

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Solar Decommissioning  
Rulemaking**

**Case No. PU-19-122**

**Statements on Regulatory Analysis, Small Entity Analysis,  
and Takings Assessment**

**August 9, 2019**

The Commission is proposing new Chapter 69-09-10 regarding Solar Facility Decommissioning after SB 2100 was enacted during the most recent legislative session. The proposed rule is not pursuant to emergency rulemaking.

**Regulatory Analysis**

N.D.C.C. § 28-32-08 requires an agency to prepare a regulatory analysis if the rule is expected to have an impact on the regulated community in excess of fifty thousand dollars, or if one is requested as provided in the law. The law provides, in part:

1. The regulatory analysis must contain:
  - a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

The persons impacted will be the solar power developers, and there may be secondary impacts to the customers receiving the energy produced.

- b. A description of the probable impact, including economic impact, of the proposed rule;

The probable impact will likely be the cost to provide financial assurances to ensure decommissioning. There may be no costs from financial assurances or very large costs, depending on the type of financial assurance provided and the size of the project.

- c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and

We are unable to anticipate the costs related to this new chapter. It will vary on the need for proceedings.

- d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.

The Commission considered no decommissioning plans and financial assurances, however, due to recently passed SB 2100, the Commission chose to propose rules that mirror wind decommissioning for easier interpretation by the regulated community and commission administration.

### **Takings Assessment**

N.D.C.C. § 28-32-09 requires an entity to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. It is very unlikely that the proposed rule will result in a taking or a regulatory taking. The purpose of the rule is to ensure proper decommissioning and remediation at the end of the solar generation facility's useful life in accordance with SB 2100 from the 2019 legislative session. The proposed rules are necessary to advance the purpose because there currently are no solar decommissioning rules. The rules are expected to reduce the impact of energy development on private landowners once the facilities are no longer operational. The proposed rules are not anticipated to result in a taking or regulatory taking, so no cost, source of payment, or cost/benefit analysis is provided.

### **Small Entity Regulatory Analysis**

N.D.C.C. § 28-32-08.1 requires that before adoption of any proposed rule, the adopting agency prepare a regulatory analysis in which the agency considers options to minimize adverse impact on small entities. The law provides, in part:

2. . . . The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:
  - a. Establishment of less stringent compliance or reporting requirements for small entities;
  - b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
  - c. Consolidation or simplification of compliance or reporting requirements for small entities;
  - d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and

- e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

### **Small Entity Regulatory Analysis**

No adverse impact on small entities is anticipated. The rule will allow the decommissioning rules to be less stringent on landowners and small entities.

### **Small Entity Economic Impact Statement**

The proposed new chapter is not expected to affect small entities or have an economic impact on them