

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

Senator Terry M. Wanzek
tmwanzek@nd.gov

Representative Michael D. Brandenburg
mbrandenburg@nd.gov

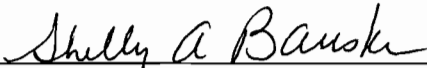
Representative Stacey Dahl
stdahl@nd.gov

Representative Scot Kelsh
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Representative William E. Kretschmar
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Each address shown is the respective addressee's last reasonably ascertainable electronic mail address.

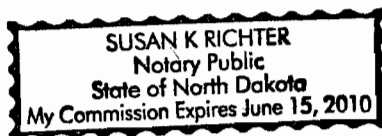
Subscribed and sworn to before me
this **10th** day of **October 2007**.





Notary Public

SEAL



**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


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 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 10th year of operation of a commercial wind energy conversion facility or wind turbine, the commission, by order, may require a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the commission to cover the anticipated costs of decommissioning the commercial wind energy conversion facility or turbine.

General Authority: NDCC 49-02

Law Implemented: NDCC 49-02-27

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

General Authority: NDCC 49-02

Law Implemented: NDCC 49-02-27

**State of North Dakota
Public Service Commission**

**Public Service Commission
Wind Turbine Decommissioning
Rulemaking**

Case No. PU-07-642

Regulatory Analysis, Takings Assessment, and Small Entity Analysis

October 3, 2007

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

The rules may address:

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

Regulatory Analysis

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

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

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

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

- Landowners should benefit from the proposed rule as it will help ensure they are not stuck with abandoned facilities on their land.
 - The general public will benefit from not having abandoned wind turbines spread across the countryside.
- b. A description of the probable impact, including economic impact, of the proposed rule;
- The 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.