

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No. PU-17-23

STAFF TESTIMONY
February 27, 2017

My name is Jerry Lein. I am employed as a Public Utility Analyst with the Public Service Commission. The purpose of my testimony is to explain and provide support for changes proposed to the Commission's administrative rules regarding wind turbine decommissioning in chapter 69-09-09 of the North Dakota Administrative Code.

The Commission initially proposed decommissioning rules in 2007 and they became effective on October 1, 2008. Over the last 8 to 9 years, the State has seen a substantial number of commercial wind energy conversion facilities begin operation. As wind generation continues to expand in sheer numbers across the state and installations grow in size and scale, the costs and consequences of failed or improper decommissioning have grown to be a cause for concern.

The proposed rules are intended to strengthen the method of ensuring that funds will be available for decommissioning and restoration throughout the life of the project, heighten decommissioning requirements for future wind energy conversion facilities, and allow the Commission to more effectively monitor the methods and costs for decommissioning and restoration.

The proposed changes to the definitions under 69-09-09-01 reflect the proposed changes in the subsequent sections under chapter 69-09-09. The proposed changes to section 69-09-09-02 clarify that the owner of the site certificate is responsible for

decommissioning. The proposed rules in section 69-09-09-03 require the owner of a wind project to file annual certifications demonstrating the operation of the facility during the previous year. Subject to rebuttal, a project would be presumed to be 1) at the end of its useful life if its annual capacity factor is less than ten percent, and 2) abandoned if, after commencement and prior to completion of construction, a period of 24 months has passed with no construction. Ten percent was chosen as a conservative minimal capacity factor considering that a modern North Dakota wind project normally operates in a range of around 50 percent capacity factor.

Absent Commission approval of a plan to return the facility to operation, the proposed change to section 69-09-09-04 increases the decommissioning period allowed to complete decommissioning from 18 to 24 months. The purposes of these changes in sections 69-09-09-03 and 04 are to better define and recognize when decommissioning is required and to allow a longer decommissioning period in recognition that longer winters can sometimes hinder decommissioning.

Section 69-09-09-05 is proposed to be amended to increase the foundation, building and ancillary equipment removal depth requirements for new facilities from 3 feet to 4 feet. A review of decommissioning requirements of states, counties, and site permits indicates removal of facilities are often required to a depth of four feet.¹ The purpose is to provide further protections against possible conflicts with future surface usage.

¹ Wyo. Admin. Code § ENV IS Ch. 1 s 9; New Hampshire ADC SITE 301.08; and a sited wind facility permit in Minnesota, Minnesota Public Utility Commission Docket No. IP-6684-WS-08-1448.

Removal of foundations, buildings, and ancillary equipment for existing facilities constructed before July 1, 2017 will not be affected. Language is added to require Commission approval of an owner request to allow landowners to retain surface features such as roads, etc. The purpose is to guard against possible short-term cash windfalls at the expense of long-term productivity of the property.

Proposed changes to section 69-09-09-06 require decommissioning plans with cost estimates to be filed for Commission approval prior to construction, whereas the existing rule requires decommissioning plans to be filed for Commission review prior to operation. The Commission would have up to six months to make a determination on the decommissioning plan. This mirrors the time period for designating a site or corridor under North Dakota Century Code section 49-22-08 and while not required, it is anticipated that applicants will make the filings at the same time to have the time periods run concurrently.

With the proposed changes, decommissioning cost estimates will need to be made by a professional engineer and may include salvage value in addition to an estimate excluding salvage value. Cost estimates must be updated ten years after initial approval then every five years after that until fully decommissioned. These changes are intended to accommodate the proposed requirement for decommissioning financial assurance to be in place prior to construction.

Under existing rules, the Commission may require financial assurance for decommissioning after ten years of operation. Proposed changes to section 69-09-09-07 require a facility with a certificate of site compatibility issued prior to July 1, 2017 to provide financial assurance after the tenth year of operation. The proposed changes to

section 69-09-09-08 require financial assurance for a facility sited after July 1, 2017 to be provided prior to construction.

Changes to section 69-09-09-08 clarify and heighten the financial assurance requirements, and allow the commission to require additional financial assurance upon a finding that current financial assurance for a facility is insufficient. The proposed changes allow financial assurance to be in the form of an incremental bond schedule with an initial bond increment prior to construction. Minimum bond ratings for a self or parent guarantee to be considered is proposed to be increased to "A" as issued by Moody's Investors Service, Standard and Poor's or an equivalent rating organization. Language is added to restrict total outstanding self-guarantee to 25% of the owner's net worth in the US and to allow the Commission to accept a self or parent guarantee from the electric utilities it regulates. These self-bonding limitations would mirror those of the Office of Surface Mining (OSM) for coal mine reclamation. The purpose of these proposed changes is to ensure that only the most-sound owners are allowed to self-guarantee.

This concludes my testimony. I would be happy to answer any questions at this time. Thank you.