



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

Thank you for the opportunity to provide supplemental comments to the North Dakota Public Service Commission (PSC) regarding its proposal to modify Chapter 69-06-08-01, the energy conversion facility siting criteria, and Chapter 69-09-09, the state's decommissioning standards for wind energy facilities. As you are aware, 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.

During the PSC's public hearing on February 27, several questions were raised concerning wind facility decommissioning laws and processes in other states. Our comments seek to inform the PSC about the practices utilized in several key neighboring states. We underscore the importance of North Dakota maintaining rules and regulations that are comparable and competitive with neighboring states, which we outlined in our initial comments in this docket.

South Dakota

State law requires the applicant for a wind energy site permit in South Dakota to file a plan regarding the action to be taken upon the decommissioning and removal of the wind energy facility. As part of this plan, the SD Public Utilities Commission (PUC) **may** require a bond, guarantee, insurance, or other requirement to provide funding for the decommissioning and removal of a wind energy facility. The PUC shall consider various factors, including the financial condition of the applicant when determining whether and what amount of funding is required. (See SD Rules Chapter 20:10:22:33.01.) In determining an estimated cost for decommissioning, an applicant may include the salvage value of the turbine. This applies to projects above 100MW that are within the jurisdiction of the SD PUC.

For projects below 100MW, which are permitted locally, the decommissioning requirements can vary by local jurisdiction. However, the SD PUC has provided a model ordinance for consideration, which includes suggestions for decommissioning. The model ordinance recommends local jurisdictions require an applicant to provide a decommissioning plan that ensures the costs to decommission the wind facility are borne by the applicant, among other things. On the key issue of timing, the SD model ordinance recommends that the wind facility owner file a decommissioning plan **prior to the commencement of operation** of the facility, including the estimated decommissioning cost per turbine and information on how the facility owner will ensure resources are available to pay for decommissioning. On financial assurances, the model ordinance recommends that after the **tenth** year of operation, the local jurisdiction **may** require a performance bond, surety bond, letter of credit, corporate guarantee, or other form of financial assurance acceptable to the local jurisdiction. This is consistent with the current Deuel County ordinance, where several wind farms are under development, which requires the

decommissioning plan to include “a description of the manner in which the permittee will ensure that it has the financial capability to carry out these restoration requirements when they go into effect.”

Minnesota

State rules require the applicant to include a plan for decommissioning in their site permit application, which must include the anticipated life of the project, the estimated decommissioning costs in current dollars, the method for updating these costs, the method for ensuring funds are available, and the anticipated manner in which the project will be decommissioned (Minn. Rules Chapter 7854.0500 subd. 13). In determining the estimated costs to decommission the facility, the company **may** include the salvage value of the turbines. In practice, an applicant typically submits their decommissioning plan prior to their **pre-operation** compliance meeting. While the Minnesota Public Utilities Commission exercises some degree of flexibility in the decommissioning plan, in a recently issued site permit, the Commission required the wind company to provide updates to the decommissioning plan every 2.5 years, which must include information identifying all financial securities established for decommissioning. Historically, the anticipated decommissioning expenses are estimated at the time of permit issuance, **but no specific bonding or fund set-aside requirements are imposed.**

The Minnesota Department of Commerce has also recently proposed a working group on decommissioning of wind and solar projects. The workgroup will investigate best practices on decommissioning wind and solar facilities to assist the Commission in developing consistent and well-reasoned permit conditions that benefit developers, local governments, and landowners. The MN PUC approved the formation of this work group at their March 2, 2017 open meeting.

Iowa

Wind farms are permitted at the county level in Iowa and local ordinances governing setbacks, noise restrictions, and decommissioning rules can vary by jurisdiction. Therefore, a decommissioning agreement is put in place with the county or counties hosting a wind project. Several counties in Iowa that are home to wind development (i.e. Emmet, Dickinson, Marshall, Story) have ordinances that require a decommissioning plan which outlines the anticipated means and proposed financing methods adequate to remove wind structures upon becoming a discontinued use. The owner is required to remove the wind energy device at the owner’s expense within a specified time frame. Despite the Iowa’s longstanding reputation as an early-adopter and leader of wind development, we were unable to identify examples in Iowa of a county imposing decommissioning requirements as rigorous and burdensome as several of those proposed by the ND PSC in PU-17-023.

Nebraska

Nebraska has taken a somewhat unique approach to the approval and permitting of wind energy systems, as a result of the state’s longstanding reliance on exclusively publicly-owned power companies for electricity. Despite having one of the strongest wind development potentials of any state in the country, Nebraska has historically lagged other states in this area, due to this

approach and the associated regulations that discourage in-state wind energy development. The state's Power Review Board approves wind projects above 70MW, though the wind company must adhere to local zoning regulations, including regulations regarding decommissioning. Current state law directs a local jurisdiction to require this decommissioning plan, which must obligate the wind company to "bear all costs of decommissioning the privately developed renewable energy generation facility", as well as to "post a security bond or other instrument, **no later than the tenth year following commercial operation...**" (ND Revised Statute Chapter 70 Section 1014.02(1)(a)(iii))

One example of a local wind energy zoning ordinance is Custer County, in central Nebraska, which has approximately 150MW of installed wind capacity. Custer County's wind energy ordinance includes a section on decommissioning, requiring a wind company to provide a decommissioning plan "outlining the anticipated means and cost of removing WECS at the end of their serviceable life or upon being discontinued. The cost estimate shall be made by a competent party...[t]he plan shall also identify the financial resources that will be available to pay for decommissioning and removal of the WECS and accessory facilities."

Nearby Boone County, which has several large operating wind projects, has a similar ordinance to that of Custer County, and requires the owner of the wind facility to place a surety bond or equivalent financial security in an amount estimated in the decommissioning plan **after the fifteenth anniversary of commercial operations**. They also note in their ordinance if the wind facility is repowered, so that decommissioning is not necessary, the security is released.

Conclusion

As you can see, different states take different approaches to decommissioning regulations and this is one of many factors affecting the decision of where to locate a wind project. We analyzed SD, MN, IA, and NE because these are states that are located relatively near North Dakota, are in the Mid-continent Independent System Operator or Southwest Power Pool territory, have already seen a significant amount of wind development, and have comparable wind development potential to that of North Dakota. In effect, these are the states with whom North Dakota is competing against to attract investment in wind energy. As discussed in our initial comments, during our testimony at the February 27 public hearing and above, we believe that the current proposal from the North Dakota PSC contains provisions that are out of step with these key states. Adopting the suggestions of Wind on the Wires, as well as those outlined in the comments of other wind companies, would help ensure North Dakota maintains its reputation as being friendly towards all forms of energy development and continues to receive the widespread economic benefits of wind energy production.