

**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.