



# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

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April 16, 2008

The Honorable Wayne Stenehjem  
North Dakota Attorney General  
State Capitol  
600 East Boulevard Avenue  
Bismarck, North Dakota 58505-0040

RE: 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

**23** **PU-06-486** Filed: 4/16/2008 Pages: 116  
**Letter Submitting Proposed Rules to Attorney  
General**

Public Service Commission

**18** **PU-06-501** Filed: 4/16/2008 Pages: 116  
**Letter Submitting Proposed Rules to Attorney  
General**

Public Service Commission

**30** **PU-07-642** Filed: 4/16/2008 Pages: 116  
**Letter Submitting Proposed Rules to Attorney  
General**

Public Service Commission

Dear Attorney General Stenehjem:

The North Dakota Public Service Commission requests your opinion of the attached proposed changes to the North Dakota Administrative Code. The proposed rules have been approved by the Public Service Commission. In accordance with N.D.C.C. § 28-32-14, the Public Service Commission requests your examination of these rules as to their legality so they may be considered for formal adoption and

publication in the North Dakota Administrative Code. The time for review of these rules should be recorded under 03-31 and 03-106.

Attached for purposes of review in case PU-06-486 is a copy of:

1. Copy of Order Submitting Rules to Attorney General dated February 27, 2008 which includes proposed rules;
2. Copy of both full and abbreviated Commission's Notice of Intent to Amend Administrative Rules and Notice of Public Hearing dated February 27, 2008, and abbreviated notice of intent to adopt;
3. Proof of publication showing where and when the Notice was published including a copy of the actual Notice as published;
4. Proof of filing the Notice and proposed rules with Legislative Council; and
5. Copy of the Statement on Regulatory Analysis and Takings Assessment & Statement on Small Entity Regulatory Analysis dated December 7, 2006 and September 13, 2007;
6. Copy of the Testimony of Mike Diller before the Public Service Commission.

Attached for purposes of review in case PU-06-501 is a copy of:

1. Copy of Order Submitting Rules to Attorney General dated February 27, 2008 which includes proposed rules;
2. Copy of both full and abbreviated Commission's Notice of Intent to Amend Administrative Rules and Notice of Public Hearing dated February 27, 2008, and abbreviated notice of intent to adopt;
3. Proof of publication showing where and when the Notice was published including a copy of the actual Notice as published;
4. Proof of filing the Notice and proposed rules with Legislative Council; and
5. Copy of the Statement on Regulatory Analysis and Takings Assessment & Statement on Small Entity Regulatory Analysis, both available on September 13, 2007;
6. Copy of the Testimony of Patrick Fahn before the Public Service Commission.

Attached for purposes of review in case PU-07-642 is a copy of:

1. Copy of Order Submitting Rules to Attorney General dated February 27, 2008 which includes revised proposed rules;

2. Copy of letter to Attorney General requesting the Public Service Commission's authority to establish rules for wind turbine decommissioning and response;
3. Copy of both full and abbreviated Commission's Notice of Intent to Amend Administrative Rules and Notice of Public Hearing dated October 3, 2007, and abbreviated notice of intent to adopt;
4. Proof of publication showing where and when the Notice was published including a copy of the actual Notice as published;
5. Proof of filing the Notice and proposed rules with Legislative Council;
6. Affidavit of Service by Electronic Mail to Legislators sponsoring 2007 HB 1317;
7. Copy of the Statement on Regulatory Analysis and Takings Assessment & Statement on Small Entity Regulatory Analysis, both available on October 3, 2007;
8. Copy of the Testimony of Jerry Lein before the Public Service Commission and copy of written comments by concerned parties.

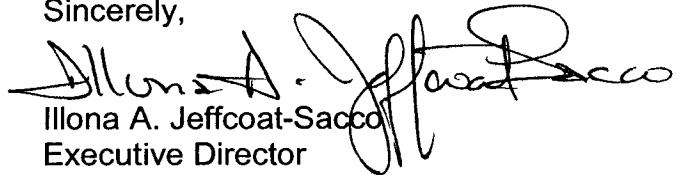
The proposed rules in Case Nos. PU-06-486 and PU 06-501 are not implementing legislation enacted during the most recent legislative session and the only comments or testimony in these two cases were by commission staff.

In Case No. PU-07-642, comments were provided by commission staff, the North Dakota Chapter of The Wildlife Society, Otter Tail Power Company, FPL Energy, LLC, Basin Electric Power Cooperative, and Cass County Electric Cooperative Inc.

If you have any questions, please do not hesitate to contact us.

Thank you for your attention in this matter.

Sincerely,

  
Illona A. Jeffcoat-Sacco  
Executive Director

Enclosures

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

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

**Public Service Commission  
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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.

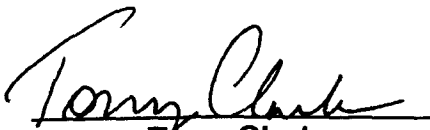
Proposed Section 69-09-10-08:

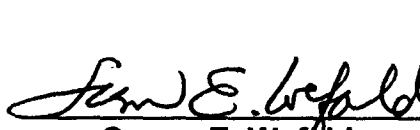
The Commission agrees with FPL Energy and Basin Electric that creditworthiness standards for accepting corporate guarantees should be established. Standards currently being used for accepting corporate guarantees for financial assurance in coal mine reclamation were discussed during the January 8<sup>th</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. Wefeld  
President

  
Kevin Cramer  
Commissioner

**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

**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 - Electric  
Rulemaking** **Case No. PU-06-490**

**Public Service Commission  
Public Utilities – Siting  
Rulemaking** **Case No. PU-06-501**

**Public Service Commission  
Gas Pipeline Safety  
Rulemaking** **Case No. GS-06-510**

**Public Service Commission  
Reclamation  
Rulemaking** **Case No. RC-07-163**

**Public Service Commission  
Weights and Measures  
Rulemaking** **Case No. WM-07-203**

**Public Service Commission  
EPA Act Section 1252 Smart Metering Standard  
Rulemaking** **Case No. PU-07-641**

**Public Service Commission  
Wind Turbine Decommissioning  
Rulemaking** **Case No. PU-07-642**

**NOTICE OF INTENT TO ADOPT, AMEND, AND REPEAL ADMINISTRATIVE RULES  
AND NOTICE OF PUBLIC HEARING**

**October 3, 2007**

**PLEASE TAKE NOTICE** that the Public Service Commission will hold a public hearing to address proposed amendments to several articles of the North Dakota Administrative Code. The hearing will be held at **1:00 p.m., CST, November 26, 2007,**

**in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.** The proposed revisions to the North Dakota Administrative Code are as follows:

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

The proposed electric and gas accounting 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. These proposed rule changes are not expected to have an impact on the regulated community in excess of fifty thousand dollars.

**Public Utilities – Electric: Case No. PU-06-490**

The proposed rule change in Case No. PU-06-490 would amend section 69-09-02-35 of the North Dakota Administrative Code to adopt by reference the 2007 version of the National Electric Safety Code for the installation and maintenance of electric supply and communication lines. This proposed rule change is not expected to have an impact on the regulated community in excess of fifty thousand dollars.

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

The proposed rule in Case No. PU-06-501 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. While the rule may impact the regulated community in amounts greater than \$50,000, this impact is only positive. Siting applicants will get refunds of a substantial portion of their respective siting fees that previously went to the state's general fund.

**Gas Safety – Gas Pipeline Safety: Case No. GS-06-510**

The Commission proposes to adopt by reference the 2006 federal Gas Pipeline Safety rule amendments. Generally, these proposed changes prescribes similar standards as the current standards governing integrity management of gas transmission lines that operators must meet when they use direct assessment use direct assessment on certain other onshore gas, hazardous liquid, and carbon dioxide pipelines; adopts a consensus standard to distinguish onshore gathering lines from other gas pipelines and production operations, and establishes safety rules for certain onshore gathering lines in

rural areas and revises current rules for certain onshore gathering lines in non-rural areas; and, updates the pipeline safety regulations to incorporate by reference all or parts of new editions of voluntary consensus technical standards to enable pipeline operators to utilize current technology, materials, and practices. None of the proposed gas safety changes is expected to have an impact on the regulated community in excess of fifty thousand dollars.

### **Reclamation: Case No. RC-07-163**

A few changes are proposed to rules for the coal mining and reclamation regulatory program. The most significant change pertains to the self-bonding provisions, and it will allow the Commission to accept, in addition to Moody's Investors Service and Standards and Poor's ratings, bond ratings from other national recognized rating organizations for companies that guarantee self-bonds. Another change updates the terminology used for native grassland descriptions that are required as part of the pre-mine land use information in permit applications. The other change corrects a cross reference error in the permit approval criteria. These proposed rule changes are not expected to have an impact on the regulated community in excess of fifty thousand dollars.

### **Weights and Measures – Case No. WM-07-203**

#### **Amendments to CHAPTER 69-10-01:**

Add the word "permit" to match recent legislative changes in the North Dakota Century Code; clarify who may recertify commercial devices; whose responsibility it is to insure the devices are recertified; how often the devices must be recertified; and what type of enforcement actions will take place if the rule is violated; delete the address requirement on the adhesive stickers used as part of the sealing process; add the word "or" to clarify that it references two different device types; delete any reference to the use of a LPG master meter as a standard; repeal 69-10-01-07 in order to allow any operator to sell refined fuels through a temperature compensated meter; add the term "1999 edition" to clarify which NIST handbook 44 is used in ND; and, lower by one month the time limit registered service companies have to test a commercial device under contract.

#### **Amendments to CHAPTER 69-10-02:**

Add the word "permit" to match recent legislative changes in the North Dakota Century Code; repeal 69-10-02-08 and 69-10-02-11, combine them in the new rule 69-

10-01-17 which includes ~~all weighing and measuring devices~~; change the word “weighman” to non gender specific “scale operator”; add “on commercial scales after”; change “audit” to “audit trail”; change “recall” to “recalled”; add the term “portable wheel-load scale” to clarify that both permanent axel load scales and portable wheelload scales are included in the rule; and, provide for the design and access requirements for all new large hopper scales installed after January 1, 2008, and new modification requirements to all existing large hopper scales.

#### **Amendments to CHAPTER 69-10-03:**

Add the word “permit” to match recent legislative changes in the North Dakota Century Code; amend subsection 69-10-03-02 to clarify that an up to date copy of the metrology certificate of traceability for all standards be on file with the commission; change the requirement for the recertification of automatic bulk-weighing system standards to once every 5 years; disallow the use of LPG master meters as testing standards; allow that any standard may be recertified sooner if inspection shows a need; clarify how to properly make a metrology appointment; replace the word “accredited” with the word “recognized” in order to match current terminology used by the U.S. Department of Commerce National Institute of Standards and Technology; and, clarify the design leveling requirements of a prover.

#### **Amendments to CHAPTER 69-10-04:**

Clarify what type of registered service person test must be taken; where the test questions are taken from; and, change where the test may be administered by replacing the phrase “metrology lab” with the phrase “a state facility”. Except for changes to North Dakota Administrative Code Sections 69-10-02-26 and 69-10-03-02, the rules are not expected to impact the regulated community in excess of \$50,000. For changes proposed in North Dakota Administrative Code Sections 69-10-02-26 and 69-10-03-02, a regulatory analysis has been prepared and is available from the Commission.

#### **Public Utilities – EAct Section 1252 Smart Metering Standard: Case No. PU-07-641**

The proposed rule would establish a new section within chapter 69-09-02 of the North Dakota Administrative Code to require regulated electric utilities to offer retail electric rates for commercial and industrial customers that vary according to the time of use. This proposed rule is not expected to have an impact on the regulated community in excess of fifty thousand dollars.

## **Public Utilities – Wind Turbine Decommissioning: Case No. 07-642**

The proposed rule would establish a new chapter to Article 69-09 of the North Dakota Administrative Code setting forth procedures and requirements to ensure proper decommissioning of commercial wind energy production facilities when they reach the end of their useful life. This proposed rule could have an impact on the regulated community in excess of fifty thousand dollars. A regulatory analysis has been prepared and is available from the Commission

All of the proposed rule changes and any statements concerning Regulatory Analyses, Small Entity Analyses and Takings Assessments may be reviewed at the Public Service Commission's offices on the 12th floor of the State Capitol, Bismarck, North Dakota. To obtain a copy of the proposed rule changes, or any statements concerning the Regulatory Analyses, Small Entity Analyses and Takings Assessments contact the Public Service Commission at 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, or 701-328-2400. The proposed rule changes and any statements concerning Regulatory Analyses, Small Entity Analyses and Takings Assessments may be viewed at <http://www.psc.state.nd.us> (see Formal Actions: Notices).

Interested persons may submit written data, views, arguments, or appear in person or through counsel concerning the proposals. Written comments should be filed with Illona A. Jeffcoat-Sacco, Executive Director, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480. Written or oral comments on the proposed rules sent to the above address or telephone number and received by December 6, 2007, will be considered.

If individuals require any auxiliary aids or services, such as readers, signers, or braille materials, please notify, Illona A. Jeffcoat-Sacco, Executive Director, at least 24 hours prior to the hearing on November 26, 2007. She can be contacted at the following numbers: 701-328-2400 and Relay North Dakota TTY: 1-800-366-6888.

### **PUBLIC SERVICE COMMISSION**

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**Tony Clark**  
**Commissioner**

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**Susan E. Wefald**  
**President**

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**Kevin Cramer**  
**Commissioner**

**NOTICE OF INTENT TO ADOPT, AMEND or REPEAL ADMINISTRATIVE RULES  
AND NOTICE OF PUBLIC HEARING**

**October 3, 2007**

PLEASE TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to the N.D. Admin. Code, relating to electric and gas public utility accounting; adoption of current National Electrical Safety Code; energy conversion and transmission facility siting fee refunds; adoption of federal gas safety provisions; provisions for reclamation self-bonds, terminology update and cross-reference correction; weights and measures; electric commercial and industrial time of use tariffs; and wind turbine decommissioning at **1 p.m., CST, November 26, 2007, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.**

The proposed rule changes and any statements concerning Regulatory Analyses, Small Entity Analyses and Takings Assessments may be reviewed at the Public Service Commission's offices on the 12th floor of the State Capitol, Bismarck, North Dakota. To obtain a copy of the proposed changes or any statements, contact the Public Service Commission at 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, 701-328-2400, or view them at <http://www.psc.state.nd.us> (see Formal Actions: Notices).

Written comments should be filed with Illona A. Jeffcoat-Sacco, Executive Director, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480. by December 6, 2007.

If individuals require any auxiliary aids or services, such as readers, signers, or braille materials, please notify, Illona A. Jeffcoat-Sacco, Executive Director, at least 24 hours prior to the hearing at 701-328-2400 and Relay North Dakota TTY: 1-800-366-6888.

**PUBLIC SERVICE COMMISSION**

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**Tony Clark  
Commissioner**

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**Susan E. Wefald  
President**

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**Kevin Cramer  
Commissioner**

# Affidavit of Publication

Colleen Park

, being duly sworn, state as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.

2. The newspapers listed on the exhibits published the advertisement of:

Public Service Commission Administrative Rules,

1 time(s) as required by law or ordinance.

3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

Signed:

Colleen Park

State of

ND

County of

Burleigh

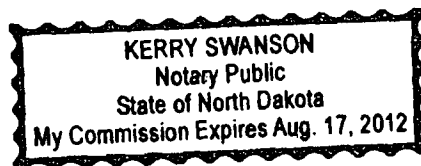
Subscribed and sworn to before me this

5<sup>th</sup>

day of

November 20 07.

Kerry Swanson





# North Dakota Newspaper Association

1435 Interstate Loop  
 Bismarck, ND 58503-0567  
 Ph (701) 223-6397 • Fax (701) 223-8185

## INVOICE

Order **24107-07105PP0**

Invoice # **96575**

November 7, 2007

Attn: ILLONAA, JEFFCOAT-SACCO  
 PUBLIC SERVICE COMMISSION  
 600 E. BOULEVARD AVE.  
 STATE CAPITOL  
 BISMARCK, ND 58505

Advertiser: **Public Service Commission**

P.O.#:

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Voice: 701-328-4076

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Public Service Commission Invoice # 24107-07105PP0-96575

Ad Size	Rate Type	Rate	Total	Discount (%)	Caption	Page	Run Date
<b>COUNTY</b>							
<b>Ashley Tribune (Ashley ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Beach Golden Valley News (Beach ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/18/07
<b>Bismarck Tribune (Bismarck ND)</b>							
7.00	SPR1	10.30	72.10	0.00	Public Service Comm		10/15/07
<b>Bottineau Courant (Bottineau ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/16/07
<b>Bowbells Burke County Tribune (Bowbells ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Bowman County Pioneer (Bowman ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/19/07
<b>Cando Towner Co Record Herald (Cando ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/20/07
<b>Carrington Foster Co Independent (Carrington ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/15/07
<b>Carson Press (Elgin ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Cavalier Chronicle (Cavalier ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Center Republican (Washburn ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/18/07
<b>Cooperstown Griggs County Courier (Cooperstown ND)</b>							
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<b>Crosby The Journal (Crosby ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Devils Lake Daily Journal (Devils Lake ND)</b>							
7.00	SPR1	7.00	49.00	0.00	Public Service Comm		10/15/07
<b>Dickinson Press (Dickinson ND)</b>							
7.00	SPR1	7.00	49.00	0.00	Public Service Comm		10/14/07
<b>Elgin Grant County News (Elgin ND)</b>							
7.00	SPR1	5.15	Did Not Run	0.00	Public Service Comm		10/17/07

<i>Ad Size</i>	<i>Rate Type</i>	<i>Rate</i>	<i>Total</i>	<i>Discount (%)</i>	<i>Caption</i>	<i>Page</i>	<i>Run Date</i>
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<b>Fargo, The Forum (Fargo ND)</b>							
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<b>Finley Steele County Press (Finley ND)</b>							
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<b>Garrison McLean Co Independent (Garrison ND)</b>							
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<b>Grafton * Walsh County Record (Grafton ND)</b>							
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<b>Grand Forks Herald (Grand Forks ND)</b>							
7.00	SPR1	10.30	72.10	0.00	Public Service Comm		10/16/07
<b>Harvey The Herald-Press (Harvey ND)</b>							
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<b>Hazen Star (Hazen ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/18/07
<b>Hettinger Adams Co Record (Hettinger ND)</b>							
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<b>Linton Emmons County Record (Linton ND)</b>							
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<b>Lisbon Ransom County Gazette (Lisbon ND)</b>							
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<b>Mandan News (Mandan ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/19/07
<b>Mayville * Traill County Tribune (Mayville ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/20/07
<b>McClusky Gazette (McClusky ND)</b>							
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<b>Minnewaukan Benson Co Farmers Press (Minnewaukan ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Minot Daily News (Minot ND)</b>							
7.00	SPR1	10.30	72.10	0.00	Public Service Comm		10/14/07

Ad Size	Rate Type	Rate	Total	Discount (%)	Caption	Page	Run Date
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COUNTY

<b>Mohall Renville County Farmer (Mohall ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Napoleon Homestead (Napoleon ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>New England The Herald (New England ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/19/07
<b>New Rockford Transcript (New Rockford ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/15/07
<b>Rolla Turtle Mountain Star (Rolla ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/15/07
<b>Rugby Pierce County Tribune (Rugby ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/20/07
<b>Stanley Mountrail Co Promoter (Stanley ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Steele Ozone &amp; Kidder Co. Press (Steele ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Towner Mouse River Journal (Towner ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Valley City Times-Record (Valley City ND)</b>							
7.00	SPR1	7.00	49.00	0.00	Public Service Comm		10/15/07
<b>Wahpeton Daily News (Wahpeton ND)</b>							
7.00	SPR1	7.00	49.00	0.00	Public Service Comm		10/14/07
<b>Watford City McKenzie Co Farmer (Watford City ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Williston Herald (Williston ND)</b>							
7.00	SPR1	7.00	49.00	0.00	Public Service Comm		10/14/07

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**NOTICE OF INTENT TO  
ADOPT, AMEND  
OR REPEAL  
ADMINISTRATIVE  
RULES**

relating to electric and gas public utility accounting; adoption of current National Electrical Safety Code; energy conversion and transmission facility siting fee refunds; adoption of federal gas safety provisions; provisions for reclamation self-bonds; terminology update and cross-reference correction; weights and measures; electrical commercial and industrial time of use tariffs; and wind turbine decommissioning.

**Public Service  
Commission**

will hold a public hearing to address proposed amendments to the N.D. Admin. Code.

**Commission Hearing Room  
12th Floor, State Capitol  
Bismarck, ND  
Mon., Nov. 26, 2007  
1:00 p.m. CST**

The proposed rule changes and any statements concerning Regulatory Analyses, Small Entity Analyses and Takings Assessments may be reviewed at the Public Service Commission's offices on the 12th floor of the State Capitol, Bismarck, North Dakota. To obtain a copy of the proposed changes or any statements, contact the Public Service Commission at 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, 701-328-2400, or view them at <http://www.psc.state.nd.us> (see Formal Actions: Notices).

Written comments should be filed with Ilhona A. Jeffcoat-Sacco, Executive Director, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, by December 6, 2007.

If individuals require any auxiliary aids or services, such as readers, signers, or braille materials, please notify, Ilhona A. Jeffcoat-Sacco, Executive Director, at least 24 hours prior to the hearing at 701-328-2400 and Relay North Dakota TTY: 1-800-366-6888.

Tony Clark      Susan E. Wefald      Kevin Cramer  
Commissioner      President      Commissioner



Public Service Commission  
State of North Dakota

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COMMISSIONERS

Susan E. Wefald, President  
Kevin Cramer  
Tony Clark

Executive Director  
Ilona A. Jeffcoat-Sacco

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

October 3, 2007

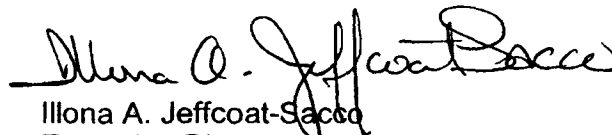
Mr. John Walstad  
Code Revisor  
North Dakota Legislative Council  
State Capitol  
Bismarck, North Dakota 58505-0360

Re: Notice of Intent to Adopt, Amend, and Repeal Administrative Rules  
Case Nos. PU-06-486, PU-06-490, PU-06-501, GS-06-510, RC-07-163,  
WM-07-203, PU-07-641, and PU-07-642.

Dear Mr. Walstad:

The Public Service Commission's full Notice of Intent to Adopt, Amend or Repeal Administrative Rules and Notice of Hearing for the captioned cases, together with an abbreviated Notice for publication, both required by N.D.C.C. § 28-32-10(1), and a copy of each of the proposed rule changes, are enclosed.

Sincerely,

  
Ilona A. Jeffcoat-Sacco  
Executive Director

Enclosure

Received in the office of Legislative Council this 3<sup>rd</sup> day of October 3, 2007.

By: Pat Geiger for  
John Walstad

# Memo

**To:** Illona Jeffcoat-Sacco  
**From:** Mike Diller, Annette Bendish  
**Date:** December 7, 2006  
**Re:** Regulatory Analysis of Proposed Accounting Rules (PU-06-486)

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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)

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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.

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

**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 reseedling requirements are needed and proposed section 69-09-10-05 is revised to incorporate reseedling 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.


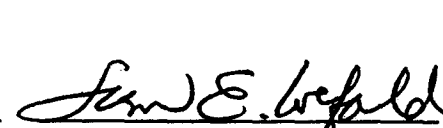
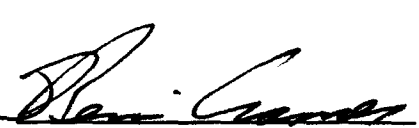
Proposed Section 69-09-10-08:

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**

		
<b>Tony Clark</b> Commissioner	<b>Susan E. Wefald</b> President	<b>Kevin Cramer</b> Commissioner

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

**Public Service Commission  
Public Utilities - Electric  
Rulemaking** **Case No. PU-06-490**

**Public Service Commission  
Public Utilities - Siting  
Rulemaking** **Case No. PU-06-501**

**Public Service Commission  
Gas Pipeline Safety  
Rulemaking** **Case No. GS-06-510**

**Public Service Commission  
Reclamation  
Rulemaking** **Case No. RC-07-163**

**Public Service Commission  
Weights and Measures  
Rulemaking** **Case No. WM-07-203**

**Public Service Commission  
EPA Act Section 1252 Smart Metering Standard  
Rulemaking** **Case No. PU-07-641**

**Public Service Commission  
Wind Turbine Decommissioning  
Rulemaking** **Case No. PU-07-642**

**NOTICE OF INTENT TO ADOPT, AMEND, AND REPEAL ADMINISTRATIVE RULES  
AND NOTICE OF PUBLIC HEARING**

**October 3, 2007**

**PLEASE TAKE NOTICE** that the Public Service Commission will hold a public hearing to address proposed amendments to several articles of the North Dakota

Administrative Code. The hearing will be held at 1:00 p.m., CST, November 26, 2007, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. The proposed revisions to the North Dakota Administrative Code are as follows:

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

The proposed electric and gas accounting 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. These proposed rule changes are not expected to have an impact on the regulated community in excess of fifty thousand dollars.

**Public Utilities – Electric: Case No. PU-06-490**

The proposed rule change in Case No. PU-06-490 would amend section 69-09-02-35 of the North Dakota Administrative Code to adopt by reference the 2007 version of the National Electric Safety Code for the installation and maintenance of electric supply and communication lines. This proposed rule change is not expected to have an impact on the regulated community in excess of fifty thousand dollars.

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

The proposed rule in Case No. PU-06-501 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. While the rule may impact the regulated community in amounts greater than \$50,000, this impact is only positive. Siting applicants will get refunds of a substantial portion of their respective siting fees that previously went to the state's general fund.

**Gas Safety – Gas Pipeline Safety: Case No. GS-06-510**

The Commission proposes to adopt by reference the 2006 federal Gas Pipeline Safety rule amendments. Generally, these proposed changes prescribes similar standards as the current standards governing integrity management of gas transmission lines that operators must meet when they use direct assessment use direct assessment on certain other onshore gas, hazardous liquid, and carbon dioxide pipelines; adopts a consensus standard to distinguish onshore gathering lines from other gas pipelines and production operations, and establishes safety rules for certain

onshore gathering lines in rural areas and revises current rules for certain onshore gathering lines in non-rural areas; and, updates the pipeline safety regulations to incorporate by reference all or parts of new editions of voluntary consensus technical standards to enable pipeline operators to utilize current technology, materials, and practices. None of the proposed gas safety changes is expected to have an impact on the regulated community in excess of fifty thousand dollars.

### **Reclamation: Case No. RC-07-163**

A few changes are proposed to rules for the coal mining and reclamation regulatory program. The most significant change pertains to the self-bonding provisions, and it will allow the Commission to accept, in addition to Moody's Investors Service and Standards and Poor's ratings, bond ratings from other national recognized rating organizations for companies that guarantee self-bonds. Another change updates the terminology used for native grassland descriptions that are required as part of the pre-mine land use information in permit applications. The other change corrects a cross reference error in the permit approval criteria. These proposed rule changes are not expected to have an impact on the regulated community in excess of fifty thousand dollars.

### **Weights and Measures – Case No. WM-07-203**

#### **Amendments to CHAPTER 69-10-01:**

Add the word "permit" to match recent legislative changes in the North Dakota Century Code; clarify who may recertify commercial devices; whose responsibility it is to insure the devices are recertified; how often the devices must be recertified; and what type of enforcement actions will take place if the rule is violated; delete the address requirement on the adhesive stickers used as part of the sealing process; add the word "or" to clarify that it references two different device types; delete any reference to the use of a LPG master meter as a standard; repeal 69-10-01-07 in order to allow any operator to sell refined fuels through a temperature compensated meter; add the term "1999 edition" to clarify which NIST handbook 44 is used in ND; and, lower by one month the time limit registered service companies have to test a commercial device under contract.

#### **Amendments to CHAPTER 69-10-02:**

Add the word "permit" to match recent legislative changes in the North Dakota Century Code; repeal 69-10-02-08 and 69-10-02-11, combine them in the new rule 69-10-01-17 which includes all weighing and measuring devices; change the word

“weighman” to non gender specific “scale operator”; add “on commercial scales after”; change “audit” to “audit trail”; change “recall” to “recalled”; add the term “portable wheel-load scale” to clarify that both permanent axel load scales and portable wheel-load scales are included in the rule; and, provide for the design and access requirements for all new large hopper scales installed after January 1, 2008, and new modification requirements to all existing large hopper scales.

#### **Amendments to CHAPTER 69-10-03:**

Add the word “permit” to match recent legislative changes in the North Dakota Century Code; amend subsection 69-10-03-02 to clarify that an up to date copy of the metrology certificate of traceability for all standards be on file with the commission; change the requirement for the recertification of automatic bulk-weighing system standards to once every 5 years; disallow the use of LPG master meters as testing standards; allow that any standard may be recertified sooner if inspection shows a need; clarify how to properly make a metrology appointment; replace the word “accredited” with the word “recognized” in order to match current terminology used by the U.S. Department of Commerce National Institute of Standards and Technology; and, clarify the design leveling requirements of a prover.

#### **Amendments to CHAPTER 69-10-04:**

Clarify what type of registered service person test must be taken; where the test questions are taken from; and, change where the test may be administered by replacing the phrase “metrology lab” with the phrase “a state facility”.

Except for changes to North Dakota Administrative Code Sections 69-10-02-26 and 69-10-03-02, the rules are not expected to impact the regulated community in excess of \$50,000. For changes proposed in North Dakota Administrative Code Sections 69-10-02-26 and 69-10-03-02, a regulatory analysis has been prepared and is available from the Commission.

#### **Public Utilities – EAct Section 1252 Smart Metering Standard: Case No. PU-07-641**

The proposed rule would establish a new section within chapter 69-09-02 of the North Dakota Administrative Code to require regulated electric utilities to offer retail electric rates for commercial and industrial customers that vary according to the time of use. This proposed rule is not expected to have an impact on the regulated community in excess of fifty thousand dollars.

**Public Utilities – Wind Turbine Decommissioning: Case No. 07-642**

The proposed rule would establish a new chapter to Article 69-09 of the North Dakota Administrative Code setting forth procedures and requirements to ensure proper decommissioning of commercial wind energy production facilities when they reach the end of their useful life. This proposed rule could have an impact on the regulated community in excess of fifty thousand dollars. A regulatory analysis has been prepared and is available from the Commission

All of the proposed rule changes and any statements concerning Regulatory Analyses, Small Entity Analyses and Takings Assessments may be reviewed at the Public Service Commission's offices on the 12th floor of the State Capitol, Bismarck, North Dakota. To obtain a copy of the proposed rule changes, or any statements concerning the Regulatory Analyses, Small Entity Analyses and Takings Assessments contact the Public Service Commission at 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, or 701-328-2400. The proposed rule changes and any statements concerning Regulatory Analyses, Small Entity Analyses and Takings Assessments may be viewed at <http://www.psc.state.nd.us> (see Formal Actions: Notices).

Interested persons may submit written data, views, arguments, or appear in person or through counsel concerning the proposals. Written comments should be filed with Illona A. Jeffcoat-Sacco, Executive Director, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480.

Written or oral comments on the proposed rules sent to the above address or telephone number and received by December 6, 2007, will be considered.

If individuals require any auxiliary aids or services, such as readers, signers, or braille materials, please notify, Illona A. Jeffcoat-Sacco, Executive Director, at least 24 hours prior to the hearing on November 26, 2007. She can be contacted at the following numbers: 701-328-2400 and Relay North Dakota TTY: 1-800-366-6888.

**PUBLIC SERVICE COMMISSION**

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**Tony Clark  
Commissioner**

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**Susan E. Wefald  
President**

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**Kevin Cramer  
Commissioner**

**NOTICE OF INTENT TO ADOPT, AMEND or REPEAL ADMINISTRATIVE RULES  
AND NOTICE OF PUBLIC HEARING**

**October 3, 2007**

PLEASE TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to the N.D. Admin. Code, relating to electric and gas public utility accounting; adoption of current National Electrical Safety Code; energy conversion and transmission facility siting fee refunds; adoption of federal gas safety provisions; provisions for reclamation self-bonds, terminology update and cross-reference correction; weights and measures; electric commercial and industrial time of use tariffs; and wind turbine decommissioning at **1 p.m., CST, November 26, 2007, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.**

The proposed rule changes and any statements concerning Regulatory Analyses, Small Entity Analyses and Takings Assessments may be reviewed at the Public Service Commission's offices on the 12th floor of the State Capitol, Bismarck, North Dakota. To obtain a copy of the proposed changes or any statements, contact the Public Service Commission at 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, 701-328-2400, or view them at <http://www.psc.state.nd.us> (see Formal Actions: Notices).

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**PUBLIC SERVICE COMMISSION**

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**Tony Clark**  
Commissioner

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**Susan E. Wefald**  
President

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**Kevin Cramer**  
Commissioner

# Affidavit of Publication

Colleen Park

, being duly sworn, state as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.
2. The newspapers listed on the exhibits published the advertisement of:  
Public Service Commission Administrative Rules,  
1 time(s) as required by law or ordinance.
3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

Signed:

Colleen Park

State of

ND

County of

Burleigh

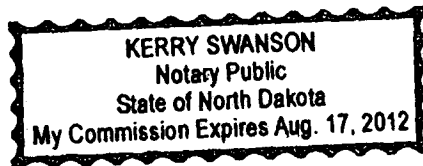
Subscribed and sworn to before me this

5<sup>th</sup>

day of

November 20 07.

Kerry Swanson





# North Dakota Newspaper Association

1435 Interstate Loop  
 Bismarck, ND 58503-0567  
 Ph (701) 223-6397 • Fax (701) 223-8185

## INVOICE

Order 24107-07105PP0

Invoice # 96575

November 7, 2007

Attn: ILLONAA. JEFFCOAT-SACCO  
 PUBLIC SERVICE COMMISSION  
 600 E. BOULEVARD AVE.  
 STATE CAPITOL  
 BISMARCK, ND 58505

Advertiser: Public Service Commission

P.O.#:

Amount Due

**\$2,096.50**

Amount Paid

Voice: 701-328-4076

*Please detach and return this portion with your payment*

Public Service Commission Invoice # 24107-07105PP0-96575

Ad Size	Rate Type	Rate	Total	Discount (%)	Caption	Page	Run Date
<b>COUNTY</b>							
<b>Ashley Tribune (Ashley ND)</b>							
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<b>Beach Golden Valley News (Beach ND)</b>							
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<b>Bismarck Tribune (Bismarck ND)</b>							
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<b>Bottineau Courant (Bottineau ND)</b>							
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<b>Cavalier Chronicle (Cavalier ND)</b>							
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<b>Cooperstown Griggs County Courier (Cooperstown ND)</b>							
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<b>Devils Lake Daily Journal (Devils Lake ND)</b>							
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<b>Dickinson Press (Dickinson ND)</b>							
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<b>Elgin Grant County News (Elgin ND)</b>							
7.00	SPR1	5.15	Did Not Run	0.00	Public Service Comm		10/17/07

<i>Ad Size</i>	<i>Rate Type</i>	<i>Rate</i>	<i>Total</i>	<i>Discount (%)</i>	<i>Caption</i>	<i>Page</i>	<i>Run Date</i>
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<b>Fargo, The Forum (Fargo ND)</b>							
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<b>Hazen Star (Hazen ND)</b>							
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<b>Hettinger Adams Co Record (Hettinger ND)</b>							
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<b>Jamestown Sun (Jamestown ND)</b>							
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<b>Killdeer Dunn County Herald (Killdeer ND)</b>							
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<b>Lakota American (Lakota ND)</b>							
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<b>LaMoure Chronicle (LaMoure ND)</b>							
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<b>Langdon Cavalier Co Republican (Langdon ND)</b>							
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<b>Linton Emmons County Record (Linton ND)</b>							
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<b>Lisbon Ransom County Gazette (Lisbon ND)</b>							
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<b>Mandan News (Mandan ND)</b>							
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<b>Mayville * Traill County Tribune (Mayville ND)</b>							
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<b>McClusky Gazette (McClusky ND)</b>							
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<b>Minot Daily News (Minot ND)</b>							
7.00	SPR1	10.30	72.10	0.00	Public Service Comm		10/14/07

Ad Size	Rate Type	Rate	Total	Discount (%)	Caption	Page	Run Date
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COUNTY

<b>Mohall Renville County Farmer (Mohall ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Napoleon Homestead (Napoleon ND)</b>							
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<b>New England The Herald (New England ND)</b>							
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<b>New Rockford Transcript (New Rockford ND)</b>							
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<b>Stanley Mountrail Co Promoter (Stanley ND)</b>							
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<b>Steele Ozone &amp; Kidder Co. Press (Steele ND)</b>							
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<b>Towner Mouse River Journal (Towner ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Valley City Times-Record (Valley City ND)</b>							
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<b>Wahpeton Daily News (Wahpeton ND)</b>							
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<b>Watford City McKenzie Co Farmer (Watford City ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Williston Herald (Williston ND)</b>							
7.00	SPR1	7.00	49.00	0.00	Public Service Comm		10/14/07

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**NOTICE OF INTENT TO  
ADOPT, AMEND  
OR REPEAL  
ADMINISTRATIVE  
RULES**

relating to electric and gas public utility accounting; adoption of current National Electrical Safety Code; energy conversion and transmission facility siting fee refunds; adoption of federal gas safety provisions; provisions for reclamation self-bonds; terminology update and cross-reference correction; weights and measures; electrical commercial and industrial time of use tariffs; and wind turbine decommissioning.

**Public Service  
Commission**

will hold a public hearing to address proposed amendments to the N.D. Admin. Code.

**Commission Hearing Room  
12th Floor, State Capitol  
Bismarck, ND  
Mon., Nov. 26, 2007  
1:00 p.m. CST**

The proposed rule changes and any statements concerning Regulatory Analyses, Small Entity Analyses and Takings Assessments may be reviewed at the Public Service Commission's offices on the 12th floor of the State Capitol, Bismarck, North Dakota. To obtain a copy of the proposed changes or any statements, contact the Public Service Commission at 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, 701-328-2400, or view them at <http://www.psc.state.nd.us> (see Formal Actions: Notices).

Written comments should be filed with Ilona A. Jeffcoat-Sacco, Executive Director, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, by December 6, 2007.

If individuals require any auxiliary aids or services, such as readers, signers, or braille materials, please notify, Ilona A. Jeffcoat-Sacco, Executive Director, at least 24 hours prior to the hearing at 701-328-2400 and Relay North Dakota TTY: 1-800-366-6888.

Tony Clark    Susan E. Wefald    Kevin Cramer  
Commissioner    President    Commissioner



Public Service Commission  
State of North Dakota

COMMISSIONERS

Susan E. Wefald, President  
Kevin Cramer  
Tony Clark

Executive Director  
Illona A. Jeffcoat-Sacco

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October 3, 2007

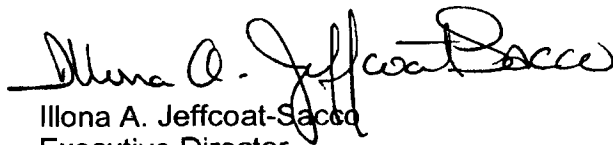
Mr. John Walstad  
Code Revisor  
North Dakota Legislative Council  
State Capitol  
Bismarck, North Dakota 58505-0360

Re: Notice of Intent to Adopt, Amend, and Repeal Administrative Rules  
Case Nos. PU-06-486, PU-06-490, PU-06-501, GS-06-510, RC-07-163,  
WM-07-203, PU-07-641, and PU-07-642.

Dear Mr. Walstad:

The Public Service Commission's full Notice of Intent to Adopt, Amend or Repeal Administrative Rules and Notice of Hearing for the captioned cases, together with an abbreviated Notice for publication, both required by N.D.C.C. § 28-32-10(1), and a copy of each of the proposed rule changes, are enclosed.

Sincerely,

  
Illona A. Jeffcoat-Sacco  
Executive Director

Enclosure

Received in the office of Legislative Council this 3<sup>rd</sup> day of October 3, 2007.

By: Pat Geizer for  
John Walstad

**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.

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

**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.

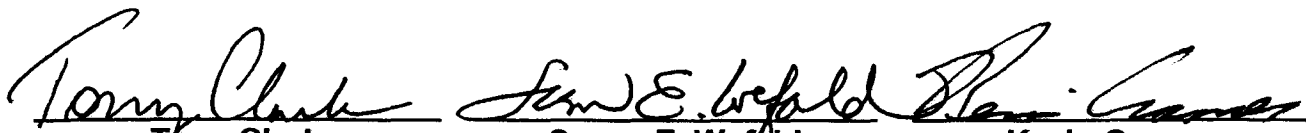
Proposed Section 69-09-10-08:

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

**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 28-32-02, 49-02-27**

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

**02. Decommissioning 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 28-32-02, 49-02-27**

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

**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 24 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 28-32-02, 49-02-27

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

**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 28-32-02, 49-02-27

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

**05. Decommissioning Requirements:** Decommissioning and site restoration includes dismantling and removal of all towers, turbine generators, transformers, and overhead cables; removal of underground cables to a depth of 24 inches; removal of foundations, buildings and ancillary equipment to a depth of 36 inches; 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. The site must be restored and reclaimed to the same general topography that existed just prior to the beginning of the construction of the commercial wind energy conversion facility or wind turbine and with topsoil respread over the disturbed areas at a depth similar to that in existence prior to

the disturbance. Areas disturbed by the construction of the facility and decommissioning activities must be graded, topsoiled and reseeded according to Natural Resource Conservation Service technical guide recommendations and other agency recommendations, unless the landowner requests in writing that the access roads or other land surface areas be retained.

**General Authority:** NDCC 28-32-02, 49-02-27  
**Law Implemented:** NDCC 49-02-27

**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 for commission review the estimated decommissioning cost per turbine, in current dollars at the time of filing, for the proposed facility or turbine and a comprehensive decommissioning plan that describes how the facility or turbine owner or operator plans to pay for decommissioning the facility or turbine as required by section 69-09-10-05 at the appropriate time. 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 28-32-02, 49-02-27  
**Law Implemented:** NDCC 49-02-27

**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 28-32-02, 49-02-27

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

**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 the owner or operator to secure 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. The commission may accept a corporate guarantee if the corporation has a tangible net worth of at least ten million dollars, a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liabilities of 1.2 or greater; or if it has an investment grade current rating for its most recent bond issuance of "Baa" or higher as issued by Moody's Investors Service, "BBB" or higher as issued by Standards and Poor's Corporation, or an equivalent rating by any other nationally recognized statistical rating organization, as defined and approved by the United States securities and exchange commission.

**General Authority:** NDCC 28-32-02, 49-02-27

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

**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 28-32-02, 49-02-27**

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



# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

Susan E. Wefald, President  
Kevin Cramer  
Tony Clark

Executive Director  
Illona A. Jeffcoat-Sacco

December 31, 2007

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TTY 800-366-6888 or 711  
Fax 701-328-2410  
Phone 701-328-2400

Honorable Wayne K. Stenehjem  
Attorney General  
State Capitol  
600 East Boulevard  
Bismarck, ND 58505-0040

Re: Request for opinion regarding the Public Service Commission's authority to establish rules for wind turbine decommissioning.

Dear Attorney General Stenehjem:

We are requesting an opinion regarding whether the Public service Commission ("Commission") has the authority under section 49-02-27 of the North Dakota Century Code to adopt rules governing the decommissioning of wind generation facilities of less than 100 megawatts (100,000 kilowatts).

House Bill No. 1317 passed by the Legislature during the 2007 legislative gives the Public Service Commission ("Commission") authority to adopt rules governing the decommissioning of commercial wind energy conversion facilities. The law provides:

**49-02-27. Power of commission to establish rules to decommission wind energy conversion facilities.** 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 Commission held a hearing on the proposed rules on November 26, 2007. On December 5, 2007, an interested party filed comments with the Commission

questioning the Commission's authority to establish rules for decommissioning of a wind energy facility of less than 100 megawatts (100,000 kilowatts). The question regarding the Commission's authority arises because although N.D.C.C. §49-02-27 addresses "commercial wind energy conversion facilities," the statute contains no definition of "commercial wind energy conversion facilities."

Under the Commission's proposed rules "commercial wind energy conversion facility" is defined as "a wind energy conversion facility of equal to or greater than five hundred kilowatts in total nameplate generating capacity." A copy of the Commission's proposed rules is attached as "Exhibit 1."

The Energy Conversion and Transmission Facility Siting Act, Chapter 49-22 of the North Dakota Century Code, does contain a statutory definition of "energy conversion facility." Section 49-22-03(5)(a) provides that an "energy conversion facility" is any plant, addition, or combination of plant and addition that is designed for or capable of generation of 100,000 kilowatts or more of electricity.

N.D.C.C. §1-01-09 provides that "[w]henver the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase wherever it occurs in the same or subsequent statutes, except when a contrary intention plainly appears." The North Dakota Supreme Court ruled that when a virtually identical definition of a word or phrase is defined in the Code, "that definition applies to any use of the word or phrase in other sections of the Code, except where a contrary intent plainly appears. Adams County Record v. Greater North Dakota Association, 529 N.W.2d 830, 834 (N.D. 1995).

The Legislative History reveals that Engrossed House Bill No. 1317 was amended by the Senate to include decommissioning provisions. The amendment approved by the Senate included a definition of "commercial wind energy conversion facility" that is identical to the definition in the proposed rules. The minutes of the House Finance and Taxation Committee indicate that the Committee discussed the fact that the amendment approved by the Senate would cover wind farms under 100 megawatts and the possible effect on developers. At the hearing on April 2, 2007, the following exchange took place:

**Chairman Brandenburg:** That would be fine if you wanted to check that out but I do know Joe Richardson. There's one thing we visited about after our last meeting. In this amendment that was put on here about decommissioning, the one thing that hasn't been brought out is that not only would this deal with decommissioning, it would also deal with any size wind farm under 100 mw that came under the strings of the Public Service Commission (PSC). Right now if you're 100 mw or less, you would not fall under the strings of the PSC, so this amendment on decommissioning does put the PSC back in control of any size project to

zero. You'd have to put all the regulatory issues that are required of the PSC, that's really what this issue is about. It's kind of ties the hands of developers that wanted a piece and that process can take quite a bit of time.

**Sen. Cook:** So your concern is not just the decommissioning but also that put in the amendment for the PSC.


**Chairman Brandenburg:** That is part of my concern because to be competitive with South Dakota (SD); SD's got 100 mw and ND needs to have that too. If you were a developer looking at where the wind farms or any energy facility would you go the SD or ND? That's the issue right there.

The Report of the Conference Committee recommended that the Senate recede from its amendments regarding decommissioning and that the language currently in section 49-02-27 of the North Dakota Century Code be adopted.

Thank you for your consideration of this request.

Sincerely,

  
Tony Clark  
Commissioner

  
Susan E. Wefald  
President

  
Kevin Cramer  
Commissioner

**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**



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

LETTER OPINION  
2008-L-03

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APR 02 2008

April 2, 2008

PUBLIC SERVICE COMMISSION

The Honorable Susan E. Wefald  
The Honorable Tony Clark  
The Honorable Kevin Cramer  
Public Service Commission  
600 East Boulevard Avenue  
Bismarck, ND 58505

Dear Commissioners Wefald, Clark and Cramer:

Thank you for your letter asking whether the Public Service Commission (PSC) has the authority under N.D.C.C. § 49-02-27 to adopt rules governing the decommissioning of commercial wind energy conversion facilities with a generating capacity of less than 100 megawatts (100,000 kilowatts). For the reasons explained below, it is my opinion that the PSC has the authority under N.D.C.C. § 49-02-27 to adopt rules governing the decommissioning of all commercial wind energy conversion facilities, whatever their generating capacity.

ANALYSIS

In 2007, the North Dakota Legislature passed House Bill 1317 ("H.B. 1317"), which gives the PSC authority to adopt rules governing the decommissioning of wind farms and individual wind turbines.<sup>1</sup> Codified as N.D.C.C. § 49-02-27, H.B. 1317 provides:

**Power of commission to establish rules to decommission wind energy conversion facilities.** 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;

<sup>1</sup> 2007 N.D. Sess. Laws ch. 505, § 1.

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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.

In November 2007, the PSC proposed rules implementing this statute. The proposed rules define "commercial wind energy conversion facility" as "a wind energy conversion facility of equal to or greater than five hundred kilowatts in total nameplate generating capacity."<sup>2</sup> Thus, if adopted in their current form, these rules would govern the decommissioning of all commercial wind farms and individual wind turbines with a generating capacity of at least 500 kilowatts (.5 megawatts).

Your question concerns the meaning of the phrase "commercial wind energy conversion facility." Part of that phrase, "energy conversion facility," is defined in N.D.C.C. ch. 49-22, the Energy Conversion and Transmission Facility Siting Act, as "any plant, addition, or combination of plant and addition, designed for or capable of . . . [g]eneration of one hundred thousand kilowatts or more of electricity."<sup>3</sup> You ask whether this definition applies to N.D.C.C. § 49-02-27, which does not define "energy conversion facility."

"Whenever the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase wherever it occurs in the same or subsequent statutes, except when a contrary intention plainly appears."<sup>4</sup> If a statutory definition "is limited by prefatory language such as 'in this title' or 'for the purposes of this title,' the legislature has expressly evidenced its intent that the definition have no application beyond that act."<sup>5</sup> For instance, the North Dakota Supreme Court held that, with the use of the prefatory phrase "in this chapter," the Legislature had expressly indicated its

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<sup>2</sup> Proposed N.D.A.C. § 69-09-10-01.

<sup>3</sup> N.D.C.C. § 49-22-03(5)(a).

<sup>4</sup> N.D.C.C. § 1-01-09.

<sup>5</sup> Edinger v. Governing Auth. of Stutsman County Corr. Ctr. & Law Enforcement Ctr., 695 N.W.2d 447, 452 (N.D. 2005); see also Northern X-Ray Co. v. State, 542 N.W.2d 733, 739 (N.D. 1996) (VandeWalle, C.J., concurring specially); State v. Pacheco, 506 N.W.2d 408, 410 (N.D. 1993); Ames v. Rose Twp. Bd. of Twp. Supervisors, 502 N.W.2d 845, 849 (N.D. 1993).

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intent that the definition of "administrative agency" in N.D.C.C. § 28-32-01 only applies to N.D.C.C. ch. 28-32.<sup>6</sup>

Chapter 49-02, N.D.C.C., which provides the PSC with the authority to decommission wind farms, does not define "commercial wind energy conversion facility." The only definition of the last part of that phrase in the code is found in N.D.C.C. ch. 49-22. This definition, however, is preceded by the phrase "[i]n this chapter."<sup>7</sup> Thus, the definition of "energy conversion facility" in N.D.C.C. ch. 49-22 does not apply to N.D.C.C. ch. 49-02. Therefore, the meaning of the phrase as used in N.D.C.C. § 49-02-27 must be determined using the general rules of statutory construction.<sup>8</sup>

Under the general rules of statutory construction, "[i]f no definition to a word contained in a certain section is given, the word is to be understood in its ordinary sense, construed according to the context in which it lies, and interpreted to give a reasonable result."<sup>9</sup> But if the language of the statute is ambiguous or adherence to the strict letter would lead to an absurd result, a court may use extrinsic aids to interpret the statute.<sup>10</sup> "A statute is ambiguous if it is susceptible to meanings that are different, but rational."<sup>11</sup> When the meaning of a word used in a statute is doubtful, related legislation may be reviewed to determine the sense in which the word is used in that statute.<sup>12</sup>

The meaning of "energy conversion facility," as used in the phrase "commercial wind energy conversion facility," is unambiguous. The usual and accepted meaning of "facility," as found in The American Heritage Dictionary, is "[s]omething created to serve a particular function: *hospitals and other health care facilities*."<sup>13</sup> Thus, a "commercial wind energy conversion facility" would be something created to convert wind energy for

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<sup>6</sup> Edinger v. Governing Auth. of Stutsman County Corr. Ctr. & Law Enforcement Ctr., at 452.

<sup>7</sup> N.D.C.C. § 49-22-03.

<sup>8</sup> Northern X-Ray Co., at 739 (VandeWalle, C.J., concurring specially) (applying usual rules of statutory construction after concluding that statutory definition of term limited to that title by prefatory language); Ames, at 849-50 (same).

<sup>9</sup> Ames, at 850; see N.D.C.C. §§ 1-02-02 and 1-02-03.

<sup>10</sup> State v. Fasteen, 740 N.W.2d 60, 63 (N.D. 2007); see N.D.C.C. § 1-02-39 (extrinsic aids include the object sought to be obtained, legislative history, and administrative construction); N.D.A.G. 2004-L-12 (reasonable construction of statute by administrative agency charged with its execution entitled to deference by the courts, unless it contradicts clear and unambiguous statutory language).

<sup>11</sup> Amerada Hess Corp. v. State ex rel. Tax Comm'r, 704 N.W.2d 8, 13 (N.D. 2005).

<sup>12</sup> Northern X-Ray Co., at 739 (VandeWalle, C.J., concurring specially).

<sup>13</sup> The American Heritage Dictionary 633 (4th ed. 2000); see Curtis v. Hyland Hills Park & Recreation Dist., No. 05CA2520, 2007 WL 686081 (Colo. App.) (concluding the term "swimming facility" is not ambiguous).

commercial use. This is generally referred to as a commercial wind farm or wind turbine. Ordinarily, the term is not understood to include only facilities capable of generating a certain amount of energy. Therefore, according to the plain language of the statute, the PSC has the authority to adopt rules governing all commercial wind farms and individual wind turbines, whatever their generating capacity. Thus, it is not necessary to look beyond the words of the statute to determine the Legislature's intent.<sup>14</sup>

Even if the meaning of the words "energy conversion facility" as used in N.D.C.C. § 49-02-27 in the phrase "commercial wind energy conversion facility" is considered ambiguous, the definition of "energy conversion facility" in the Energy Conversion and Transmission Facility Siting Act<sup>15</sup> would not control its meaning because N.D.C.C. chs. 49-02 and 49-22 were enacted for distinct purposes.<sup>16</sup> Chapter 49-22, N.D.C.C., regulates the siting of all different types of energy conversion facilities, so that they are sited "in an orderly manner compatible with environmental preservation and the efficient use of resources."<sup>17</sup> Section 49-02-27, N.D.C.C., on the other hand, seeks to prevent nonfunctioning or decommissioned wind turbines from cluttering the landscape, and returning the land on which they are sited to its original or other use. Although siting concerns may be less important for facilities with a relatively low generating capacity, all commercial wind generation facilities have the potential to contribute to the problem if not properly decommissioned. Applying the definition in N.D.C.C. § 49-22-03 to N.D.C.C. § 49-02-27 would mean that the PSC's rules would not apply to wind farms and individual wind turbines rated at less than 100 megawatts, even though they are at least as likely to be abandoned as are larger facilities. Such a result was likely not the Legislature's intent.<sup>18</sup>

This determination is also supported by the legislative history, which indicates that the Legislature intended to give the PSC broad discretion to determine how and when to regulate decommissioning wind farms and individual wind turbines. The conference committee's minutes indicate that the Legislature's objective was to prevent "ghost towns of wind generators" from tarnishing the landscape.<sup>19</sup> Testimony and data were

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<sup>14</sup> See N.D.C.C. § 1-02-05 ("When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.").

<sup>15</sup> N.D.C.C. § 49-22-03(5).

<sup>16</sup> See Thornton v. N.D. State Highway Comm'r, 399 N.W.2d 861, 863 (N.D. 1987) (definition of "intoxicating liquor" in N.D.C.C. titles 5 and 19 does not control meaning of the term as used in N.D.C.C. § 39-08-01 because statutes have different purposes).

<sup>17</sup> N.D.C.C. § 49-22-02.

<sup>18</sup> Edinger, at 453 (statutes are construed to avoid absurd results).

<sup>19</sup> Hearing on H.B. 1317 Before the House Comm. on Finance and Taxation, 2007 N.D. Leg. (Mar. 29) (Statement of Sen. Anderson).

presented earlier regarding the cost of removing nonfunctioning wind turbines – a cost the landowner may not be able to afford after a wind turbine is abandoned by a utility company.<sup>20</sup>

Your letter mentions one committee member's statement that he was concerned North Dakota would not be competitive with South Dakota if wind farms rated at less than 100 megawatts "came under the strings of the Public Service Commission (PSC)."<sup>21</sup> This statement was made while the conference committee was discussing an earlier version of H.B. 1317 that included the same definition of "commercial wind energy conversion facility" that is in the PSC's proposed rules.<sup>22</sup> The conference committee eventually decided to examine how other jurisdictions regulate decommissioning. After reviewing information from other jurisdictions, a committee member noted that decommissioning is generally governed by "rules that have been set up by the PSC's, PUC's, or Energy Divisions of the states that address these issues."<sup>23</sup> Section 49-02-27, N.D.C.C., is actually based on a Minnesota Public Utilities Commission rule,<sup>24</sup> which, by statute, applies to wind farms with a capacity of at least 5,000 kilowatts (5 megawatts).<sup>25</sup> The one statement mentioning South Dakota is of little value in determining the entire Legislature's intent, even assuming that the statute is ambiguous, and cannot outweigh

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<sup>20</sup> Hearing on H.B. 1317 Before the House Comm. on Finance and Taxation, 2007 N.D. Leg. (Feb. 7).

<sup>21</sup> Hearing on H.B. 1317 Before the House Comm. on Finance and Taxation, 2007 N.D. Leg. (Apr. 2) (Statement of Rep. Brandenburg).

<sup>22</sup> Your letter also mentions that this prior version of H.B. 1317 contained Senate amendments with a definition of "commercial wind energy conversion facility" identical to the definition in the proposed rules but that the Senate later receded from these amendments. This implicitly raises the question of whether the Legislature intended to reject the definition. However:

[A]s a matter of law, courts generally do not determine legislative intent based on the Legislature's failure to act on a measure. "[T]he defeat of legislation is not indicative of legislative intent, for public policy is declared by the Legislature's action, not by its failure to act." Warner and Company v. Solberg, 634 N.W.2d 65, 71 (N.D. 2001) (citing James v. Young, 43 N.W.2d 692 (N.D. 1950)). See also Coles v. Glenburn Public School District No. 26, 436 N.W.2d 262, 265, n.2 (N.D. 1989).

N.D.A.G. 2004-L-43 (quoting N.D.A.G. 2003-L-32).

Thus, the fact that the definition was not included in the final bill does not determine the validity of the identical definition in the proposed rules.

<sup>23</sup> Hearing on H.B. 1317 Before the House Comm. on Finance and Taxation, 2007 N.D. Leg. (Apr. 9) (Statement of Rep. Brandenburg).

<sup>24</sup> Hearing on H.B. 1317 Before the House Comm. on Finance and Taxation, 2007 N.D. Leg. (Apr. 11) (Statement of Rep. Brandenburg); Minn. R. 7836.0500 (2007).

<sup>25</sup> See Minn. Stat. § 216F.01 (2007).

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the bulk of the legislative history indicating that the Legislature intended to give the PSC broad authority to adopt decommissioning rules for commercial wind energy conversion facilities, whatever their generating capacity.<sup>26</sup> No other statements were made to support the idea that North Dakota's statute should mimic South Dakota's and apply only to wind farms and individual wind turbines with a generating capacity of at least 100 megawatts.

In conclusion, the definition of "energy conversion facility" in N.D.C.C. § 49-22-03 does not apply to the term as used in N.D.C.C. § 49-02-27. A "commercial wind energy conversion facility" means a commercial wind farm or individual wind turbine capable of generating any amount of electricity. Therefore, the PSC has the authority to adopt rules governing the decommissioning of commercial wind energy conversion facilities with a generating capacity of less than 100 megawatts.

Sincerely,



Wayne Stenehjem  
Attorney General

mio/pg

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.<sup>27</sup>

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<sup>26</sup> See Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993) ("Random statements by legislative committee members, while possibly useful if they are consistent with the statutory language and other legislative history, are of little value in fixing legislative intent.").

<sup>27</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).

**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 - Electric  
Rulemaking** **Case No. PU-06-490**

**Public Service Commission  
Public Utilities - Siting  
Rulemaking** **Case No. PU-06-501**

**Public Service Commission  
Gas Pipeline Safety  
Rulemaking** **Case No. GS-06-510**

**Public Service Commission  
Reclamation  
Rulemaking** **Case No. RC-07-163**

**Public Service Commission  
Weights and Measures  
Rulemaking** **Case No. WM-07-203**

**Public Service Commission  
EPA Act Section 1252 Smart Metering Standard  
Rulemaking** **Case No. PU-07-641**

**Public Service Commission  
Wind Turbine Decommissioning  
Rulemaking** **Case No. PU-07-642**

**NOTICE OF INTENT TO ADOPT, AMEND, AND REPEAL ADMINISTRATIVE RULES  
AND NOTICE OF PUBLIC HEARING**

**October 3, 2007**

**PLEASE TAKE NOTICE** that the Public Service Commission will hold a public hearing to address proposed amendments to several articles of the North Dakota

Administrative Code. The hearing will be held at 1:00 p.m., CST, November 26, 2007, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. The proposed revisions to the North Dakota Administrative Code are as follows:

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

The proposed electric and gas accounting 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. These proposed rule changes are not expected to have an impact on the regulated community in excess of fifty thousand dollars.

**Public Utilities – Electric: Case No. PU-06-490**

The proposed rule change in Case No. PU-06-490 would amend section 69-09-02-35 of the North Dakota Administrative Code to adopt by reference the 2007 version of the National Electric Safety Code for the installation and maintenance of electric supply and communication lines. This proposed rule change is not expected to have an impact on the regulated community in excess of fifty thousand dollars.

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

The proposed rule in Case No. PU-06-501 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. While the rule may impact the regulated community in amounts greater than \$50,000, this impact is only positive. Siting applicants will get refunds of a substantial portion of their respective siting fees that previously went to the state's general fund.

**Gas Safety – Gas Pipeline Safety: Case No. GS-06-510**

The Commission proposes to adopt by reference the 2006 federal Gas Pipeline Safety rule amendments. Generally, these proposed changes prescribes similar standards as the current standards governing integrity management of gas transmission lines that operators must meet when they use direct assessment use direct assessment on certain other onshore gas, hazardous liquid, and carbon dioxide pipelines; adopts a consensus standard to distinguish onshore gathering lines from other gas pipelines and production operations, and establishes safety rules for certain

onshore gathering lines in rural areas and revises current rules for certain onshore gathering lines in non-rural areas; and, updates the pipeline safety regulations to incorporate by reference all or parts of new editions of voluntary consensus technical standards to enable pipeline operators to utilize current technology, materials, and practices. None of the proposed gas safety changes is expected to have an impact on the regulated community in excess of fifty thousand dollars.

### **Reclamation: Case No. RC-07-163**

A few changes are proposed to rules for the coal mining and reclamation regulatory program. The most significant change pertains to the self-bonding provisions, and it will allow the Commission to accept, in addition to Moody's Investors Service and Standards and Poor's ratings, bond ratings from other national recognized rating organizations for companies that guarantee self-bonds. Another change updates the terminology used for native grassland descriptions that are required as part of the pre-mine land use information in permit applications. The other change corrects a cross reference error in the permit approval criteria. These proposed rule changes are not expected to have an impact on the regulated community in excess of fifty thousand dollars.

### **Weights and Measures – Case No. WM-07-203**

#### **Amendments to CHAPTER 69-10-01:**

Add the word "permit" to match recent legislative changes in the North Dakota Century Code; clarify who may recertify commercial devices; whose responsibility it is to insure the devices are recertified; how often the devices must be recertified; and what type of enforcement actions will take place if the rule is violated; delete the address requirement on the adhesive stickers used as part of the sealing process; add the word "or" to clarify that it references two different device types; delete any reference to the use of a LPG master meter as a standard; repeal 69-10-01-07 in order to allow any operator to sell refined fuels through a temperature compensated meter; add the term "1999 edition" to clarify which NIST handbook 44 is used in ND; and, lower by one month the time limit registered service companies have to test a commercial device under contract.

#### **Amendments to CHAPTER 69-10-02:**

Add the word "permit" to match recent legislative changes in the North Dakota Century Code; repeal 69-10-02-08 and 69-10-02-11, combine them in the new rule 69-10-01-17 which includes all weighing and measuring devices; change the word

“weighman” to non gender specific “scale operator”; add “on commercial scales after”; change “audit” to “audit trail”; change “recall” to “recalled”; add the term “portable wheel-load scale” to clarify that both permanent axel load scales and portable wheel-load scales are included in the rule; and, provide for the design and access requirements for all new large hopper scales installed after January 1, 2008, and new modification requirements to all existing large hopper scales.

**Amendments to CHAPTER 69-10-03:**

Add the word “permit” to match recent legislative changes in the North Dakota Century Code; amend subsection 69-10-03-02 to clarify that an up to date copy of the metrology certificate of traceability for all standards be on file with the commission; change the requirement for the recertification of automatic bulk-weighing system standards to once every 5 years; disallow the use of LPG master meters as testing standards; allow that any standard may be recertified sooner if inspection shows a need; clarify how to properly make a metrology appointment; replace the word “accredited” with the word “recognized” in order to match current terminology used by the U.S. Department of Commerce National Institute of Standards and Technology; and, clarify the design leveling requirements of a prover.

**Amendments to CHAPTER 69-10-04:**

Clarify what type of registered service person test must be taken; where the test questions are taken from; and, change where the test may be administered by replacing the phrase “metrology lab” with the phrase “a state facility”.

Except for changes to North Dakota Administrative Code Sections 69-10-02-26 and 69-10-03-02, the rules are not expected to impact the regulated community in excess of \$50,000. For changes proposed in North Dakota Administrative Code Sections 69-10-02-26 and 69-10-03-02, a regulatory analysis has been prepared and is available from the Commission.

**Public Utilities – EPA Act Section 1252 Smart Metering Standard: Case No. PU-07-641**

The proposed rule would establish a new section within chapter 69-09-02 of the North Dakota Administrative Code to require regulated electric utilities to offer retail electric rates for commercial and industrial customers that vary according to the time of use. This proposed rule is not expected to have an impact on the regulated community in excess of fifty thousand dollars.

**Public Utilities – Wind Turbine Decommissioning: Case No. 07-642**

The proposed rule would establish a new chapter to Article 69-09 of the North Dakota Administrative Code setting forth procedures and requirements to ensure proper decommissioning of commercial wind energy production facilities when they reach the end of their useful life. This proposed rule could have an impact on the regulated community in excess of fifty thousand dollars. A regulatory analysis has been prepared and is available from the Commission

All of the proposed rule changes and any statements concerning Regulatory Analyses, Small Entity Analyses and Takings Assessments may be reviewed at the Public Service Commission's offices on the 12th floor of the State Capitol, Bismarck, North Dakota. To obtain a copy of the proposed rule changes, or any statements concerning the Regulatory Analyses, Small Entity Analyses and Takings Assessments contact the Public Service Commission at 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, or 701-328-2400. The proposed rule changes and any statements concerning Regulatory Analyses, Small Entity Analyses and Takings Assessments may be viewed at <http://www.psc.state.nd.us> (see Formal Actions: Notices).

Interested persons may submit written data, views, arguments, or appear in person or through counsel concerning the proposals. Written comments should be filed with Illona A. Jeffcoat-Sacco, Executive Director, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480.

Written or oral comments on the proposed rules sent to the above address or telephone number and received by December 6, 2007, will be considered.

If individuals require any auxiliary aids or services, such as readers, signers, or braille materials, please notify, Illona A. Jeffcoat-Sacco, Executive Director, at least 24 hours prior to the hearing on November 26, 2007. She can be contacted at the following numbers: 701-328-2400 and Relay North Dakota TTY: 1-800-366-6888.

**PUBLIC SERVICE COMMISSION**

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**Tony Clark  
Commissioner**

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**Susan E. Wefald  
President**

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**Kevin Cramer  
Commissioner**

**NOTICE OF INTENT TO ADOPT, AMEND or REPEAL ADMINISTRATIVE RULES  
AND NOTICE OF PUBLIC HEARING**

**October 3, 2007**

PLEASE TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to the N.D. Admin. Code, relating to electric and gas public utility accounting; adoption of current National Electrical Safety Code; energy conversion and transmission facility siting fee refunds; adoption of federal gas safety provisions; provisions for reclamation self-bonds, terminology update and cross-reference correction; weights and measures; electric commercial and industrial time of use tariffs; and wind turbine decommissioning at **1 p.m., CST, November 26, 2007, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.**

The proposed rule changes and any statements concerning Regulatory Analyses, Small Entity Analyses and Takings Assessments may be reviewed at the Public Service Commission's offices on the 12th floor of the State Capitol, Bismarck, North Dakota. To obtain a copy of the proposed changes or any statements, contact the Public Service Commission at 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, 701-328-2400, or view them at <http://www.psc.state.nd.us> (see Formal Actions: Notices).

Written comments should be filed with Illona A. Jeffcoat-Sacco, Executive Director, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480. by December 6, 2007.

If individuals require any auxiliary aids or services, such as readers, signers, or braille materials, please notify, Illona A. Jeffcoat-Sacco, Executive Director, at least 24 hours prior to the hearing at 701-328-2400 and Relay North Dakota TTY: 1-800-366-6888.

**PUBLIC SERVICE COMMISSION**

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**Tony Clark**  
**Commissioner**

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**Susan E. Wefald**  
**President**

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**Kevin Cramer**  
**Commissioner**

# Affidavit of Publication

Colleen Park, being duly sworn, state as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.

2. The newspapers listed on the exhibits published the advertisement of:

Public Service Commission Administrative Rules,

1 time(s) as required by law or ordinance.

3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

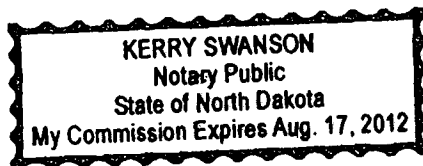
Signed: Colleen Park

State of ND

County of Burleigh

Subscribed and sworn to before me this 5<sup>th</sup> day of November 20 07.

Kerry Swanson





# North Dakota Newspaper Association

1435 Interstate Loop  
 Bismarck, ND 58503-0567  
 Ph (701) 223-6397 • Fax (701) 223-8185

## INVOICE

Order 24107-07105PP0

Invoice # 96575

November 7, 2007

Attn: ILLONAA. JEFFCOAT-SACCO  
 PUBLIC SERVICE COMMISSION  
 600 E. BOULEVARD AVE.  
 STATE CAPITOL  
 BISMARCK, ND 58505

Advertiser: Public Service Commission

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Ad Size	Rate Type	Rate	Total	Discount (%)	Caption	Page	Run Date
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### COUNTY

<b>Ashley Tribune (Ashley ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Beach Golden Valley News (Beach ND)</b>							
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<b>Bismarck Tribune (Bismarck ND)</b>							
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<b>Bowman County Pioneer (Bowman ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/19/07
<b>Cando Towner Co Record Herald (Cando ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/20/07
<b>Carrington Foster Co Independent (Carrington ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/15/07
<b>Carson Press (Elgin ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Cavalier Chronicle (Cavalier ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Center Republican (Washburn ND)</b>							
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<b>Cooperstown Griggs County Courier (Cooperstown ND)</b>							
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<b>Crosby The Journal (Crosby ND)</b>							
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<b>Devils Lake Daily Journal (Devils Lake ND)</b>							
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<b>Dickinson Press (Dickinson ND)</b>							
7.00	SPR1	7.00	49.00	0.00	Public Service Comm		10/14/07
<b>Elgin Grant County News (Elgin ND)</b>							
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<i>Ad Size</i>	<i>Rate Type</i>	<i>Rate</i>	<i>Total</i>	<i>Discount (%)</i>	<i>Caption</i>	<i>Page</i>	<i>Run Date</i>
<b>COUNTY</b>							
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<b>Ellendale Dickey Co Leader (Ellendale ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/18/07
<b>Fargo, The Forum (Fargo ND)</b>							
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<b>Fargo, The Forum (Fargo ND)</b>							
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<b>Garrison McLean Co Independent (Garrison ND)</b>							
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<b>Grafton * Walsh County Record (Grafton ND)</b>							
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<b>Grand Forks Herald (Grand Forks ND)</b>							
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<b>Harvey The Herald-Press (Harvey ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/20/07
<b>Hazen Star (Hazen ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/18/07
<b>Hettinger Adams Co Record (Hettinger ND)</b>							
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<b>Jamestown Sun (Jamestown ND)</b>							
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<b>Lakota American (Lakota ND)</b>							
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<b>LaMoure Chronicle (LaMoure ND)</b>							
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<b>Langdon Cavalier Co Republican (Langdon ND)</b>							
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<b>Linton Emmons County Record (Linton ND)</b>							
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<b>Lisbon Ransom County Gazette (Lisbon ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/15/07
<b>Mandan News (Mandan ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/19/07
<b>Mayville * Traill County Tribune (Mayville ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/20/07
<b>McClusky Gazette (McClusky ND)</b>							
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<b>Medora Billings County Pioneer (Beach ND)</b>							
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<b>Milnor The Teller (Milnor ND)</b>							
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7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Minot Daily News (Minot ND)</b>							
7.00	SPR1	10.30	72.10	0.00	Public Service Comm		10/14/07

Ad Size	Rate Type	Rate	Total	Discount (%)	Caption	Page	Run Date
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COUNTY

<b>Mohall Renville County Farmer (Mohall ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Napoleon Homestead (Napoleon ND)</b>							
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<b>New England The Herald (New England ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/19/07
<b>New Rockford Transcript (New Rockford ND)</b>							
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<b>Rolla Turtle Mountain Star (Rolla ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/15/07
<b>Rugby Pierce County Tribune (Rugby ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/20/07
<b>Stanley Mountrail Co Promoter (Stanley ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Steele Ozone &amp; Kidder Co. Press (Steele ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Towner Mouse River Journal (Towner ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Valley City Times-Record (Valley City ND)</b>							
7.00	SPR1	7.00	49.00	0.00	Public Service Comm		10/15/07
<b>Wahpeton Daily News (Wahpeton ND)</b>							
7.00	SPR1	7.00	49.00	0.00	Public Service Comm		10/14/07
<b>Watford City McKenzie Co Farmer (Watford City ND)</b>							
7.00	SPR1	5.15	36.05	0.00	Public Service Comm		10/17/07
<b>Williston Herald (Williston ND)</b>							
7.00	SPR1	7.00	49.00	0.00	Public Service Comm		10/14/07

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 2000  
 7200 - R030-07(01) /  
 7100  
 8000 R03408(01)

**NOTICE OF INTENT TO  
ADOPT, AMEND  
OR REPEAL  
ADMINISTRATIVE  
RULES**

relating to electric and gas public utility accounting; adoption of current National Electrical Safety Code; energy conversion and transmission facility siting fee refunds; adoption of federal gas safety provisions; provisions for reclamation self-bonds; terminology update and cross-reference correction; weights and measures; electrical commercial and industrial time of use tariffs; and wind turbine decommissioning.

**Public Service  
Commission**

will hold a public hearing to address proposed amendments to the N.D. Admin. Code.

**Commission Hearing Room  
12th Floor, State Capitol  
Bismarck, ND  
Mon., Nov. 26, 2007  
1:00 p.m. CST**

The proposed rule changes and any statements concerning Regulatory Analyses, Small Entity Analyses and Takings Assessments may be reviewed at the Public Service Commission's offices on the 12th floor of the State Capitol, Bismarck, North Dakota. To obtain a copy of the proposed changes or any statements, contact the Public Service Commission at 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, 701-328-2400, or view them at <http://www.psc.state.nd.us> (see Formal Actions Notices).

Written comments should be filed with Ilona A. Jeffcoat-Sacco, Executive Director, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, by December 6, 2007.

If individuals require any auxiliary aids or services, such as readers, signers, or braille materials, please notify Ilona A. Jeffcoat-Sacco, Executive Director, at least 24 hours prior to the hearing at 701-328-2400 and Relay North Dakota TTY: 1-800-366-6888.

Tony Clark      Susan E. Wefald      Kevin Cramer  
Commissioner      President      Commissioner



Public Service Commission  
State of North Dakota

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COMMISSIONERS

Susan E. Wefald, President  
Kevin Cramer  
Tony Clark

Executive Director  
Illona A. Jeffcoat-Sacco

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

October 3, 2007

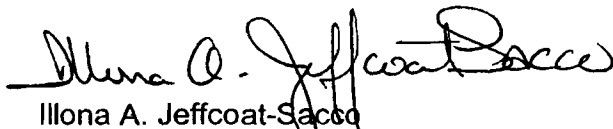
Mr. John Walstad  
Code Revisor  
North Dakota Legislative Council  
State Capitol  
Bismarck, North Dakota 58505-0360

Re: Notice of Intent to Adopt, Amend, and Repeal Administrative Rules  
Case Nos. PU-06-486, PU-06-490, PU-06-501, GS-06-510, RC-07-163,  
WM-07-203, PU-07-641, and PU-07-642.

Dear Mr. Walstad:

The Public Service Commission's full Notice of Intent to Adopt, Amend or Repeal Administrative Rules and Notice of Hearing for the captioned cases, together with an abbreviated Notice for publication, both required by N.D.C.C. § 28-32-10(1), and a copy of each of the proposed rule changes, are enclosed.

Sincerely,

  
Illona A. Jeffcoat-Sacco  
Executive Director

Enclosure

Received in the office of Legislative Council this 3<sup>rd</sup> day of October 3, 2007.

By: Pat Geiger for  
John Walstad

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
Wind Turbine Decommissioning  
Rulemaking

Case No. PU-07-642

AFFIDAVIT OF SERVICE BY ELECTRONIC MAIL

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

Shelly A. Bauske deposes and says that:

she is over the age of 18 years and not a party to this action and, on the 10th day of October, 2007, she sent via electronic mail a copy of:

- Notice of Intent to Adopt, Amend, and Repeal Administrative Rules and Notice of Public Hearing
- Proposed Rules
- Statements

The electronic mail was addressed as follows:

Senator Robert S. Erbele  
[rerbele@nd.gov](mailto:rerbele@nd.gov)

Senator Terry M. Wanzek  
[tmwanzek@nd.gov](mailto:tmwanzek@nd.gov)

Representative Michael D. Brandenburg  
[mbrandenburg@nd.gov](mailto:mbrandenburg@nd.gov)

Representative Stacey Dahl  
[stdahl@nd.gov](mailto:stdahl@nd.gov)

Representative Scot Kelsh  
[skelsh@nd.gov](mailto:skelsh@nd.gov)

Representative William E. Kretschmar  
[wkretschmar@nd.gov](mailto:wkretschmar@nd.gov)

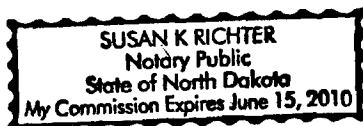
Each address shown is the respective addressee's last reasonably ascertainable electronic mail address.

Subscribed and sworn to before me  
this 10<sup>th</sup> day of October 2007.

Shelly A. Bauske

Susan K. Richter  
Notary Public

SEAL



**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 probable 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.

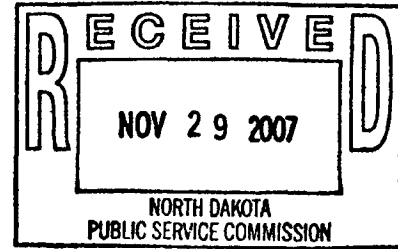
The proposal would require Commission approval of a decommissioning plan prior to construction of new facilities. For existing facilities the plan would need to be filed within one year after the rules become effective. The Commission would have six months to act on a filed plan. The plan would describe 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.

North Dakota Chapter of The Wildlife Society  
P.O. Box 1442  
Bismarck, ND 58502-1442  
November 27, 2007

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



Ms. Jeffcoat-Sacco:

The North Dakota Chapter of The Wildlife Society thanks the Public Service Commission for the opportunity to comment on Case No. PU-07-642 (10/02/2007), concerning the decommissioning of wind facilities in North Dakota. The Wildlife Society is an international, nonprofit, scientific and educational organization composed of professionals, students, and laypersons active and interested in wildlife research, management, education and administration. The NDCTWS is an active affiliate with approximately 350 members. It is specifically concerned with approaches to effective management of North Dakota's plant and animal communities.

The wind industry in North Dakota promises to hold great benefit to North Dakotans and their communities. The Society is generally supportive of wind energy as a renewable source of "green" energy that can be produced locally. The Society is pleased that the Public Service Commission has addressed the issue of decommissioning. Decommissioning will allow those areas that previously served as wildlife habitat to be reclaimed as such and thus help to ameliorate any negative environmental impacts to wildlife from the original wind-farm development. Overall, we are in agreement with the proposed rule and are particularly pleased that the rule addressed the following points:

- The reclamation of disturbed areas to their pre-construction conditions
- Requirement of a decommissioning plan for facilities greater than 500 kW
- Requirement of a decommissioning plan prior to commencement of the construction of wind facilities
- Reclamation of the entire facility footprint, including foundations, overhead power lines, roads, etc.

While we generally think the rule is thorough, we do have a few concerns. In Section 69-09-10-05, Decommissioning Requirements, we recommend that disturbed areas in native prairie be planted with a high-diversity native seed mixture. This will help allay concerns we have about the invasion of non-native species in native prairie.

Secondly, Section 69-09-10-08, Financial Assurance, addresses the timing for the requirement of financial assurance. We are uncertain how the 10 year indicator was chosen and why financial assurance would not be required upon start-up. What happens if a wind developer sells before that 10-year mark? Further, we propose that the wording be changed from "may require a performance bond....." to a stronger and more definitive "will require a performance bond...."

Lastly, we would recommend the performance bond be sufficient to complete reclamation to the state's standards.

Thank you again for the opportunity to comment.

215 South Cascade Street  
PO Box 496  
Fergus Falls, Minnesota 56538-0496  
218 739-8200  
www.otpco.com (web site)



December 6, 2007

State of North Dakota  
Public Service Commission  
Illona A. Jeffcoat-Sacco  
Executive Director  
600 East Boulevard, Dept. 408  
Bismarck, ND 58505-0480

Re: Comments - Wind Turbine Decommissioning Proposed Rules (PU-07-642)

Dear Ms. Jeffcoat-Sacco,

On behalf of Otter Tail Power Company please find below comments to the Proposed Rules for Wind Turbine Decommissioning.

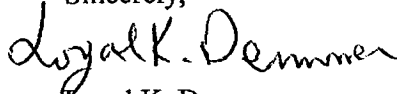
While we generally support the proposed rules for Wind Turbine Decommissioning, our initial comments center on wording in Article 69-09-10-05, Decommissioning Requirements. Our recommendation is that the portion of this sentence that states "to a depth of four feet." be changed to, "to a depth of three feet." We have 6 primary reasons that support our recommended change as follows:

- Our Conditional Use Permit with Cavalier County which was granted on May 1<sup>st</sup>, 2007 and basically agrees with Chapter 69-09-10-05, calls for removal to a depth of "three" feet in paragraph # 9 (see attachment).
- Our standard landowner easements call for removal of Wind Farm Improvements to a depth of thirty-six inches ("36") in accordance with the Cavalier County Conditional Use Permit.
- The standard wind tower foundation engineering design accommodates the best engineering practice to remove the top 36" "Pedestal" portion of the foundation. Based on engineering estimates removing twelve additional inches from the spreading foundation base exponentially increases decommissioning costs by 50%.
- We know of no environmental impact or public safety concern that is mitigated by removal of an extra 12" below the 36" already planned for.

- In a decommissioning event it appears compliance with the removal of Wind Facility Improvements to 36" below grade would not interfere with current agricultural practices, the most drastic of which (deep tillage) is not recommended by the North Dakota Extension Service and only goes to depths 18". Per the NDSU extension service, soil surveying probe depths can go as deep as four feet, but these are only done rarely and randomly across a field. Normal soil testing is usually less than 12", but can go to a depth of 24" depending on the testing needs.
- The additional 50% increase in incremental cost to remove the last 12" of the proposed 48" depth for which no environmental, public safety or economic benefit is realized and for which retail electric customers would pay through cost of service rates is not good stewardship of the resources entrusted to our care. Otter Tail Power Company is mindful that electric energy consumers are affected by decommissioning costs included in retail electric rates and we desire to keep rates as low as possible.

If you have any questions on the above comments to the Proposed Wind Turbine Decommissioning Rules (PU-07-642) please contact me at (218) 739-8659 or [ldemmer@otpc.com](mailto:ldemmer@otpc.com).

Sincerely,



Loyal K. Demmer  
Depreciation Accountant  
Otter Tail Power Company

Enclosures:

Cavalier County Conditional Use Permit (Section 9 Highlight)  
NDSU Extension Service, ProCrop – Exploring Deep Tillage, webpage and follow-up e-mail.

**Cavaller County, North Dakota  
Conditional Use Permit**

1. Langdon Wind, LLC having submitted an Application for the construction of a "Wind Farm" to include wind turbine generators with associated towers, foundations, substation, operation and maintenance building and other improvements upon the following described property:

**Manila Township:**

All of Sections 27 and 34

Northwest quarter and West half of the Northeast quarter of Section 26

ALL in Township 161N, Range 59W

**Easby Township:**

All of Sections 3, 4, 5, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32 and 33

North half of Section 2

All of Section 6, except the East half of the Southwest quarter

North half and Southwest quarter of Section 10

ALL in Township 160N, Range 59W

**Osnabrock Township:**

All of Sections 3, 4, 8, 17, 18, 20, 21, and 22

North half and Southeast quarter of Section 5

North half and Southwest quarter of Section 6

North half and Southeast quarter of Section 7

North half and Southwest quarter of Section 9

West half of Southwest quarter of Section 14

South half of Section 15

Southwest quarter of Section 16

Section 19 (except Waterfowl Production Area)

Northwest quarter, except the Northeast quarter of the Northwest quarter of Section 23

ALL in Township 159N, Range 59W

**Perry Township:**

All of Sections 12, 13, 24, 25, 35 and 36

South half and Northeast quarter of Section 1

East half of East half of Section 11

Northeast quarter of Section 14

East half of Section 26

ALL in Township 160N, Range 60W

**Nekoma Township:**

All of Sections 1, 13 and 24

Northeast quarter of Section 11

North half and North half of South half of Section 12

ALL in Township 159N, Range 60W

2. Said "Wind Farm" being a conditional use as defined by the Cavalier County Zoning Regulations.
3. Dawn Roppel, the Cavalier County Zoning Administrator, having denied the permit and having referred the Application to the Cavalier County Zoning Commission.
4. Notice of a Public Hearing regarding the Application having been published in the Cavalier County Republican on April 9 and April 16, 2007, a hearing was held April 24, 2007, at 2:00 p.m. in the meeting room of the Cavalier County Courthouse before the Cavalier County Zoning Commission.
5. Langdon Wind, LLC having presented testimony regarding its Application and the Commission having given opportunity to all present to question or comment on the Application, and the Commission having made the following Findings of Fact:

- A. The conditional use will not be a detriment or endanger public health, safety, morals or general welfare. The Applicant's proposed conditional use will be compliant with all federal, state and local regulations to protect public safety and welfare including, but not limited to, the U.S. Game and Fish Department, the North Dakota Department of Game and Fish, the North Dakota State Water Commission and the State Historical Society.

Further, the project will provide up to \$500,000.00 per year in property taxes to the County of Cavalier and will provide significant economic benefits to the local community and the affected landowners.

- B. The existing permitted use in the property affected is agriculture and said use will be impacted minimally by the proposed construction.
- C. The proposed conditional use will not impede the normal and orderly development of the surrounding property.
- D. The Applicant will be responsible for providing adequate roads, drainage and other necessary site improvements for the proposed construction.
- E. The Applicant will provide gated access roads to the proposed construction to minimize traffic congestion.
- F. No construction will be in a floodway or flood plain.
- G. The conditional use complies with all applicable regulations.
- H. Cavalier County will not be required to provide any infrastructure for the project.

The Commission having made said findings and upon motion of Bill Hardy and a second by Lawrence Henry, the Commission moved to grant Langdon Wind, LLC's Application for construction of the "Wind Farm" upon the following conditions:

1. Langdon Wind LLC shall locate all wind turbines so as to maintain a setback distance from the right of way line of all existing public roads and above-ground utility

easements equal to or greater than the maximum height of the wind turbine measured with a blade tip at its highest point, except in specific instances that may be allowed in the special use permit.

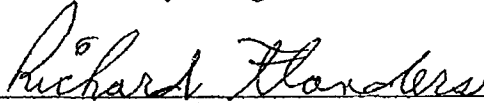
2. Langdon Wind LLC shall locate all wind turbines so as to maintain a setback distance of 1400 feet or more from any existing, occupied residence, whether located within or outside the Project area. New structures built adjacent to wind power facilities shall maintain these same minimum setbacks requirements.
3. Langdon Wind LLC shall construct the Project in accordance with generally accepted engineering practice and in accordance with all applicable federal, state and local regulations.
4. Langdon Wind LLC shall obtain all required permits from other governmental agencies (such as the Federal Aviation Administration) prior to commencing construction or as otherwise required by the applicable laws and regulations.
5. Langdon Wind LLC shall provide final site location information to the applicable Zoning Administrator prior to commencing construction.
6. Langdon Wind LLC will work with local rescue authorities to provide training (at Langdon Wind LLC's expense) to personnel who can assist with a rescue from a wind turbine or tower.
7. Langdon Wind LLC will provide a graphic Site Plan Exhibit including the easement boundaries for each property to the Zoning Administrator for approval before construction begins. Langdon Wind LLC will furnish the Zoning Administrator with certified "As-Built" site plans and easement descriptions showing the location of wind turbines, roads, transmission lines and all other improvements.
8. Langdon Wind LLC shall provide dust control measures as may be reasonably required by the County during construction and shall repair any roads, drainage facilities or other infrastructure damaged by Project construction or maintenance facilities.
9. Within one year after the end of the term (including extensions and renewals) of an easement agreement with any landowners participating in the Project, Langdon Wind LLC shall remove all physical materials pertaining to the Project located on such landowner's property (except for roads participating landowners do not want removed) to a depth of three feet below the surface of the ground. After removal, Langdon Wind LLC shall restore the ground as nearly as possible to the condition it was in prior to construction of the Project.
10. The intention of this Application is to complete construction of 106 wind turbines with associated roads and electric cables by December 31, 2007. To allow for contingencies in securing permits and contracts, Langdon Wind LLC shall be required to begin construction of the Project within three (3) years and complete the full expansion of the Project within five (5) years of the granting of this Conditional Use Permit. The Permit will continue as long as wind turbines are operational within the permit area.

11. All wind turbines and other equipment shall be new equipment commercially available from a reliable manufacturer.
12. Langdon Wind LLC will approve all haul routes with the County Road Supervisor.
13. Langdon Wind LLC will restore all roads to their original condition after construction is complete, unless otherwise agreed to by the County, and repair any road damaged during ongoing maintenance of the Project.

Said Motion having passed unanimously upon a vote of the Commission, the Zoning Administrator was directed to issue the building permit to the Applicant.

Dated this the 1<sup>st</sup> day of May, 2007.

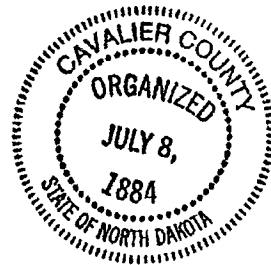
Cavalier County Zoning Commission

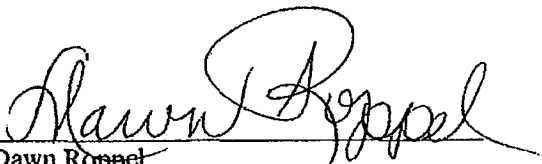
  
By: Richard Flanders  
Its: Chairman

### Building Permit

The fee of \$25.00 having been submitted, Langdon Wind LLC is hereby issued a Building Permit for the construction of a "Wind Farm" upon the property and subject to the conditions set forth above.

Dated this the 1<sup>st</sup> day of May, 2007.



  
Dawn Roppel  
Cavalier County Zoning Administrator

## Demmer, Loyal

---

**From:** Terry Gregoire [terry.gregoire@ndsu.edu]  
**Sent:** Wednesday, December 05, 2007 10:38 AM  
**To:** Demmer, Loyal  
**Subject:** Re: FW: Emailing: tildep09.htm

Hi Loyal,

Deep tillage in our area is typically no deeper than 18". Soil testing probes may go as deep as four feet or deeper in soil survey sites. Otherwise it is rare for tillage to be deeper than 9 inches for routine ag practices.

Sincerely,

Terry

<<tildep09.htm>>  
> > Hi Terry,  
> >  
> > I'm doing some research on tillage depth's in regard to utility  
> > installations of underground services for wind facilities. In your  
> > article (attached) what is the depth of deep tillage mentioned?  
> >  
> > Thanks for your input!  
> >  
> > Loyal K. Demmer  
> > Depreciation Accountant  
> >  
> > Otter Tail power Company  
> > 215 South Cascade Street  
> > Fergus Falls, MN 56538-0496  
> >  
> > ldemmer@otpc.com  
> >  
> > (218)-739-8659 - direct  
> > (218)-739-8895 - fax  
> >  
> > This e-mail may include confidential or privileged information. If  
> > this is not intended for your use, please destroy immediately and  
> > contact the sender of this message.  
> >  
> >  
>

Devils Lake Area Office  
Terry Gregoire  
509 5th Street NE, Suite 6  
Devils Lake ND 58301-2571  
tgregoir@ndsuxext.nodak.edu  
tel (701) 662-1364  
fax (701) 662-1365

## Demmer, Loyal

---

**From:** Demmer, Loyal  
**Sent:** Monday, December 03, 2007 4:03 PM  
**To:** 'tgregoir@ndsuext.nodak.edu'  
**Subject:** Emailing: tildep09.htm

**Attachments:** tildep09.htm



tildep09.htm (11  
KB)

Hi Terry,

I'm doing some research on tillage depth's in regard to utility installations of underground services for wind facilities. In your article (attached) what is the depth of deep tillage mentioned?

Thanks for your input!

Loyal K. Demmer  
Depreciation Accountant

Otter Tail power Company  
215 South Cascade Street  
Fergus Falls, MN 56538-0496

ldemmer@otpc.com

(218)-739-8659 - direct  
(218)-739-8895 - fax

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	Family-Youth-4-H	Home-Lawn-Garden-Trees	Livestock Nutrition-Food Safety-Health

SEARCH



# ProCrop

## Exploring Deep Tillage

Deep tillage can break up subsoil layers which impede root penetration. Studies over 10 years ago at NDSU showed that there was little benefit to deep tillage in the heavy clay soils of the valley following sugarbeet and potato, nor was there a benefit to these crops with deep tillage following small grains. Although deep tillage seems like it would be most useful in heavy valley soils, it may be the area of least benefit. Heavy valley soils crack when dry, expand when wet, and break apart rapidly under freezing and thawing. Nature usually prepares the soil adequately without intervention by deep tillage equipment. Some areas of the state have a high sodium content. Regardless of tillage, these soils become hard when dry and impermeable when wet. In other areas of North Dakota deep tillage may be more useful if the tillage is performed on dry soils. If tillage is performed on wet soils, the soils do not breakup and create slits within the soils that do not solve the compaction layer problems.

[Back to Environmental Damage Menu](#)

[Back to Main ProCrop Index](#)

Terry Gregoire, Area Extension Specialist/Crop Production NDSU Extension Service 509 5th Street NE, Suite #6 Devils Lake, ND 58301-2571	Phone No.(701) 662-1364 FAX (701) 662-1365 <a href="mailto:terry.gregoire@ndsu.edu">terry.gregoire@ndsu.edu</a>
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<a href="#">INFORMATION</a> <a href="#">ACADEMICS</a> <a href="#">RESEARCH</a> <a href="#">EXTENSION</a> <a href="#">CALENDAR</a> <a href="#">WEATHER</a> <a href="#">DIRECTORY</a>	<input type="text" value="Search"/> <input type="button" value="GO"/>
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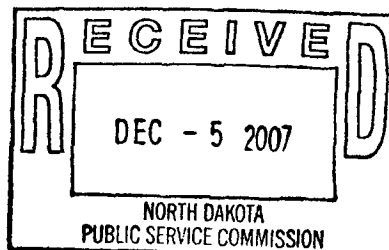
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 North Dakota State University Agriculture and University Extension  
 Morrill Hall, P.O. Box 5562, Fargo, ND 58105-5562



**FPL Energy**



December 5, 2007

Illona A. Jeffcoat-Sacco  
Executive Director, Public Service Commission  
600 East Boulevard Avenue  
Bismarck, North Dakota 58505-0480

**via: Email**

RE: Wind Turbine Decommissioning: Case No. 07-642

Dear Ms. Jeffcoat-Sacco:

FPL Energy is pleased to submit comments in the above-referenced docket.

As you will see, we believe there are several areas of concern, most notably the authority of the Commission to regulate wind farms less than 100MW, that need to be addressed prior to finalization of rules governing decommissioning of wind turbines and wind farms. As a result, FPL Energy requests the Commission conduct a working session, in which interested parties like FPL Energy may participate, to consider our comments and the comments that others may submit.

You may contact me directly at 561-691-7232 or via email at [john\\_didonato@fpl.com](mailto:john_didonato@fpl.com) to discuss this submission.

Sincerely,

A handwritten signature in cursive script that reads 'John DiDonato'.

John DiDonato  
Executive Director, Midwest Wind Development

enclosures

cc: Mike O'Sullivan  
Dean Gosselin  
Scott Scovill  
Brian Bjella, Fleck, Mather & Strutz

**BEFORE THE NORTH DAKOTA PUBLIC SERVICE COMMISSION**

Susan Wefald  
Tony Clark  
Kevin Cramer

President  
Commissioner  
Commissioner

In the Matter of Wind Turbine  
Decommissioning

Case No. 07-642

**COMMENTS OF FPL ENERGY, LLC**

On October 3, 2007, the North Dakota Public Service Commission published notice seeking comments on the above-referenced docket.

FPL Energy, LLC (FPL Energy) is the largest owner and operator of wind energy generation facilities in the United States. In North Dakota it owns and operates, through various subsidiaries and affiliates, the 40MW North Dakota I Wind Energy Center and 21MW North Dakota II Wind Energy Center near Kulm, North Dakota; the 49.5MW Wilton Wind Energy Center in Wilton, North Dakota; and the 50.6MW Oliver I Wind Energy Center near Center, North Dakota. We are also currently constructing the 118.5MW Langdon Wind Energy Center near Langdon, North Dakota and the 48MW Oliver II Wind Energy Center near Center, North Dakota. Additionally, we are developing over 1,500MW of wind generation throughout North Dakota, and we have a wind development pipeline throughout the United States of over 14,000MW. Based on our position in the wind energy industry and our continued interest in developing new wind generation in North Dakota, we respectfully submit the following comments.

**Proposed Rule 69-09-10-05. Decommissioning Requirements:**

(A) The third line of the first sentence should be revised to more clearly reflect the intent of the Commission that underground cables, foundations, buildings and ancillary equipment must only be removed to a depth of four feet. FPL Energy routinely buries underground cable below the frost line, which is typically four feet or deeper in North Dakota, and it is not necessary that cable buried deeper than four feet be removed if the wind farm was to be decommissioned. To reflect this, we respectfully propose the following:

**"Decommissioning and site restoration includes dismantling and removal of all towers, turbine generators, transformers, and overhead cables; removal of 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.”

(B) The proposed requirement to reclaim the original top soil quality of an individual wind turbine site is impractical. Stockpiling top soil near each wind turbine site is not in the interest of the landowner, who is typically looking to maximize his land usage around the wind turbines located on his property. This would disrupt row crop farming and potentially change the drainage of some sites. For these reasons, we respectfully request that the standard of reclamation be set as “good or prudent engineering practices.”

**Proposed Rule 69-09-10-06. Decommissioning Plan:**

The Commission proposes that a decommissioning plan be filed prior to commencement of operation of a commercial conversion facility or wind turbine, and that the Commission shall review the decommissioning plan and issue an order approving or disapproving the plan within 6 months after the decommissioning plan is filed. FPL Energy has several concerns about this proposal for which we respectfully request clarification.

First, what happens in the event the Commission issues an order disapproving the decommissioning plan? Does the Commission intend on preventing the wind energy conversion facility (or wind turbine) from generating clean, renewable energy while the decommissioning plan is reconsidered? If so, what would be the Commission’s authority for doing so and even to regulate wind farms less than 100MW?

Second, what is the Commission’s proposed standard for approval or disapproval of a decommissioning plan? As far as FPL Energy is aware, no commercial wind farm has ever been decommissioned in the United States, so there is no “best practice” or established standard for wind farm decommissioning.

**Proposed Rule 69-09-10-08. Financial Assurance:**

This proposed rule lists a corporate guarantee as one of the options available for providing financial assurance for decommissioning costs. FPL Energy is in favor of this option. However, we believe the Commission should establish the standard by which a corporate entity would qualify as a guarantor within the rules instead of leaving that to the discretion of the Commission every time a corporate guaranty is proposed. FPL Energy suggests a creditworthiness standard (e.g., BBB- by Standard & Poor’s), net worth standard, or debt to equity ratio standard be incorporated into the proposed rules to create a “safe harbor” for corporate guarantors.

**BEFORE THE NORTH DAKOTA PUBLIC SERVICE COMMISSION**

Susan Wefald  
Tony Clark  
Kevin Cramer

President  
Commissioner  
Commissioner

In the Matter of Wind Turbine  
Decommissioning

Case No. 07-642

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**BASIN ELECTRIC  
POWER COOPERATIVE**

1717 EAST INTERSTATE AVENUE  
BISMARCK, NORTH DAKOTA 58503-0564  
PHONE 701-223-0441  
FAX: 701/224-5336



---

November 26, 2007

Iliona A. Jeffcoat-Sacco  
Executive Director, Public Service Commission  
600 East Boulevard Avenue  
Department 408  
Bismarck, North Dakota 58505-0480

Re: Wind Turbine Decommissioning: Case No. 07-642

Dear Ms. Jeffcoat-Sacco:

Enclosed please find Basin Electric Power Cooperative's comments in the above-referenced docket.

Questions can be addressed to me at 701/355-5120.

Regards,

A handwritten signature in black ink, appearing to read 'Ron Rebenitsch', written in a cursive style.

Ron Rebenitsch  
Manager, Alternative Technologies

Enclosures

cc: Deborah Fohr Levchak  
Curtis Jabs  
Casey Jacobson  
Amanda Wangler  
Mike Eggl

BEFORE THE NORTH DAKOTA PUBLIC SERVICE COMMISSION

Susan Weflad  
Kevin Cramer  
Tony Clark

President  
Commissioner  
Commissioner

In the Matter of Wind Turbine  
Decommissioning

Case No. 07-642

COMMENTS OF BASIN ELECTRIC POWER COOPERATIVE

On October 3, 2007, The North Dakota Public Service Commission published notice seeking comments on the above-referenced docket.

Basin Electric Power Cooperative (**Basin Electric**) owns and operates four wind towers, two at Minot, North Dakota and two at Chamberlin, South Dakota. Basin Electric purchases 130MW of wind power from FPLE generated from the wind projects at Edgley-Kulm, North Dakota, Wilton, North Dakota and Hyde County, South Dakota. Also, Basin Electric is in the planning stages for building an additional 115 MW of wind generation in the state of North Dakota. Based on this experience, and on our continued interest in wind generation development, Basin Electric offers the following comments.

**Proposed Rule 69-09-10-03: Useful Life:**

The Commission has proposed a presumption that an individual wind turbine is at the end of its useful life if the facility generated no electricity for a continuous period of twelve (12) months. Basin Electric suggests this is too short a period of time given our knowledge of the time needed for replacement parts. Replacing long lead time equipment can easily take twelve (12) months or longer. For example, in today's market, large transformers, gear boxes, and turbine blades can take over twelve (12) months today from order to delivery. Moreover, the demand for this equipment is anticipated to increase. In addition, there is a long lead time for large pieces of the construction equipment that is needed to erect and provide maintenance to wind turbines and related equipment. For example, to secure a crane often requires scheduling in excess of twelve (12) months.

Therefore, Basin Electric suggests 24 months of downtime before any presumption of the end of a "useful life" period.

**Proposed Rule 69-09-10-05: Decommissioning Requirements:**

The proposed requirement to reclaim the original top soil quality of an individual wind tower site would be difficult. Unlike a surface coal mine where reclamation and stockpiling of large masses of soils is involved, the multiple and small dispersed sites of a wind project would potentially require the stock piling of very small quantities of the topsoil at hundreds of sites for 25-30 years.

Basin Electric would suggest that upon decommissioning of a wind turbine site that the area disturbed be reclaimed on a best engineering practice basis with a goal of achieving comparative topsoil quality and topography.

**Proposed Rule 69-09-10-08: Financial Assurance:**

This proposed rule offers multiple ways in which financial assurance for the anticipated costs of decommissioning might take place. Basin Electric requests greater specify in regards to the options this assurance may be demonstrated. It is Basin Electric's preference that corporate guarantees be available to companies that meet a certain financial worthiness standard.

**Lein, Jerry R.**

---

**From:** ldemmer@otpc.com  
**Sent:** Tuesday, January 22, 2008 8:28 PM  
**To:** Lein, Jerry R.  
**Cc:** Jeffcoat-Sacco, Ilona; -Info-Public Service Commission; ldemmer@otpc.com  
**Subject:** ND Proposed Wind Decommissioning Additional Comments  
**Attachments:** Wind Tower Foundation.jpg; langdon S-01 Rev 1 Wind Tower Foundation.pdf; langdon S-03 Rev 2 Wind Tower Foundation.pdf

**Importance:** High

Hi Jerry,

I hope everything is going well for you. I have been really busy this month with our annual financial close. At the last Wind decommissioning workshop on January 8th a request was made for additional wind tower foundation information. I did secure permission this morning to share engineering drawings of the tower foundations used at Langdon and I'm including a photograph for added clarification. Please let me know if you have any questions in regard to any of these files. The center top drawing on the S-01 print (middle attachment) shows best the 3'-2" pedestal height that was discussed at the work shop. This is in support of our recommendation to change the proposed decommissioning depth from 48" to 36".

<<Wind Tower Foundation.jpg>> <<langdon S-01 Rev 1 Wind Tower Foundation.pdf>> <<langdon S-03 Rev 2 Wind Tower Foundation.pdf>>

Additionally, Otter Tail Power would like to comment on the financial assurance paragraph 8 of the proposed rules. At the January 8th meeting, discussion on this topic centered around the Moody's Investment Service Rating of "A", in the proposed rules and each utility was asked to comment. Otter Tail would like to propose that the wording be changed from stating a specific letter grade level to simply state as "Investment Grade". Investment grade is defined by the major rating agencies and is used by those who are making financial considerations on the credit worthiness of a firm which can include state government agencies.

That portion of the proposed rules could read like this:

; or if it has a current rating for its most recent bond issuance of "Investment Grade" as issued by Moody's Investors Service, Standards and Poor's Corporation, or an equivalent rating by any other nationally recognized statistical rating organization, as defined and approved by the United States securities and exchange commission.

Let me know if you have any questions in regard to these comments. I may be reached at the below phone or fax number.

Thanks, and have a great day!

Loyal K. Demmer  
Depreciation Accountant


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# Cass County Electric Cooperative

Your Touchstone Energy® Partner 

January 29, 2008

Illona A. Jeffcoat-Sacco  
Executive Director, ND Public Service Commission  
600 East Boulevard Ave.  
Dept. 408  
Bismarck, ND 58505-0480

Re: Case No. PU-07-642

Dear Ms. Jeffcoat-Sacco:

Cass County Electric Cooperative Inc. (CCEC) would like to submit the following comments to the North Dakota Public Service Commission regarding the proposed rule 69-09-10 in the above referenced case, *Decommissioning Requirements of Wind Turbines*. CCEC applauds the efforts of the commission to be proactive on this matter.

CCEC concurs with the language contained in Section 05 of rule 69-09-10 with the exception of the requirement to remove all underground cables up to a depth of 48 inches. Removal of existing underground (UD) power cables is a very expensive and questionable practice relative to the benefits realized. There are two aspects which CCEC would like the Commission to consider in its rulemaking process with regard to the aspect of underground cable removal.

With many wind power projects, there is the immediate site of the turbine(s) and then there is the adjacent area which is often times used for purposes of roads, but also as an access route for power lines to connect the turbines to the electrical grid. These adjacent areas can often times be quite expansive, especially for a large wind project. Thus the land in question can amount to a significant acreage. The language of this rulemaking does not distinguish between these two very specific areas of a project, and while there may in fact be somewhat of a grey line dividing them, CCEC believes they are readily identified with a little study.

Therefore, CCEC recommends that the Commission define the areas for decommissioning requirements as such: a) immediate project sites, and b) adjacent project sites, so as to differentiate the immediate site area of a wind turbine vs. the adjacent sites which might be used for roadways, cable and powerline routes, etc.

Regarding the installation of UD power cables, there are generally three distinct depths involved in the installation process for electrical utilities as set forth in the National Electrical Safety Code: 24 inches for cables operated at 600 volts or less (typically referred to as secondary cables); 30 inches for voltages greater than 600 volts up to 50,000 volts (typically referred to as medium voltage cables); and 42 inches for cables operated above 50,000 volts (typically referred

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to as high voltage cables). Most underground cable used for a wind project will be of the medium voltage class for circuit lines traversing to the turbine transformer; and of the secondary class from the turbine transformer into the turbine tower. The secondary cable runs in a wind project will usually be of a very short length and should be easily recoverable.

CCEC would recommend different requirements for decommissioning a wind turbine project with regard to underground power cables between the immediate site areas and the adjacent or adjoining lands. As a utility, CCEC has concerns regarding the removal of abandoned underground power cables; it's a very time-consuming and expensive process which typically yields little if any benefit to the land. In fact, the process of removal might be more detrimental to the land than any benefit gained.


Given the fact that most reclamation work around the immediate site of a wind turbine will likely be quite extensive, CCEC has little concern with the requirement to remove electrical cables in the immediate site area, but would not recommend requiring cable removal beyond a depth of 36 inches as a matter of practicality if there is no other reclamation work beyond that depth. Again, there would be little benefit to the land reclamation process and the costs would likely be quite high.

Outside the immediate area of a wind tower site, CCEC would recommend that no requirements for removing underground cables be set forth beyond a depth of two feet (24 inches). As a matter of practice, most utilities will bury any medium or high voltage cables at a depth of about 40 inches. There are few if any known agricultural practices which would be negatively affected by cables buried at a depth of 24 inches or beyond. The present ruling requiring removal of cable buried up to 48 inches would likely result in significant unnecessary costs with little if any benefit.

Additionally, any depth requirements adopted by the Commission might well become a basis or precedent for future laws requiring the same for utilities' general underground cable installations. Given the fact that most landowners prefer underground cable installations vs. overhead, such a requirement would all but prohibit utilities from considering underground with such an open-ended liability at some point in the future. Thus, CCEC recommends minimal requirements for the removal of abandoned underground cables.

Thank you for your consideration of these comments. If we can be of further assistance, please don't hesitate to contact us at your convenience.

Sincerely,



Bradley J. Schmidt, PE  
Sr. VP Trans. & Distr. Services