

March 9, 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 – Wind Decommissioning
Rulemaking
Case No. PU-17-23**

Dear Mr. Nitschke:

Red Butte Wind, LLC respectfully provides the enclosed comments regarding the rules proposed in the above-referenced rulemaking case. Electronic copies of this letter and the enclosed comments were filed today via e-mail.

If you have any questions, please let me know.

Sincerely,



MOLLIE M. SMITH

MMS/ms/60933373

Enclosures

cc: John Schuh (via e-mail – w/ encl.)
Jerry Lein (via e-mail – w/ encl.)
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34 PU-17-23 Filed 03/09/2017 Pages: 4
Comments on proposed rules
Red Butte Wind, LLC
Mollie Smith, Fredrikson&Byron, P.A.

34 PU-16-775 Filed 03/09/2017 Pages: 4
Comments on proposed rules
Red Butte Wind, LLC
Mollie Smith, Fredrikson&Byron, P.A.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Public Utilities – Wind Decommissioning
Rulemaking

Case No. PU-17-23

COMMENTS OF RED BUTTE WIND, LLC

The North Dakota Public Service Commission (“Commission”) has proposed changes to N.D.A.C. Ch. 69-09-09. Red Butte Wind, LLC (“Red Butte”) respectfully provides the following comments regarding the proposed rules.

Red Butte, an affiliate of Tenaska, Inc. (“Tenaska”), is developing the Red Butte Wind Project in Oliver County, North Dakota. Founded in 1987, Tenaska is a diversified energy company headquartered in Omaha, Nebraska, and it is one of the largest privately owned companies in North America. Tenaska has developed approximately 10,000 megawatts (“MW”) of natural gas fueled and renewable power generation projects. The company actively manages a development and acquisition pipeline for renewable and thermal generation, with approximately 2,500 MW of projects currently in advanced, pre-financing development. Tenaska currently manages operations for approximately 7,000 MW, consisting of nine power generating facilities in six states. Over its 30 year history, the company has managed operations for power generating facilities totaling 16,500 MW.

A. Comments Regarding Proposed N.D.A.C. § 69-09-09-01.

In the Commission’s proposed rules, financial assurance for decommissioning would be required prior to the commencement of construction, but the term “construction” is not defined. We propose adding the following definition of construction to N.D.A.C. § 69-09-09-01:

“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.

This definition is based on the relevant portion of the definition of construction in N.D.C.C. § 49-22-03.

B. Comments Regarding Proposed 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. 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. Moreover, utilizing a ten percent annual capacity factor does not account for potential catastrophic or force majeure type events, such as a project substation failure, which may result in a facility being non-operational for more than a year. We understand that the presumption may be rebutted with a plan approved by the Commission, but the need for approval creates uncertainty, particularly since the members of the Commission are subject to change. For these reasons, we believe the current end of useful life presumption should be retained. However, if a minimum generation threshold is required, it should include an express exception for not meeting the minimum threshold due to catastrophic or force majeure type events.

C. Comments Regarding Proposed N.D.A.C. §§ 69-09-09-06 and 69-09-09-08.

With respect to N.D.A.C. §§ 69-09-09-06 and 69-09-09-08, we support the proposal of Enel Green Power North America, Inc. (“EGPNA”) and Tradewind Energy, Inc. (“Tradewind”) that two separate types of financial assurance be provided: (1) financial assurance during construction that is based on a specified amount, and released or returned when construction is completed; and (2) incremental financial assurance starting at the commencement of commercial operations that is based on a Commission-approved decommissioning cost estimate. A separate method for determining financial assurance for the construction phase, as proposed by EGPNA and Tradewind, is important given the difficulty of estimating the cost to decommission a facility before it is built. This approach will simplify the process for the owner and the Commission to determine a reasonable amount of financial assurance to provide during construction.

With respect to the financial assurance during construction, EGPNA and Tradewind have proposed financial assurance based on a percentage of a facility’s total estimated construction cost. Another alternative would be for an owner to provide financial assurance during the construction phase based on a fixed amount per wind turbine. We believe \$60,000 per wind turbine will be sufficient to restore a site if construction is never completed. It will also act as a reasonable hedge against firms doing minimal construction work to qualify a project under Federal Production Tax Credit rules only to later abandon the project. Finally, a fixed amount per wind turbine will simplify administration of the construction phase financial assurance requirement for both the owner and the Commission.

With respect to the incremental financial assurance starting at the commencement of commercial operations, EGPNA and Tradewind have proposed requiring financial assurance in increments of twenty-five percent of the total decommissioning cost upon commencing operations, an additional twenty-five percent five years later, and the remaining fifty percent on the tenth anniversary of commencing operations. Another alternative would be for an owner to provide financial assurance equal to ten percent of the total decommissioning cost upon commencing operations, and an additional ten percent each subsequent year until the financial assurance equals the total estimated cost of decommissioning.

Besides the financial assurance revisions noted above, we propose two additional revisions to N.D.A.C. § 69-09-09-08. First, while we understand that proposed N.D.A.C. § 69-09-09-08(3) would not be necessary if a specific incremental financial assurance schedule is adopted, if it is included in the final rule, we request clarification that all forms of financial

assurance referenced in N.D.A.C. § 69-09-09-08(2) may be provided on an incremental basis. Therefore, we propose the following revised language:

The commission may allow the owner to provide financial assurance in the forms set forth in Section 69-09-09-08(2) through an incremental performance bond schedule. To be given consideration, an incremental performance bond schedule must include an initial performance bond increment due upon commencement of construction.

This proposed language would more clearly align N.D.A.C. § 69-09-09-08(2) and N.D.A.C. § 69-09-09-08(3).

Second, in N.D.A.C. § 69-09-09-08(4)(b), we request that the phrase “at least” be omitted, so the rule would read: “The owner or parent guarantor has or is one of the following: . . .” As drafted, the provision implies the Commission could impose more stringent owner or parent guarantor requirements than are set forth in the proposed rule, and we would like more certainty that compliance with the stated requirements is sufficient.