

-Info-Public Service Commission

From: Chris Kunkle <CKunkle@windonthewires.org>
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To: -Info-Public Service Commission
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Subject: Wind on the Wires Written Comments on PU-17-023
Attachments: WOW - PU17-023 Decommissioning Comments.pdf

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Hello:

Please find attached written comments from Wind on the Wires on the North Dakota Public Service Commission's proposed rulemaking on decommissioning rules for wind facilities (PU-17-023).

Please let me know if you have any questions.

Thank you,



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Comments regarding proposed rulemaking



Comments of Wind on the Wires to the North Dakota Public Service Commission on Proposed Rulemaking on Decommissioning of Wind Facilities (PU-17-23)

Thank you for the opportunity to provide formal comments to the North Dakota Public Service Commission (PSC) regarding its proposal to modify Section 69-06-08-01, the energy conversion facility siting criteria, and Chapter 69-09-09, the state's decommissioning standards for wind energy facilities. Wind on the Wires is a regional organization focused on the policy, regulatory, and technical issues affecting the clean energy industry in the Midwest. Our members include private developers of large-scale wind and solar projects, turbine manufacturers, construction companies, and other businesses that supply goods and services to this industry. We hope that our regional perspective will be useful as the PSC considers changing its decommissioning rules.

With over 2740 MW installed and an additional 750 MW under construction or in advanced stages of development, North Dakota is a leader in wind energy development. The majority of this development has occurred in the last 8 years. The state's stable regulatory climate, all-of-the-above approach to energy, world-class wind resource, and access to transmission has attracted significant investment in wind energy, resulting in billions of dollars in economic activity, millions in payments to host landowners and rural communities, and thousands of good-paying jobs. As the PSC considers substantive changes to the rules affecting wind development, we encourage you to continue the state's reputation as friendly towards business of all kinds, including the wind industry, which now employs over 100,000 Americans.

We applaud the PSC's work to address concerns raised by local units of government and host landowners concerning the decommissioning of wind turbines in the state. Maintaining and growing public support for wind energy is critical for our industry and the prospects of a wind farm being abandoned can be daunting. Accordingly, we seek to ensure that the interests of landowners and local governments are met, while also maintaining fair and competitive rules for the development of wind energy.

There are currently 82,213MW of installed wind capacity across the country. To our knowledge, very few projects have been fully decommissioned and the vast majority of inactive turbines that are reported in the U.S. are decades old. Wind projects utilizing state-of-the-art technology – especially those located in the wind-rich Midwest – are even less likely to be abandoned. In fact, we are not aware of a single abandoned wind project across our nine-state footprint. Due to the value of these facilities and the seemingly growing interest in lower-carbon electricity from consumers and businesses, the demand for both existing and new wind assets appears sure to grow, not wane. Across our region, we have seen tremendous interest from wind companies and other stakeholders in repowering wind facilities that were built in the late 1990s and early 2000s, rather than retiring and removing them. Given the significant improvements in turbine technology, repowering projects are proving to be a cost-effective opportunity for increasing output and extending the life of these assets, to the benefit of landowners and taxpayers in rural communities.

Wind on the Wires is also unaware of a single project that was abandoned as a result of a company's financial woes. However, there are several instances of a wind facility being sold to a more financially stable entity, ensuring uninterrupted and continued operation of that asset. The likelihood of abandonment, given industry trends, is very low and the state's decommissioning rules should reflect that market reality.

Unfortunately, there are multiple provisions in the current PSC proposal that, if implemented, would prove to be unduly burdensome to the wind industry. There are also several areas in the proposal that we believe need additional clarification. We hope our feedback and input can help the PSC craft rules that allow for continued growth of the state's vibrant wind sector, while also ensuring that landowners and local units of government are protected in the unlikely event of abandonment of a wind farm.

We address these concerns individually and in the order in which they appear in the PSC's proposal:

69-06-08-01(5): Selection Criteria – Light-Sensitive Land Uses

The PSC proposes to add the impact on "light-sensitive land uses" to the criteria to be considered as applicants demonstrate that any significant adverse effects from projects are minimized. Based on our comments below on Section 69-06-08-01(6), we believe this proposal is unnecessary. However, if this provision is kept, we seek additional clarification from the PSC on the definition of "light-sensitive land uses".

69-06-08-01(6): Policy Criteria – Lighting Systems

We encourage the PSC to allow other technologies designed to mitigate lighting impacts to be considered in this section, rather than only aircraft detection systems. For example, a new technology called "LIDS™" dims the intensity level of lights on a wind farm based on surrounding weather and visibility. This technology is being tested by the Federal Aviation Administration this spring in Oklahoma. By allowing for other FAA-approved technologies, we believe this minor change would provide industry with additional flexibility, while also achieving the same level of lighting mitigation. Should the PSC seek to modify this provision to allow for this flexibility, they could require a commitment to install light mitigating solutions subject to the approval of and documented in the latest FAA standard 70/7460-1.

Also, in protecting the need for a streamlined regulatory approach, we suggest the PSC modify the current language to allow a project that has not yet obtained full FAA approval to obtain a site permit. The FAA approval process can be somewhat fluid until and perhaps even through early stages of construction. As written, there is concern that if the FAA denies a particular lighting mitigation mechanism, the project would, at best, need to amend their permit, and at worst, be denied their permit. We want to preserve flexibility, while ensuring construction and operation occur in a timely fashion.

69-09-09-01.2: Certificate of Operation

We understand the need for reporting to the PSC to ensure turbines are not abandoned but we caution that developing a public report that aggregates commercially sensitive information could expose wind companies to a competitive disadvantage. One potential solution is to require that

the report be confidential, thus giving the PSC the information they need, while also protecting companies from exposing competitive information. Alternatively, the PSC could require the wind company to provide only easily attainable information, such as nameplate capacity and annual megawatt-hour output, then require an explanation of why any turbines are not operational.

69-09-09-01.5b: Decommissioning Cost Estimate

This cost estimate should be based on present day dollars. We believe this to be the intent of the PSC's proposal, although we seek to clarify and confirm this point.

Wind on the Wires also believes the PSC should consider salvage value of turbines and equipment in the estimated cost of decommissioning. Striking the language excluding the consideration of salvage value would better align the rules with the provision proposed in 69-09-09-06(3)(b), which allows the PSC to include salvage value when determining decommissioning costs. We seek to ensure the PSC has the flexibility to consider decommissioning costs both with and without considering salvage value.

69-09-09-03.3: Definition of "End of Useful Life"

Currently, the proposal states a facility is "presumed to be at the end of its useful life if its annual capacity factor is less than ten percent." We contend that a ten percent capacity factor is an arbitrary number; therefore we believe it can be improved. Though unlikely, there are many factors for why a wind project could have a low capacity factor, including factors beyond the control of the wind company. The PSC could use the same timeline for defining abandonment for defining the end of useful life, which is currently twenty-four consecutive months without generation.

69-09-09-06.1: Decommissioning Plan Timeline

This provision is currently a major concern from our perspective. As written, it appears that a wind company may not begin construction until the PSC has approved their decommissioning plan, which could take up to six months. North Dakota's streamlined regulatory approach and lack of bureaucratic red tape makes the state attractive for investment. However, this provision moves in the opposite direction and will have a considerably negative affect on the future of development in the state. The PSC should ensure that the decommissioning plan is considered simultaneously with the site compatibility permit, instead of handling the two approvals in series, thus extending the timeline for construction.

We still have concerns about the proposal even if these two permits are considered jointly. We believe requiring a decommissioning plan at this time will result in either an unnecessary delay of project construction or a series of estimates that cannot be expected to be reasonably accurate, due to the lengthy lead time. For example, final turbine model selection is often made after receiving a site permit from the ND PSC and the specifics of a decommissioning plan may be contingent on this type of information.

Tightening the six-month timeline would also represent an improvement from our perspective.

69-09-09-08: Financial Assurance

This provision is the single most important to us, as it results in the greatest economic impact on the wind sector. Wind on the Wires believes there is an opportunity to improve the decommissioning rules in a way that protects the interests and rights of landowners without imposing an excessive burden on wind companies. However, the current proposal, which mandates the entirety of the financial guarantee to be placed before commencement of construction, is a blunt instrument. Instead, we encourage the PSC to work with industry in good faith to solve the issue at hand using a more precise approach.

For example, we understand that the PSC is concerned about the prospect of a wind facility prematurely commencing construction in order to qualify for the federal Production Tax Credit, then being abandoned, leaving landowners and local jurisdictions to bear the costs of decommissioning the preliminary construction work. Rather than requiring the wind company to post a financial assurance for the entire proposed project up front, perhaps the PSC could allow an incremental or phased-in approach. A company could post, for example, a portion of the decommissioning costs upon the commencement of construction, a supplemental portion by the date of commercial operation, and the remainder at some point later during operation. We believe this approach recognizes that the decommissioning costs for early-stage abandonment would be far lower than the costs for decommissioning a full project.

We also seek to ensure that financial assurances are not double counted. For example, different levels of government with taxing authority can also potentially impose a bond requirement. Therefore, we encourage the PSC to consider local bonding requirements as part of the total required financial assurance.

We also seek clarification from the PSC about the definition of the commencement of construction. For example, this could be defined several different ways, including the beginning of physical work or when the notice to proceed is given to an EPC contractor.

Lastly, Wind on the Wires does support modifying the proposed requirement of an "A" bond rating to allow the PSC to consider a corporate/parental guarantee of "BBB-" as well. We defer to the comments filed by industry regarding the specifics of the financial mechanisms that are most viable, however we reiterate that flexibility is critical.

Conclusion

Based on recent trends in pricing, announcements from utilities and wind companies, as well as increasing demand from residential, commercial and industrial customers for low-cost, clean energy, we anticipate continued development of wind power in our region. Rather than abandonment, we see example after example of companies reinvesting in existing wind farms to ensure continued and improved operation. As you are aware, North Dakota's electric grid is not insulated from the broader trends occurring across the Midwest. Numerous factors must align for a state to reap the benefits of this trend, not the least of which is a stable and competitive state regulatory process. If a state's permitting regime becomes excessively onerous relative to neighboring states, there is a clear risk of lost economic development, job creation, and new tax revenue. By maintaining a balanced set of rules for the wind industry, we can ensure that North Dakota is well-positioned to benefit from the continued growth of wind power. We believe our comments on the PSC's proposed decommissioning rule changes will help achieve this goal.