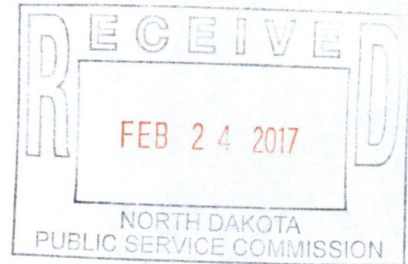


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February 24, 2017

Via Hand Delivery

Mr. Darrell Nitschke  
Executive Director  
North Dakota Public Service Commission  
600 E. Boulevard, Dept. 408  
Bismarck, ND 58505-0480



**RE: Public Service Commission  
Public Utilities  
Rulemaking  
Case No. PU-16-775  
and  
Public Service Commission  
Public Utilities - Wind Decommissioning  
Rulemaking  
Case No. PU-17-023  
Our File No. 035218-000023**

Dear Mr. Nitschke:

NextEra Energy Resources, LLC respectfully submits the enclosed comments for filing in the above referenced matters. Enclose are an original and ten copies.

Please call should you have any questions.

Sincerely,

**CROWLEY FLECK PLLP**

Casey A. Furey

CAF:rw  
Enc.

cc: John Schuh (via email)  
Jerry R. Lein (via email)  
Sara Cardwell (via email)

**17 PU-17-23 Filed: 2/24/2017 Pages: 5**  
**Proposed revisions and comments**

NextEra Energy Resources, LLC  
Casey Furey, Crowley Fleck, PLLP

**16 PU-16-775 Filed: 2/24/2017 Pages: 5**  
**Proposed revisions and comments**

NextEra Energy Resources, LLC  
Casey Furey, Crowley Fleck, PLLP

# COMMENTS OF NEXTERA ENERGY RESOURCES, LLC

## STATE OF NORTH DAKOTA PUBLIC SERVICE COMMISSION

**Public Utilities  
Rulemaking**

**PU-16-775**

**Public Utilities – Wind Decommissioning  
Rulemaking**

**PU-17-023**

NextEra Energy Resources, LLC (NextEra) is a leading diversified energy company that owns and operates natural gas, wind, solar, and nuclear power plants in 27 states and Canada. NextEra is the leading producer of wind power in North America and has been doing business in the state of North Dakota for over a decade. NextEra currently owns and operates fourteen wind energy conversion facilities within the state totaling approximately 1,250 MW of nameplate capacity, and representing a capital investment of over \$2.4 billion.

Decommissioning wind facilities is an important area of the Commission's oversight that has public safety, environmental, aesthetic and economic implications. NextEra supports the Commission's efforts and believes the proposed rule changes demonstrate a thoughtful approach that balances the needs of multiple constituencies. NextEra respectfully submits the following comments that it believes will clarify some ambiguities and minimize unintended consequences. NextEra greatly values its partnership with North Dakota and appreciates the opportunity to comment on the Commission's rulemaking regarding wind decommissioning regulations.

### **69-09-09-03. Abandonment and useful life – certificate of operation.**

**69-09-09-03(3).** The proposed rule creates a presumption that a facility is at the end of its useful life if its annual capacity factor is less than ten percent. Capacity factor is not an appropriate basis for evaluating whether a facility is at the end of its useful life. To the contrary, the fact that a wind facility has a measurable annual capacity suggests the wind facility is not at the end of its useful life.

A set capacity factor is generally arbitrary and does not account for various circumstances that could arise and impact a facility's ability to operate. For example, force majeure events could cause a facility to be unable to operate for an extended period of time, resulting in an abnormally low annual capacity factor. In that type of situation, the facility would generally be excused from performance obligations under contracts with customers and the grid operator until the force majeure event has ended, possibly subject to a maximum time limit of 1-3 years. A set capacity factor does not provide the flexibility to account for force majeure events such as extreme weather events, transformer failures, major transmission system disruptions, transmission constraints outside the control of the facility owner, or for factors such as technology upgrades that may require a turbine or an entire facility to be nonoperational while upgrades are made.

NextEra submits that a better approach would be to create a rebuttable presumption that a wind facility has reached the end of its useful life only if it completely ceases operating for more than a year. In the event a capacity factor presumption is retained in this section, NextEra suggests that the presumption should be automatically rebutted if the facility owner files a certification explaining that the limited operations are due to events outside the owner's control, the facility has not been abandoned, the owner is actively working to restore the facility to normal operations, and reasonably expects the facility to satisfy the annual capacity factor requirement within the next 12 months.

**69-09-09-03(5).** The Commission should consider accounting for instances where a facility may be nonoperational because the facility is scheduled to undergo a large scale retrofitting or mechanical renewal or upgrade. As long as an owner has filed a plan to return a facility to operation within two years of triggering an abandonment or end of useful life presumption, we believe an owner should not be required to obtain Commission approval for this plan where operations will continue to fit within the parameters of the project's Certificate of Site Compatibility.

**69-09-09-05. Decommissioning requirements.**

**69-09-09-05(5).** The proposed rule requires that the Commission approve a landowner's request to retain altered surface features on their property. We suggest the proposed rule be amended to remove the requirement that the Commission approve a landowner's request. Commission approval requires the issuance of public notice and adds additional layers to what should be a simple process and creates unnecessary costs for the Commission, landowners and facility owners. We suggest proposed rule 69-09-09-05(5) be revised as follows,

Grading and topsoiling of areas disturbed by the facility, and reseeded according to natural resource conservation service recommendations unless ~~the commission approves an owner~~ a request signed by the applicable landowner, identifying the surface features the landowner prefers to remain in place, ~~and the reason the landowner prefers those features to remain~~ is filed with the commission.

**69-09-09-06. Decommissioning plan.**

The proposed rules require that prior to the commencement of construction, a decommissioning plan be filed for Commission approval. Subsection two requires that the Commission make a determination on the plan no later than six months after the Commission has deemed the plan complete. Historically, decommissioning estimates were not required to be issued by a licensed professional engineer. This new requirement for Commission approval of a decommissioning plan, which will impose additional costs on facility owners and potentially create delays, is entirely unnecessary when a licensed professional engineer provided the decommissioning cost estimate.

The proposed rules require the Commission to approve a decommissioning plan prior to construction of a facility, and that a determination be made no later than six months after the Commission deems the application complete. This requirement could result in significant

compliance delays. If the Commission retains the requirement that a decommissioning plan be approved by the Commission, we submit that the Commission ought to amend the time period in which it must issue approval. In lieu of the proposed six-month time frame, the Commission should revise the rule to require that it issue a determination on a decommissioning plan in conjunction with the approval of a wind project.

Additionally, we suggest the Commission revise the proposed rule to include a timeframe for when the Commission must determine that a decommissioning plan is complete. Under the proposed rule, the Commission can withhold deeming a plan complete for an indefinite amount of time which could introduce significant delays in the siting process.

We also suggest that language be included in this section that provides owners the opportunity to present additional information to the Commission should circumstances change that impact decommissioning values, or if an owner believes the decommissioning cost estimate is no longer accurate and provide a new cost estimate from a license professional engineer. Lastly, we suggest the proposed rules be revised so the Commission retains the flexibility to account for salvage value in the calculation of an appropriate financial assurance amount.

#### **69-09-09-08. Financial Assurance.**

The proposed rule conditions Commission acceptance of a self-guarantee or a corporate guarantee on several factors, one of which is a current credit rating of "A" or higher. To our knowledge, the requirement that a corporate entity have an "A" credit rating disqualifies a majority of entities in the renewable energy industry currently doing business in North Dakota. Instead of an "A" credit rating, NextEra suggests the Commission adopt an "investment grade" credit rating as the metric, which is a rating of BBB- or higher from Standard & Poor's Corporation, and a rating of Baa3 or higher from Moody's Investors Service.

Further, the Commission should not require a corporate guarantor to satisfy the financial ratios included in the proposed rules. The proposed rules contain a requirement that an entity have a ratio of total liabilities to net worth of 2.5 or greater and a ratio of current assets to currently liabilities of 1.2 or greater. The leverage ratio measures liabilities compared to net worth at a single point in time and changes frequently as liabilities increase or decrease. Similarly, the current ratio measures working capital at a point in time and changes frequently as revenue is received and bills are paid. We are concerned the proposed ratios are poor measurements of creditworthiness and an entity could easily move money or liabilities to show acceptable ratios at a single point in time, which may make an entity appear to be in a better financial condition than it actually is.

NextEra believes a "tangible net worth" criteria will offer more protection than other financial metrics in a default and recovery scenario because the other coverage ratios can be met through financial engineering. Tangible net worth shows how much value is left in an entity after all creditors are paid and is not easily financially engineered to meet a defined target. NextEra suggests the Commission revise the proposed rules to include only the tangible net worth requirement. If the Commission is concerned that \$10 million is insufficient, it may wish adopt a higher requirement for a tangible net worth of \$100 million, for example.

We suggest the proposed rule 69-09-09-08(4)(b)(1) be revised as follows,

~~A current rating of "A" or higher for its most recent bond issuance as issued by Moody's Investors Service, Standard and Poor's Corporation, BBB- or higher from Standard & Poor's Corporation, or a rating of Baa3 or higher from Moody's Investors Service, or an equivalent rating by any other nationally recognized statistical rating organization, as defined and approved by the United States securities and exchange commission, that is acceptable to the commission:~~

We also suggest the proposed rule 69-09-09-08(4)(b)(2) be revised as follows,

~~A tangible net worth of at least [ten/one hundred] million dollars; a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liability of 1.2 or greater; or~~

**69-06-08-01. Energy conversion facility siting criteria.**

**69-06-08-01(6)(n).** The proposed rule adds a new policy criteria for a commitment to install aircraft detection and lighting systems (ADLS) on facilities subject to Federal Aviation Administration approval. This proposed policy criteria will allow the Commission to give preference to applicants that commit to installing ADLS on their facilities. We suggest the Commission revise the proposed rule to account for additional technologies that may develop and should utilize language similar to what has been included in recent orders. *See* PU-15-690, PU-16-042, and PU-16-123. Proposed rule 69-06-08-01(6)(n) could be revised as follows,

A commitment to install aircraft detection and lighting systems or, other technology suitable to the Commission, for wind energy conversion facilities subject to Federal Aviation Administration approval.