

February 21, 2017

VIA E-MAIL AND FEDERAL EXPRESS

Mr. Darrell Nitschke
Executive Secretary
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-17-23**

Dear Mr. Nitschke:

Enel Green Power North America, Inc. (“EGPNA”) and Tradewind Energy, Inc. (“Tradewind”) respectfully provide the enclosed proposed revisions and supporting comments regarding the rules proposed in the above-referenced rulemaking cases. Please note that EGPNA’s and Tradewind’s proposed revisions to the rules are shown in blue and in track changes format.

Electronic copies of this letter and the enclosures were filed today via e-mail. If you have any questions regarding the proposed revisions or comments, please let me know.

Sincerely,



MOLLIE M. SMITH

MMS/ms/60817145

Enclosures

cc: John Schuh (via e-mail – w/ encl.)
Jerry Lein (via e-mail – w/ encl.)
Rob Stupar (via e-mail – w/ encl.)
Frank Costanza (via e-mail – w/ encl.)

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15 PU-17-23 Filed 02/21/2017 Pages: 24
Proposed revisions and comments

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**Public Service Commission
Public Utilities
Rulemaking**

Case No. PU-16-775

**Public Service Commission
Public Utilities – Wind Decommissioning
Rulemaking**

Case No. PU-17-23

**COMMENTS OF ENEL GREEN POWER NORTH AMERICA, INC.
AND TRADEWIND ENERGY, INC.**

The North Dakota Public Service Commission (“Commission”) has proposed changes to N.D.A.C. § 69-06-08-01 and N.D.A.C. Ch. 69-09-09. Enel Green Power North America, Inc. (“EGPNA”) and Tradewind Energy, Inc. (“Tradewind”) respectfully provide the attached proposed revisions and the supporting comments set forth below.

EGPNA is a subsidiary of the Enel Group (“Enel”). Enel is a global power business with more than 61 million customers and a net installed capacity of 87.4 gigawatts (“GW”). In the United States, EGPNA is a leading owner and operator of renewable energy plants, with over 100 projects operating and under development in 23 states. EGPNA’s current operating capacity exceeds 2.8 GW. These facilities span the breadth of renewable energy generation, from renewable hydropower, to wind, geothermal, and solar energy. EGPNA is constructing and will operate the 150 megawatt (“MW”) Lindahl Wind Project in Williams County, North Dakota, which will provide electricity to Basin Electric Power Cooperative pursuant to a Power Purchase Agreement.

Tradewind, based in Lenexa, Kansas, is one of the largest independent wind and solar project development companies in the United States. Founded in 2003, the company has grown from its three co-founders to more than 100 employees specializing in a variety of areas, including meteorology, geographic information systems, environmental permitting, real estate, and engineering. Tradewind has 3 GW of contracted and operating projects, totaling more than \$5 billion in project capital investment, and is actively developing over 6 GW of wind assets and 3 GW of solar assets across the country. Tradewind is financially partnered with EGPNA and, in coordination with EGPNA, developed the Lindahl Wind Project.

I. Comments Regarding Proposed N.D.A.C. § 69-06-08-01 (Case No. PU-16-775).

Proposed N.D.A.C. § 69-06-08-01(6)(n) would make a commitment to install a Federal Aviation Administration (“FAA”) approved aircraft detection and lighting system a policy criteria for wind energy conversion facilities. To our knowledge, there are only two suppliers of FAA-approved aviation detection and lighting systems, which is likely to affect the availability

of the systems if their use becomes widespread. As a result, until the systems are more readily available, it may be difficult to secure an FAA-approved system – including qualified personnel to install, maintain, and monitor the system – or it may be financially untenable to do so.

Our proposed revisions are intended to address these concerns. Adding the phrase “to use commercially reasonable efforts” after “commitment” aligns with provisions in recent Commission orders addressing aviation detection and lighting system commitments made by wind developers (*see* Finding of Fact No. 46 in the June 22, 2016 Findings of Fact, Conclusions of Law and Order (Case No. PU-16-123); Finding of Fact No. 46 in the July 6, 2016 Findings of Fact, Conclusions of Law and Order (Case No. PU-16-42); Order Paragraph No. 13 in the December 7, 2016 Findings of Fact, Conclusions of Law and Order (Case No. PU-16-539)). In addition, we propose making the commitment “subject to the availability of a FAA-approved system” to account for the potential limited supply of approved systems.

II. Comments Regarding Proposed N.D.A.C. Ch. 69-09-09 (Case No. PU-17-23).

A. EGPNA/Tradewind Proposed N.D.A.C. § 69-09-09-01(5).

Proposed N.D.A.C. § 69-09-09-08 would require financial assurance for decommissioning to be provided prior to the commencement of construction, but the term “construction” is not defined. We propose adding a definition of construction as N.D.A.C. § 69-09-09-01(5). The proposed definition is based on the relevant portion of the definition of construction in N.D.C.C. § 49-22-03.

B. N.D.A.C. § 69-09-09-01(5)(b).

In proposed N.D.A.C. § 69-09-09-01(5)(b), the definition of “Decommissioning Plan” includes “a decommissioning cost excluding salvage value of the turbines and equipment.” We propose omitting the phrase “excluding salvage value of the turbines and equipment.” Doing so aligns the provision with proposed N.D.A.C. § 69-09-09-06(3)(b), which states that “a decommissioning cost estimate for a facility” may include a decommissioning cost estimate with salvage value and a decommissioning cost estimate without salvage value. As is, the proposed limitation of the decommissioning cost estimate in N.D.A.C. § 69-09-09-01(5)(b) seems to take away the ability the Commission currently has to consider decommissioning costs both with and without salvage value when determining decommissioning financial assurance for a wind energy conversion facility. We request that the Commission retain the flexibility it currently has to consider both types of decommissioning cost estimates when setting decommissioning financial assurance.

C. N.D.A.C. § 69-09-09-01(8).

In proposed N.D.A.C. § 69-09-09-01(8), the definition of “Owner” is “a person who has acquired a certificate of site compatibility . . .” Since a certificate of site compatibility may be transferred from one entity to another (*see* N.D.C.C. § 49-22-07(1)), we propose changing “has acquired” to “holds” to ensure the definition is broad enough to cover both initial permittees and those that acquire a certificate of site compatibility through transfer.

D. N.D.A.C. § 69-09-09-03(1).

Proposed N.D.A.C. § 69-09-09-03(1) requires wind energy conversion facility owners to file a certificate of operation by February fifteenth of each year. Many large utilities and wind development companies have facilities and associated filing requirements in multiple jurisdictions, as well as other federal and state reporting requirements, early each year. Therefore, we propose changing the annual certificate of operation filing deadline to March thirtieth (end of the First Quarter) to allow more time to prepare and submit the filing.

E. N.D.A.C. § 69-09-09-03(3).

Proposed N.D.A.C. § 69-09-09-03(3) presumes a facility is at the end of its useful life if its annual capacity factor is less than ten percent. Instead, we propose retaining the language in the current N.D.A.C. § 69-09-09-03, which presumes a facility is at the end of its useful life if it “generates no electricity for a continuing period of twenty-four months.” Based on comments made during the Commission’s working sessions on the proposed rules, we understand that the ten percent annual capacity factor is an arbitrary number. In addition, utilizing a ten percent annual capacity factor does not account for changing market conditions or catastrophic events, which may result in a facility falling below the ten percent annual capacity threshold. For example, replacing a main transformer at the point where a facility connects to the substation could result in a facility-wide outage of more than a year. For these reasons, we believe the current end of useful life presumption should be retained.

F. N.D.A.C. § 69-09-09-04.

We propose minor revisions to proposed N.D.A.C. § 69-09-09-04. The most notable revision is to tie the triggers for decommissioning – i.e., when a facility is abandoned or reaches the end of its useful life – to N.D.A.C. § 69-09-09-03, which is in the current rule.

G. N.D.A.C. §§ 69-09-09-06 and 69-09-09-08.

Our proposed revisions to N.D.A.C. §§ 69-09-09-06 and 69-09-09-08 are interconnected, so we will discuss the revisions together. Summaries of our revisions and supporting rationale are provided below.

1. Summary of Proposed Revisions.

In Section 69-09-09-03, two types of decommissioning triggers are identified: (1) abandonment of a facility (where construction is started but not completed); and (2) end of useful life (where the facility ceases operations). In Section 69-09-09-08, the Commission proposes requiring that financial assurance be posted prior to construction and remain in place throughout the life of the facility so the Commission has funds available to complete decommissioning in either instance. The amount of the financial assurance would be based on a Commission-approved decommissioning plan, which must also be submitted and approved prior to construction.

Our proposed revisions to Sections 69-09-09-06 and 69-09-09-08 would require owners to provide two types of financial assurance. First, we propose that, upon construction of a facility, an owner provide financial assurance equal to ten percent of the estimated cost of construction of the facility, which could be used to decommission the facility if it is abandoned (*see* revised Section 69-09-09-08(1)). With Commission approval, local bonding requirements could be considered part of the required financial assurance. Following completion of construction, the financial assurance would be returned or released.

Second, we propose that, upon commencement of commercial operation, an owner would provide financial assurance, to be used if needed to decommission the facility once it reaches the end of its useful life, in the following manner: twenty-five percent of the total decommissioning cost upon commencement of operation; an additional twenty-five percent of the total decommissioning cost five years after the date of commencement of commercial operation; and the remaining fifty percent ten years after the date of commencement of commercial operation (*see* revised Section 69-09-09-08(2)). The total amount of the financial assurance would be based on the owner's Commission-approved decommissioning cost estimate and detailed plan of financial assurance (*see* revised Sections 69-09-09-06(2) and 69-09-09-08(2)). Following completion of decommissioning of the facility by the owner, the financial assurance would be returned or released to the owner (*see* revised Section 69-09-09-08(2)).

With respect to the decommissioning plan, we propose that it continue to be filed prior to operation of the facility, and updated at year ten of operation and every five years thereafter (*see* revised Section 69-09-09-06(1) and (4)). The Commission would have sixty days from the date the initial decommissioning plan is deemed complete to make a determination regarding the owner's decommissioning cost estimate and detailed plan of financial assurance, and that determination would set the amount and form of financial assurance required for end of useful life decommissioning (*see* revised Sections 69-09-09-06(2) and 69-09-09-08(2)). Within sixty days of the filing of an updated decommissioning plan, the Commission could order additional financial assurance to be provided if the existing financial assurance is no longer sufficient to cover decommissioning (*see* revised Sections 69-09-09-06(4) and 69-09-09-08(6)).

2. Rationale for Proposed Revisions.

Requiring financial assurance during construction will ensure that sufficient funds are available to restore a site if construction is never completed. Setting the amount at ten percent of the cost of construction equates to just over \$100,000 per turbine, which exceeds our estimate of the cost of full facility decommissioning, without considering salvage value. *See, e.g.*, Lindahl Wind Project's Decommissioning Plan (Case No. PU-17-021) (per turbine decommissioning cost, without salvage value, estimated to be \$94,000). In addition, establishing a set formula for the pre-construction financial assurance, rather than basing the amount on a Commission-approved decommissioning plan, addresses our concerns with preparing a decommissioning plan (which is dependent upon final turbine selection) and obtaining Commission approval prior to construction. Returning or releasing the financial assurance once the facility is operational allows the funds to be used for other investments.

Once the facility is operational, it has a life expectancy of at least 25-30. Therefore, requiring decommissioning cost financial assurance to be provided on an incremental schedule beginning at the commencement of operation, with full financial assurance provided ten years after commencing operation, ensures that full decommissioning funding is available at least 15-20 years before the end of the facility's useful life. Further, the Commission's ability to review and require additional financial assurance at year ten and every five years thereafter ensures that adjustments to the financial assurance can be made, as necessary.

We understand there may be concerns that a facility will begin commercial operations, but stop operating before year ten. We have discussed this concern with the American Wind Energy Association, Wind on the Wires, commercial institutions that finance wind projects, and others in the wind energy industry. In all of our discussions, as well as our own research, we have not identified any utility scale wind facilities (i.e., 50 MW or greater in size) that have been permanently retired and not been decommissioned. Additionally, we have not identified any instances where a facility stopped operating because the owner went bankrupt. Rather, since operating wind facilities – which typically have long-term power contracts – are valuable assets, such facilities have been acquired and operated by others.

Further, requiring wind companies to provide the full amount of decommissioning financial assurance prior to construction and to maintain it throughout the life of the project would place an unnecessary economic burden on the companies and consumers. The requirement adds to the cost of developing a wind project in North Dakota, particularly when compared to other states that do not require financial assurance until several years after the facility is operational. Moreover, the added cost will be passed on to off-takers, which are typically utilities and their members or ratepayers.

We believe our proposal sufficiently and reasonably addresses the risk that the Commission may need to complete decommissioning if a wind energy conversion facility is abandoned or reaches the end of its useful life, without imposing unnecessary costs on wind companies, utilities, and consumers.

Proposed Revisions to Rules

CHAPTER 69-06-08

CRITERIA

Section

69-06-08-01 Energy Conversion Facility Siting Criteria

69-06-08-02 Transmission Facility Corridor and Route Criteria

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

The following criteria must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process.

1. **Exclusion areas.** The following geographical areas must be excluded in the consideration of a site for an energy conversion facility.
 - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; historic districts; monuments; wilderness areas; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
 - b. Designated or registered state: parks; forests; forest management lands; historic sites; monuments; historical markers; archaeological sites; grasslands; wild, scenic, or recreational rivers; game refuges; game management areas; management areas; and nature preserves.
 - c. County parks and recreational areas; municipal parks; parks owned or administered by other governmental subdivisions; hardwood draws; and enrolled woodlands.
 - d. Prime farmland and unique farmland, as defined by the land inventory and monitoring division of the soil conservation service, United States department of agriculture, in 7 C.F.R. part 657; provided, however, that if the commission finds that the prime farmland and unique farmland that will be removed from use for the

life of the facility is of such small acreage as to be of negligible impact on agricultural productions, this exclusion does not apply.

- e. Irrigated land.
- f. Areas critical to the life stages of threatened or endangered animal or plant species.
- g. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
- h. Areas within one thousand two hundred feet of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.

2. **Additional exclusion areas for wind energy conversion facilities.** The following geographical areas must be excluded in the consideration of a site for a wind energy conversion facility:

- a. Areas less than:
 - (1) One and one-tenth times the height of the turbine from interstate or state roadway right of way;
 - (2) One and one-tenth times the height of the turbine plus seventy-five feet from the centerline of any county or maintained township roadway;
 - (3) One and one-tenth times the height of the turbine from any railroad right of way;
 - (4) One and one-tenth times the height of the turbine from a one hundred fifteen kilovolt or higher transmission line; and
 - (5) One and one-tenth times the height of the turbine from the property line of a nonparticipating landowner, unless a

variance is granted. A variance may be granted if an authorized representative or agent of the permittee and affected parties with associated wind rights file a written agreement expressing all parties' support for a variance to reduce the setback requirement in this subsection. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in North Dakota Century Code chapter 17-04.

3. **Avoidance areas.** The following geographical areas may not be approved as a site for an energy conversion facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative sites. Economic considerations alone will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area must be included. Natural screening may be considered in determining the width of the buffer zone.
 - a. Historical resources which are not designated as exclusion areas.
 - b. Areas within the city limits of a city or the boundaries of a military installation.
 - c. Areas within known floodplains as defined by the geographical boundaries of the hundred-year flood.
 - d. Areas that are geologically unstable.
 - e. Woodlands and wetlands.

- f. Areas of recreational significance which are not designated as exclusion areas.
4. **Additional avoidance areas for wind energy conversion facilities.** A wind energy conversion facility site must not include a geographic area where, due to operation of the facility, the sound levels within one hundred feet of an inhabited residence or a community building will exceed fifty dBA. The sound level avoidance area criteria may be waived in writing by the owner of the occupied residence or the community building.
5. **Selection criteria.** A site may be approved in an area only when it is demonstrated to the commission by the applicant that any significant adverse effects resulting from the location, construction, and operation of the facility in that area as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. The effects to be considered include:
- a. The impact upon agriculture:
 - (1) Agricultural production.
 - (2) Family farms and ranches.
 - (3) Land which the owner demonstrates has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.
 - (4) Surface drainage patterns and ground water flow patterns.
 - (5) The agricultural quality of the cropland.
 - b. The impact upon the availability and adequacy of:
 - (1) Law enforcement.

- (2) School systems and education programs.
- (3) Governmental services and facilities.
- (4) General and mental health care facilities.
- (5) Recreational programs and facilities.
- (6) Transportation facilities and networks.
- (7) Retail service facilities.
- (8) Utility services.

c. The impact upon:

- (1) Local institutions.
- (2) Noise or light-sensitive land uses.
- (3) Rural residences and businesses.
- (4) Aquifers.
- (5) Human health and safety.
- (6) Animal health and safety.
- (7) Plant life.
- (8) Temporary and permanent housing.
- (9) Temporary and permanent skilled and unskilled labor.

d. The cumulative effects of the location of the facility in relation to existing and planned facilities and other industrial development.

6. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies

and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits. The benefits to be considered include:

- a. Recycling of the conversion byproducts and effluents.
- b. Energy conservation through location, process, and design.
- c. Training and utilization of available labor in this state for the general and specialized skills required.
- d. Use of a primary energy source or raw material located within the state.
- e. Not relocating residents.
- f. The dedication of an area adjacent to the facility to land uses such as recreation, agriculture, or wildlife management.
- g. Economies of construction and operation.
- h. Secondary uses of appropriate associated facilities for recreation and the enhancement of wildlife.
- i. Use of citizen coordinating committees.
- j. A commitment of a portion of the energy produced for use in this state.
- k. Labor relations.
- l. The coordination of facilities.
- m. Monitoring of impacts.

- n. For wind energy conversion facilities, a commitment to use commercially reasonable efforts to install an aircraft detection and lighting system s for wind energy conversion facilities subject to the availability of a Federal Aviation Administration--approved system for the facilitya.

History: Amended effective August 1, 1979; July 1, 2006; April 1, 2013; _____

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1

69-09-02-35. Installation and maintenance – Conformance to National Electrical Safety Code.

The installation and maintenance of electric supply and communication lines shall conform to rules and regulations established in the ~~2012~~ 2017 edition of the National Electrical Safety Code which is adopted by reference. Copies of these regulations may be obtained from the public service commission, state capitol, Bismarck, North Dakota 58505-0480.

History: Amended effective September 1, 1984; January 1, 1988; December 1, 1990; August 1, 1993; July 1, 1997; March 1, 2003; July 1, 2008; April 1, 2013; _____

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-02-04, 49-20-02

CHAPTER 69-09-09

WIND ~~TURBINE~~ FACILITY DECOMMISSIONING

Section

- 69-09-09-01 Definitions
- 69-09-09-02 Decommissioning Responsibility
- 69-09-09-03 Abandonment and Useful Life – Certificate of Operation
- 06-09-09-04 Decommissioning Period
- 69-09-09-05 Decommissioning Requirements
- 06-09-09-06 Decommissioning Plan
- 06-09-09-07 Existing Facilities
- 69-09-09-08 Financial Assurance
- 06-09-09-09 Failure to Decommission

69-09-09-01. Definitions.

1. “Capacity Factor” means the ratio of the actual output generated by a facility for a period of time, to the output that could be produced at the nameplate generating capacity of that facility.
2. “Certificate of Operation” means an affidavit executed by the Owner certifying to the commission a facility’s:
 - a. Nameplate generating capacity;
 - b. Annual capacity factor;
 - c. Annual MWh output; and
 - d. Monthly MWh output.
3. “Commercial wind energy conversion facility” means a wind energy conversion facility of with one or more wind turbines that has a total

~~nameplate generating capacity~~ equal to or greater than five hundred kilowatts in total ~~nameplate generating capacity~~.

4. “Commission” means the public service commission.

4.5. “Construction” means any clearing of land, excavation, or other action that would affect the environment of the site of a facility, but does not include activities incident to preliminary engineering or environmental studies.

5.6. “Decommissioning Plan” means a plan filed with the commission that includes:

- a. The anticipated life of the facility;
- b. A decommissioning cost estimate ~~excluding salvage value of the turbines and equipment;~~
- c. A description of the method used for determining the decommissioning cost estimate;
- d. The anticipated manner in which the project will be decommissioned;
- e. A description of any expected effects on present and future natural resource development; and
- f. A detailed plan of financial assurance sufficient to ensure decommissioning.

6.7. “Existing facility” means a facility for which a certificate of site compatibility has been issued prior to July 1, 2017.

7.8. “Facility” means a commercial wind energy conversion facility including wind turbines, turbine towers, tower bases, blades, pad transformers, collector lines, substations, facility access roads, meteorology towers, and

all areas disturbed by the construction, operation, maintenance or decommissioning activities.

8-9. "Owner" means a person who ~~has acquired~~ holds a certificate of site compatibility pursuant to North Dakota Century Code chapter 49-22 for a facility.

~~3. "Wind turbine" means a wind turbine of equal to or greater than five hundred kilowatts in total nameplate generating capacity~~

History: Effective October 1, 2008; _____

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

Law Implemented: NDCC 49-02-27

69-09-09-02. Decommissioning responsibility.

~~The owner or operator of a commercial wind energy conversion facility is responsible for decommissioning that the facility and for all costs associated with decommissioning that facility and associated facilities.~~

History: Effective October 1, 2008; _____

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

Law Implemented: NDCC 49-02-27

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

~~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 continuing period of twenty four 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.~~

1. After construction of a facility is complete, the owner shall annually file a certificate of operation with the commission for that facility by ~~February~~ March thirtieth fifteenth of each year.

2. If no energy is generated by one or more wind turbines for the time period specified in the certificate of operation, a written explanation for the non-generating wind turbines must accompany the certificate of operation.
3. A facility is presumed to be at the end of its useful life if ~~its annual capacity factor is less than ten percent~~ it generates no electricity for a period of ~~twenty-four consecutive months~~.
4. A facility is presumed to be abandoned if after commencement of construction and prior to completion, a period of twenty-four consecutive months has passed with no construction.
5. A presumption under this section may be rebutted by filing a plan for commission approval outlining the steps and schedule for continuing construction or operation of the facility or wind turbine.

History: Effective October 1, 2008; _____

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

Law Implemented: NDCC 49-02-27

69-09-09-04. Decommissioning period.

The facility owner or operator shall begin decommissioning a commercial wind energy conversion facility or wind turbine within eight months after a facility is the time the facility ~~abandonment~~ or turbine reaches reaches the end of its its useful life, as determined by section 69-09-09-03 as determined in section ~~69-09-09-03~~. Decommissioning must be completed within ~~eighteen~~ twenty-four months after the facility ~~abandonment~~ or turbine reaches the end of its useful life unless the commission approves a plan specifying the steps and schedules to return the facility to operation.

History: Effective October 1, 2008; _____

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

Law Implemented: NDCC 49-02-27

69-09-09-05. ~~Decommissioning~~Decommissioning requirements.

~~Decommissioning and site restoration includes: 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.~~

1. ~~dismantling~~ Dismantling and removal of all towers, turbine generators, transformers, and overhead cables;
2. ~~removal~~ Removal of underground cables to a depth of twenty-four [60.96 centimeters] inches;
3. ~~removal~~ Removal of foundations, buildings, and ancillary equipment to a depth of:
 - a. ~~three~~ Three feet [91.44 centimeters] for facilities constructed before July 1, 2017; and
 - b. Four feet [121.92 centimeters] for facilities constructed on or after July 1, 2017;
4. Site restoration and reclamation to the approximate original topography that existed prior to construction of the facility with topsoil respread over the disturbed areas at a depth similar to that in existence prior to the disturbance; and

5. Grading and topsoiling of areas disturbed by the facility, and reseeding according to natural resource conservation service recommendations, unless the commission approves an owner 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.

History: Effective October 1, 2008; _____

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

Law Implemented: NDCC 49-02-27

69-09-09-06. Decommissioning plan.

1. Prior to ~~the~~ commencement of operation ~~construction~~operation of a commercial wind energy conversion facility or wind turbine, the facility or turbine owner or operator shall file a decommissioning plan with the ~~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~~ that describes any expected effect on present and future natural resource development, and 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 financial assurance. 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.
2. When the decommissioning plan is filed with the commission pursuant to section 69-09-09-06(1), the decommissioning cost estimate and the detailed plan of financial assurance sufficient to ensure decommissioning are subject to commission approval. The cCommission shall take-make a determination on the decommissioning cost estimate and the detailed plan of financial assurance decommissioning plan no later than sixty days six

months after the decommissioning plan is deemed complete by the commission.

3. A decommissioning cost estimate for a facility:

a. Must be made be a professional engineer licensed by the State of North Dakota and at the owner's expense;

b. May include a decommissioning cost estimate including salvage value in addition to the decommissioning cost estimate excluding salvage value:

~~c. Must be updated and filed with the commission ten years after initial approval of the decommissioning plan, and then continue to be updated and filed with the commission every five years until decommissioning is complete.~~

~~4. The commission may at any time require the owner to file an updated decommissioning plan.~~

~~4. The decommissioning plan must be updated and filed with the commission ten years after the date of commencement of commercial operation of the facility, and then continue to be updated and filed with the commission every five years thereafter until decommissioning is complete.~~

History: Effective October 1, 2008; amended effective October 1, 2010; _____

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

Law Implemented: NDCC 49-02-27

69-09-09-07. Existing facilities.

~~Owners The owner and operators of an existing commercial wind energy conversion facilities facility shall file with the commission the information required in section 69-09-09-06 within one year after July 1, 2008 provide financial assurance after the tenth year of operation sufficient to complete decommissioning.~~

History: Effective October 1, 2008; _____
General Authority: NDCC 28-32-02, 49-02-27
Law Implemented: NDCC 49-02-27

69-09-09-08. Financial assurance.

~~After the tenth 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 Standard 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.~~

1. ~~Prior to the~~Upon commencement of construction of a facility, the owner shall provide financial assurance equal to ten percent of the estimated cost of construction of the facility that may be used to decommission the facility in the event it is abandoned. With commission approval, bonding requirements at the county or township level may be considered part of the required financial assurance. Within sixty days of receipt of written notice from the owner that the facility is commercially operational, the commission shall return or release said financial assurance provided to the commission.

1-2. ~~Following commission approval of the decommissioning cost and detailed plan of financial assurance in the decommissioning plan pursuant to section 69-09-09-06(2), the owner shall provide financial assurance that is acceptable to the commission~~ to ensure complete decommissioning of the

facility at the end of its useful life in the following manner: twenty-five percent of the total decommissioning cost upon commencement of commercial operation; an additional twenty-five percent of the total decommissioning cost five years after the date of commencement of commercial operation; and the remaining fifty percent of the total decommissioning cost ten years after the date of commencement of commercial operation. Within sixty days of completion of decommissioning, the commission shall return or release said financial assurance.

2.3. Financial assurance may be in the form of a performance bond either as, or a combination of, a surety bond, irrevocable letter of credit, self-guarantee, parent guarantee, or another form of financial assurance that is acceptable to the commission to cover the anticipated costs of decommissioning.

~~3. The commission may allow the owner to provide financial assurance through an incremental bond schedule. To be given consideration, an incremental bond schedule must include an initial bond increment prior to commencement of construction.~~

4. The commission may accept a self-guarantee or parent guarantee if:
- a. The owner has been in continuous operation as a business entity for five years preceding the application. The commission may accept a self-guarantee with less than five years of continuous operation if guaranteed with a parent guarantee and the parent company has been in operation for at least five years preceding the application; and
 - b. The owner or parent guarantor has or is at least one of the following:

- (1) 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, 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;
 - (2) 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 liability of 1.2 or greater; or
 - (3) An electric public utility as defined by N.D.C.C. § 49-03-01.5(2).
- c. The total amount of an outstanding self-guarantee for decommissioning may not exceed twenty-five percent of the owner’s tangible net worth in the United States.
 - d. The combined total amount of an outstanding self-guarantee and parent guarantee for decommissioning may not exceed twenty-five percent of the owner’s and parent guarantor’s combined tangible net worth in the United States.
5. If any financial assurance is modified, cancelled, suspended or revoked, the Owner shall immediately notify the commission and provide financial assurance as soon as practicable sufficient to ensure complete decommissioning.
 6. Within sixty (60) days of an owner filing an updated decommissioning plan pursuant to section 69-09-09-06(4), the commission may order an owner to provide ~~require~~ additional financial assurance up ~~on~~ a finding by the commission that the ~~then~~ current financial assurance for a facility is no longer sufficient to ensure complete decommissioning.

History: Effective October 1, 2008; _____
General Authority: NDCC 28-32-02, 49-02-27
Law Implemented: NDCC 49-02-27

69-09-09-09. 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~~ action to require forfeiture of the ~~a~~ 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.

History: Effective October 1, 2008;
General Authority: NDCC 28-32-02, 49-02-27
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