTIMONY**

**Proposed Rule**

A new section to Chapter 69-06-01

69-06-01-05 Siting fee refund. After all siting permits and certificates are issued by the commission and after all notice and hearing costs and expenses are paid, the commission will refund to the applicant all of the application fee paid by the applicant except \$5,000 or the amount of the fee remaining if that amount is less than \$5,000. When construction and all post-construction inspections are complete, and when the Commission has determined that any required tree mitigation is satisfactory, any remaining balance of the application fee will be refunded to the applicant. No refunds for less than \$50 will be processed.

**General Authority:** NDCC 49-22-18

**Law Implemented:** NDCC 49-22-22

**State of North Dakota  
Public Service Commission**

**Public Service Commission  
Public Utilities – Siting  
Rulemaking**

**Case No. PU-06-501**

**Statement Regarding Regulatory Analysis, Takings Assessment, and Small  
Entity Analysis**

**September 13, 2007**

The proposed rule sets forth administrative procedures for returning siting application fees that were not needed for processing energy conversion or transmission facility siting applications in accordance with N.D.C.C. section 49-22-22.

**Statement Regarding Regulatory Analysis:**

The proposed changes set forth administrative procedures for returning siting application fees to applicants in compliance with state law. The changes are not expected to have a negative impact on the regulated community in excess of fifty thousand dollars. Rather, applicants will receive a benefit they did not have prior to the refund law.

**Statement Regarding Takings Assessment:**

North Dakota Century Code Section 28-32-09(1) requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private property. The assessment must:

- a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
- b. Clearly and specifically identify the purpose of the proposed rule.
- c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
- d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
- e. Identify the source of payment within the agency's budget for any compensation that may be ordered.
- f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

This proposed rule change does not affect the use of private real property and therefore will not result in any taking.

We do not expect any impact on private property owners as a result of the proposed rules.

We do not expect the proposed rules to constitute a taking; therefore, there should be no cost to the state.

Subsection e is not applicable because the proposed rule changes will not limit the use of private real property.

Subsection f is not applicable because the proposed rule changes will not limit the use of private real property.

**Statement Regarding Small Entity Regulatory Analysis:**

An economic impact analysis under North Dakota Century Code Section 28-32-08.1 requires a regulatory analysis which considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. Subsection 2 states that the agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:

- a. Establishment of less stringent compliance or reporting requirements for small entities.
- b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities.
- c. Consolidation or simplification of compliance or reporting requirements for small entities.
- d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule.
- e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

No additional compliance standards or reporting requirements are proposed by the rule changes.

No additional performance standards are proposed by these rule changes.

Small entities will not be exempt from any part of the requirements contained in the proposed rule.

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Public Utilities – Siting  
Rulemaking**

**Case No. PU-06-501**

**STAFF TESTIMONY**

**November 26, 2007**

My name is Patrick Fahn. I am employed as a Public Utility Analyst in the Public Utility Division of the Public Service Commission. The purpose of my testimony is to explain a proposed new section to Commission administrative rules Chapter 69-06-01 pertaining to refunding the remaining balance of a siting application fee.

Under North Dakota Century Code Section 49-22-22 of the Energy Conversion and Transmission Facility Siting Act, every applicant for a certificate of site compatibility, a certificate of corridor compatibility or a waiver or siting procedures must pay to the Commission an application fee. The Commission must deposit application fees into the Siting Process Expense Recovery Fund established in the state treasury. All moneys deposited in the fund are appropriated on a continuing basis to the Commission to pay expenses incurred in the siting process. The Commission must refund the portion of fees collected which exceeds the expenses incurred for the evaluation and designation process.

The new section to the Commission's administrative rules is intended to set out a process for refunding to an applicant the portion of the applicant's statutory siting application fee that is not used in processing the case.

That concludes my testimony in Case No. PU-06-501. Thank you.

**PU-07-642**

**PROPOSED RULE – WIND TURBINE DECOMMISSIONING  
REGULATORY ANALYSIS, TAKINGS ASSESSMENT AND SMALL ENTITY ANALYSIS  
STAFF TESTIMONY**

Public Service Commission  
Wind Turbine Decommissioning  
Rulemaking

Case No. PU-07-642

Proposed Rule

A new Chapter to Article 69-09:

**69-09-10-01. Definitions:**

1. "Commercial wind energy conversion facility" means a wind energy conversion facility of equal to or greater than five hundred kilowatts in total nameplate generating capacity.
2. "Commission" means the public service commission
3. "Wind turbine" means a wind turbine of equal to or greater than five hundred kilowatts in total nameplate generating capacity.

**General Authority:** NDCC 49-02

**Law Implemented:** NDCC 49-02-27

**69-09-10-02. Cost Responsibility:** The owner or operator of a commercial wind energy conversion facility is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities.

**General Authority:** NDCC 49-02

**Law Implemented:** NDCC 49-02-27

**69-09-10-03. Useful Life:** A commercial wind energy conversion facility or individual wind turbine is presumed to be at the end of its useful life if the facility or turbine generates no electricity for a continuous period of twelve (12) months. The

---

presumption may be rebutted by submitting to the commission for approval a plan outlining the steps and schedule for returning the commercial wind energy conversion facility or wind turbine to service.

General Authority: NDCC 49-02  
Law Implemented: NDCC 49-02-27

69-09-10-04. Decommissioning Period: The facility owner or operator shall begin decommissioning a commercial wind energy conversion facility or wind turbine within 8 months after the time the facility or turbine reaches the end of its useful life, as determined in (#3). Decommissioning must be completed within 18 months after the facility or turbine reaches the end of its useful life.

General Authority: NDCC 49-02  
Law Implemented: NDCC 49-02-27

69-09-10-05. Decommissioning Requirements: Decommissioning and site restoration includes dismantling and removal of all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of four feet; and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the commercial wind energy conversion facility or wind turbine. To the extent possible, the site must be restored and reclaimed to the topography and topsoil quality that existed just prior to the beginning of the construction of the commercial wind energy conversion facility or wind turbine. Disturbed earth must

---

be graded and reseeded, unless the landowner requests in writing that the access roads or other land surface areas be retained.

**General Authority: NDCC 49-02**

**Law Implemented: NDCC 49-02-27**

**69-09-10-06. Decommissioning Plan:** Prior to commencement of operation of a commercial wind energy conversion facility or wind turbine, the facility or turbine owner or operator shall file with the commission the estimated decommissioning cost per turbine, in current dollars at the time of the application, for the proposed facility or turbine and a decommissioning plan that describes how the facility or turbine owner or operator will ensure that resources are available to pay for decommissioning the facility or turbine at the appropriate time. The commission shall review a plan filed under this section and shall issue an order approving or disapproving the plan within 6 months after the decommissioning plan was filed. The commission may at any time require the owner or operator of a commercial wind energy conversion facility or wind turbine to file a report with the commission describing how the facility or turbine owner or operator is fulfilling this obligation.

**General Authority: NDCC 49-02**

**Law Implemented: NDCC 49-02-27**

**69-09-10-07. Existing Facilities:** Owners and operators of existing commercial wind energy conversion facilities shall file with the commission the information required in section 6 within one year of the effective date of the rules.

**General Authority:** NDCC 49-02

**Law Implemented:** NDCC 49-02-27

**69-09-10-08. Financial Assurance:** After the 10<sup>th</sup> year of operation of a commercial wind energy conversion facility or wind turbine, the commission, by order, may require a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the commission to cover the anticipated costs of decommissioning the commercial wind energy conversion facility or turbine.

**General Authority:** NDCC 49-02

**Law Implemented:** NDCC 49-02-27

**69-09-10-09. Failure to Decommission:** If the commercial wind energy conversion facility owner or operator does not complete decommissioning, the commission may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the commission may take such action as may be necessary to decommission a commercial wind energy conversion facility or wind turbine, including the exercise by the commission, commission staff, and their contractors of the right of ingress and egress for the purpose of decommissioning the commercial wind energy conversion facility.

**General Authority:** NDCC 49-02

**Law Implemented:** NDCC 49-02-27

**State of North Dakota  
Public Service Commission**

**Public Service Commission  
Wind Turbine Decommissioning  
Rulemaking**

**Case No. PU-07-642**

**Regulatory Analysis, Takings Assessment, and Small Entity Analysis**

**October 3, 2007**

N.D.C.C. Section 49-02-27 provides that the commission may adopt rules governing the decommissioning of commercial wind energy conversion facilities. The rules may address:

1. The anticipated life of the project;
2. The estimated decommissioning costs in current dollars;
3. The method and schedule for updating the costs of the decommissioning and restoration;
4. The method of ensuring that funds will be available for decommissioning and restoration; and
5. The anticipated manner in which the project will be decommissioned and the site restored.

**Regulatory Analysis**

North Dakota Century Code Section 28-32-08 requires that an agency issue a regulatory analysis if the proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars or if a written request for the analysis is filed by the governor or a member of the legislative assembly.

The proposed rule would require owners and operators of new and existing commercial wind energy conversion facilities with total nameplate generating capacity ratings of 500 kW or more to decommission all such facilities and be responsible for all costs of decommissioning when a project has reached the end of its useful life. The proposal would require establishment of a decommissioning plan and, to the extent that it causes decommissioning of facilities that would otherwise be abandoned, the proposal will likely have an impact on the regulated community in excess of fifty thousand dollars. Therefore, a regulatory analysis is being issued.

Section 28-32-08 provides that a regulatory analysis must contain:

- a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule:
  - Wind project owner and operators are expected to bear the costs of decommissioning when wind projects are retired. It is expected that the costs of decommissioning will be recovered from consumers of the electricity produced – just as other costs, including competing generation project decommissioning costs, are recovered.

- Landowners should benefit from the proposed rule as it will help ensure they are not stuck with abandoned facilities on their land.
  - The general public will benefit from not having abandoned wind turbines spread across the countryside.
- b. A description of the probable impact, including economic impact, of the proposed rule;
- The probably impact will be to decommission wind turbine facilities that might otherwise be abandoned when no longer useful for generating electricity. Actual decommissioning costs per turbine will depend on the number of turbines in the facility and other factors such as salvage value or whether there is a market for used towers, etc. An example was provided in testimony before the ND Legislature's Natural Resources Committee regarding 2007 HB 1506 where the Minnesota Public Utilities Commission estimated in 2006 that decommissioning of a 100 MW facility could cost in a range of approximately \$10,000 to \$30,000 per turbine. However, absent decommissioning, there may also be an impact from decreased land values if facilities were abandoned in place.
- c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues:
- Implementation and enforcement costs are expected to be limited to existing staff time. Revenue could be impacted by penalties assessed for non-compliance.
- d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.
- No reasonable alternatives were identified or seriously considered.

### **Takings Assessment**

North Dakota Century Code Section 28-32-09(1) requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private property. The assessment must:

- a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
- To the extent that the proposed rule results in the removal of wind generating facilities that otherwise would be abandoned in place, then the rule would limit the use of private property by not allowing "junk" wind turbines to remain erected upon it.
- b. Clearly and specifically identify the purpose of the proposed rule.
- The purpose of the proposed rule is to ensure that wind generating facilities are properly decommissioned at the end of their useful life rather than simply abandoned in place.

- c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
  - The proposed rule will establish requirements, and require a funding plan, for decommissioning of wind generating facilities that may not otherwise be properly decommissioned at the end of their useful life. The legislature has authorized the establishment of the rule and no alternative action has been identified that will ensure proper decommissioning of the facilities
- d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
  - We do not have sufficient expertise to estimate potential cost to the government. However, there could be salvage value or other factors that may affect the cost to government.
- e. Identify the source of payment within the agency's budget for any compensation that may be ordered.
  - There are no sources in this agency's budget without further appropriation from the Legislature.
- f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.
  - So certified by the State Legislature. Proposed rule authorized under NDCC 49-02-27.

#### **Small Entity Regulatory Analysis**

An economic impact analysis under North Dakota Century Code Section 28-32-08.1 requires a regulatory analysis which considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. Subsection 2 states that the agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:

- a. Establishment of less stringent compliance or reporting requirements for small entities.
- b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities.
- c. Consolidation or simplification of compliance or reporting requirements for small entities.
- d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule.
- e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

Small entities employ fewer than 25 full-time employees or have gross annual revenue sales of less than \$2.5 million dollars.

As proposed, the rules would provide flexibility for the Commission to establish project-specific decommissioning plans to assist wind energy developers that are small entities to fund decommissioning of facilities. Absent a decommissioning plan it is likely more difficult for small entities to fund decommissioning and more likely that facilities will be abandoned in place.

No additional compliance standards, reporting requirements or performance standards are proposed by the rule changes. Small entities will not be exempt from any part of the requirements contained in the proposed rule

Section 28-32-08.1 provides that before adoption of any proposed rule that may have an adverse impact on small entities, the adopting agency shall prepare an economic impact statement that includes consideration of:

- a. The small entities subject to the proposed rule;
  - There are some small entity developers, but generally commercial wind energy facility owners and operators are unlikely to be small entities because of the financial and operating resources necessary to develop commercial scale wind energy projects. Possible exceptions include possible school or small community based projects.
- b. The administrative and other costs required for compliance with the proposed rule;
  - Aside from the cost of decommissioning the facilities, administrative and other costs are expected to be limited to the cost of preparing and obtaining approval of a decommissioning plan and the costs of a bond if one is needed.
- c. The probable cost and benefit to private persons and consumers who are affected by the proposed rule;
  - Wind energy facility owners and operators typically enter into a lease arrangement with private land owners and consequently the landowner can be left with facility removal if the developer fails to do so. The proposed rule will benefit private land owners by ensuring that a plan is in place to remove abandoned facilities from their land.
- d. The probable effect of the proposed rule on state revenues:
  - If facilities are abandoned then the state could end up removing them at state expense. The proposed rule will benefit the state by ensuring that a plan is in place to ensure that the state will be left to remove abandoned facilities.
- e. Any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule:
  - No less intrusive or less costly alternatives have been identified.

# STATE OF NORTH DAKOTA

## PUBLIC SERVICE COMMISSION

Public Service Commission  
Wind Turbine Decommissioning  
Rulemaking

Case No. PU-07-642

### STAFF TESTIMONY

November 26, 2007

My name is Jerry Lein. I am employed as a Public Utility Analyst within the Public Utility Division of the Public Service Commission. The purpose of my testimony is to explain and provide support for changes proposed to the Commission's administrative rules to adopt a new chapter 69-09-10 to the North Dakota Administrative Code. This new chapter would establish rules for the decommissioning of commercial wind turbines.

N.D.C.C. Section 49-02-27 provides that the commission may adopt rules governing the decommissioning of commercial wind energy conversion facilities. The rules may address:

1. The anticipated life of the project;
2. The estimated decommissioning costs in current dollars;
3. The method and schedule for updating the costs of the decommissioning and restoration;
4. The method of ensuring that funds will be available for decommissioning and restoration; and
5. The anticipated manner in which the project will be decommissioned and the site restored.

The proposed rules would require owners and operators of new and existing commercial wind energy conversion facilities with total nameplate generating capacity ratings of 500 kW or more to decommission all such facilities to a depth of four feet below ground level and be responsible for all costs of decommissioning and reclaiming the land when a project has reached the end of its useful life.

A facility is presumed to be at the end of its useful life if it generates no electricity for a continuous period of twelve months, unless the Commission approves a plan for returning the facility to service. Decommissioning would be required to begin within 8 months and be completed within 18 months after the facility reaches the end of its useful life.

The proposal would require Commission approval of a decommissioning plan prior to construction of new facilities. For existing facilities the plan would need to be filed within one year after the rules become effective. The Commission would have six months to act on a filed plan. The plan would describe how the owner or operator will ensure resources are available to pay for decommissioning. After the 10<sup>th</sup> year of operation the Commission could order a performance bond or other form of financial assurance to cover the anticipated costs of decommissioning. If decommissioning were not completed then the commission could take action as necessary to complete the decommissioning, including forfeiture of the bond.

A regulatory analysis, small entities analysis and takings assessment have been performed under N.D.C.C. sections 28-32-08 and 28-32-09..

That concludes my testimony. Thank You.