



December 5, 2019

Steve Kahl
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard; Dept 408
Bismarck, ND 58505-0480

Re: Case No. PU-10-078 - Basin Electric Power Cooperative

Dear Mr. Kahl:

The purpose of this submittal is to provide the North Dakota Public Service Commission (NDPSC) with Basin Electric Power Cooperative's (Basin Electric's) financial assurance Guaranty for the decommissioning of the PrairieWinds Project facilities.

Consistent with North Dakota Administrative Code (NDAC) § 69-09-09-08, Basin Electric is providing financial assurance documentation after the tenth year of operation to ensure sufficient resources for the decommissioning of PrairieWinds. Basin Electric meets the criteria for self-guarantee as allowed under NDAC § 69-09-09-08(5). The self-guarantee financial assurance Guaranty is enclosed.

Please contact me at 701.557.5495 or ksolie@bepc.com if you have any questions or concerns regarding this submittal.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Solie".

Kevin L. Solie, P.E.
Senior Environmental Compliance Administrator

/enclosure
cc: Casey Jacobson

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Financial Assurance - Self-Guarantee

Basin Electric Power Cooperative
Paul Sukut, CEO & General Manager

GUARANTY

THIS GUARANTY (this “**Guaranty**”), dated as of Dec, 4th, 2019 (the “**Effective Date**”), is made by Basin Electric Power Cooperative, a North Dakota electric cooperative corporation (“**Guarantor**”), in favor of the NORTH DAKOTA PUBLIC SERVICE COMMISSION (“**Commission**”).

RECITALS:

- A. WHEREAS, Guarantor is the owner and obligor of PrairieWinds North Dakota (the “**Project**”) in Ward County, North Dakota which consists of one or more wind turbines and tower equipment;
- B. WHEREAS, the obligor is required to provide to Commission financial assurance supporting decommissioning obligations pursuant to Section 69-09-09-08 of the North Dakota Administrative Code (the “**Rule**”);
- C. WHEREAS, Guarantor will directly or indirectly benefit from the Project; and
- D. WHEREAS, Guarantor wishes to issue the Guaranty to Commission to satisfy the terms of the Statute.
- E. NOW THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration, the receipts and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Commission as follows:

1. **GUARANTY**. Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocable guarantees the timely payment when due of all obligations owing to Commission under the Statute on or after the Effective Date (the “**Obligations**”). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under the Guaranty shall be subject to the following limitations:

Notwithstanding anything herein to the contrary, the maximum aggregate obligation and liability of Guarantor under the Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed thirteen million, three hundred forty three thousand dollars (U.S. \$13,343,000.00) (the “**Maximum Recovery Amount**”).

- (a) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments due and owing by the obligor and which the obligor has not timely paid (the “**Overdue Obligations**”), as well as costs of collection and enforcement of this Guaranty (including attorney’s fees) to the extent reasonably

and actually incurred by the Commission. Litigation and administrative costs are not limited by indebtedness reflected by the above listed financial assurance. In no event, however, shall Guarantor be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

- (b) In the event that the Guarantor no longer meets the financial assurance requirements set forth by the Statute, provided as a condition for acceptance, or is disallowed from continuing as a guarantor, the obligor shall immediately notify the Commission by certified mail and establish alternative financial assurance acceptable to the Commission.
- (c) Guarantor agrees to notify the Commission by certified mail, of a voluntary or involuntary proceeding under title 11 (Bankruptcy), United State Code, naming guarantor as debtor, within ten days after commencement of the proceeding.
- (d) Guarantor agrees to remains to be bound under this guarantee notwithstanding any or all of the following: amendment or modification of the decommissioning plan, amendment or modification of the site certificate, the extension or reduction of the time of performance for decommissioning and remediation, or any other modification or alteration of the obligation of the owner or operator.

2. **DEMANDS AND PAYMENT.**

- (a) If obligor fails to complete the decommissioning and remediation as required by the Statute, the terms and conditions of the site certificate, and to the satisfaction of the Commission, Commission may present a written demand to Guarantor calling for Guarantor's payment to be used for the decommissioning and remediation of the above-listed of the Project (a "**Payment Demand**"). Guarantor hereby agrees that demands for payment may be based and are payable on projection of costs or their actual accrual and the liability for payment is not contingent on the costs having been presently sustained. The Guarantor agrees to make prompt payment upon demand of the full amount, or portions thereof, requested by the Commission.
- (b) Guarantor's obligation hereunder to pay any particular Overdue Obligation(s) to Commission is condition upon Guarantor's receipt of a signed statement that the Commission has ordered the forfeiture, in whole or in part, of the guaranty and accompany a Payment Demand.
- (c) After issuing a Payment Demand in accordance with the requirement specified in Section 2(b) above, Commission shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with

respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term “**Business Days**” shall mean all weekdays (i.e. Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of North Dakota.

3. **REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants that:

- (a) it is a corporation duly organized and validly existing under the laws of the State of North Dakota and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration of filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of the Guaranty; and
- (c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditor’s rights generally and by general principles of equity.

4. **RESERVATION OF CERTAIN DEFENSES.** Without limiting Guarantor’s own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which it is or may be entitled.

5. **AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Commission.

6. **WAIVERS AND CONSENTS.** Subject to and in accordance with the terms and provisions of Guaranty:

- (a) Except as required in *Section 2* above, Guarantor hereby waives (i) notice of appearance of this Guaranty; (ii) presentment and demand concerning the liabilities of Guarantor; and (iii) any right to require that any action or proceeding be brought against any other person, or to require that Commission seek enforcement of any performance against any other person, prior to any action against Guarantor under the terms hereof.
- (b) No delay by Commission in the exercise of (or failure by Commission to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by

Guarantor of any rights or defenses which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).

(c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Commission may; (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions, or other alterations of the Obligations); (ii) release any person (other than Guarantor) from liability for payment of all or any of the Obligations; or (iii) receive, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.

7. **TERMINATION.**

(a) Unless terminated earlier, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately at [11:59:59 Central Prevailing Time December 30, 2050 (10 years after the predicted useful life of the facility), or upon complete decommissioning; *provided, however,* that no such termination shall affect Guarantor's liability with respect to any Obligation incurred prior to the time the termination is effective, which Obligation shall remain subject to the Guaranty.

(b) The Guarantor shall notify the Commission one year prior to the above-listed termination date to ensure decommissioning has occurred to the satisfaction of the Statute and the Commission.

(c) Guarantor may terminate this guarantee by sending notice by certified mail to the Commission, provided that this guarantee may not be terminated unless and until the obligor obtains, and the Commission approves, alternative financial assurance.

8. **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called ("**Notice**") by Commission to Guarantor, or by Guarantor to Commission, as applicable, shall be in writing and may be delivered either by (i) U.S. Certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Commission, as applicable, to the other in accordance with the requirements of this Section 8):

<i>TO GUARANTOR:</i> *	<i>TO COUNTERPARTY:</i>
Basin Electric Power Cooperative Attn: Chief Financial Officer 1717 E. Interstate Avenue Bismarck, ND 58501	North Dakota Public Service Commission 600 East Boulevard Avenue Bismarck, North Dakota 58505 <i>Attn: Dept. 0408</i>
[Tel: 701-223-0441-for use in. Connection with courier deliveries]-	[Tel. (701) 328-2400—for use in connection with courier deliveries]

Any Notice given accordance with this Section 8 will (i) if delivered during the recipient’s normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipients’ normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient’s normal business hours on the next Business Day after such deliver.

10. **MISCELLANEOUS.**

- (a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of North Dakota, without regard to principles of conflicts of laws thereunder.
- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Commission and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Commission. Commission may not assign its rights or benefits under the Guaranty in part or in whole without the prior written consent of Guarantor.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Commission and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in the Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing and singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term “person” as used herein means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

- (e) Commission (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the South Central Judicial District, the Burleigh County District Court for the purpose of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transaction contemplated hereby brought by Commission, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named court, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on December 4, 2019, but it is effective as of the Effective Date.

Dated: December 4, 2019

Basin Electric Power Cooperative

Paul M. Sukut GM
By: Mark D. FOSS

Name: Paul M. Sukut

Title: CEO & General Manager