

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

**Public Service Commission  
Solar Decommissioning  
Rulemaking**

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

**Public Service Commission  
Pipeline Safety  
Rulemaking**

**Case No. GS-19-217**

**Public Service Commission  
Energy Conversion Facility Siting Criteria  
Rulemaking**

**Case No. PU-19-290**

**Public Service Commission  
Wind Decommissioning  
Rulemaking**

**Case No. PU-19-291**

**AFFIDAVIT OF SERVICE BY REGULAR AND ELECTRONIC MAIL**

**STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH**

**Geralyn R. Schmaltz** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **7th** day of **August 2019**, she deposited in the United States Mail, Bismarck, North Dakota, **7** envelopes by first class mail, fully prepaid, securely sealed each containing a photocopy of:

- **Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing**
- **Proposed Rules**

The envelopes were addressed as follows:

**See attached list**

**Geralyn R. Schmaltz** further deposes and says that on the **7th day of August 2019**, she sent an electronic message to **126** addressees, each including an electronic copy in portable document format of the same document.

The electronic mails were addressed as follows:

**See attached list**

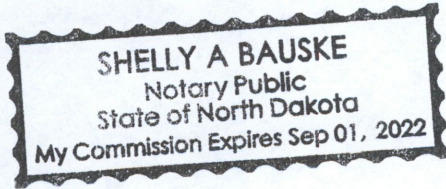
7 PU-19-291 Filed 08/07/2019 Pages: 38  
Service document - Notice and proposed Rules  
7 PU-19-290 Filed 08/07/2019 Pages: 38  
Service document - Notice and proposed Rules  
7 GS-19-217 Filed 08/07/2019 Pages: 38  
Service document - Notice and proposed Rules  
7 PU-19-122 Filed 08/07/2019 Pages: 38  
Service document - Notice and proposed Rules

The addresses shown are the respective addressee's last reasonably ascertainable post office and electronic mail addresses.

Subscribed and sworn to before me  
this **7th day of August 2019**.

*[Handwritten Signature]*

(SEAL)



*Shelly A Bauske*  
Notary Public

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**Case Nos.**  
**PU-19-122**      **PU-19-290**  
**GS-19-217**      **PU-19-291**

**Electric/Gas**      **PU\_PS**      **PU\_WG**  
**PU\_ELN**            **PU\_REC**  
**PU\_GSN**            **PU\_SNO**  
**PU\_GT**              **PU\_Rules**

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**STATE OF NORTH DAKOTA**

**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Solar Decommissioning  
Rulemaking**

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

**Public Service Commission  
Pipeline Safety  
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**Case No. GS-19-217**

**Public Service Commission  
Energy Conversion Facility Siting Criteria  
Rulemaking**

**Case No. PU-19-290**

**Public Service Commission  
Wind Decommissioning  
Rulemaking**

**Case No. PU-19-291**

**NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES AND  
NOTICE OF PUBLIC HEARING**

**August 6, 2019**

**PLEASE TAKE NOTICE** that the Public Service Commission will hold a public hearing to address new proposed Chapter 69-09-10, to amend Section 69-09-03-02, to amend Section 69-06-08-01, and to amend Chapter 69-09-09.

A hearing will be held on the proposed rules at **1:30 p.m. Central Time on September 19, 2019, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.**

The proposed adoption and revisions to the North Dakota Administrative Code are as follows:

**Case No. PU-19-122 - proposed New Chapter 69-09-10 - Solar Facility Decommissioning**

The purpose of the proposed new chapter 69-09-10 is to implement changes from S.B. No. 2100 enacted during the most recent legislative session concerning renewable energy conversion facility decommissioning. The Commission is proposing to create a new chapter to the North Dakota Administrative Code, Chapter 69-09-10 regarding Solar

Facility Decommissioning. The proposed chapter is expected to have an impact on the regulated community in excess of \$50,000.

**Case No. GS-19-217 - proposed Amendments to Section 69-09-03-02**

The purpose of this amendment is to adopt by reference the most recent amendments to pipeline safety regulations adopted by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA). This rule change adopts amendments to safety regulations that have been adopted by PHMSA since December 31, 2017, current to July 31, 2019. The proposed change is not expected to have an impact on the regulated community in excess of \$50,000.

**Case No. PU-19-290 – Section 69-06-08-01 - Energy Conversion Facility Siting Criteria**

The purpose of the amendments are to address concerns related to the impact of energy conversion facilities on military and department of defense operations and to re-evaluate the acceptable sound level of a wind facility from an inhabited residence or community building that has not signed a waiver. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

**Case No. PU-19-291 – Chapter 69-09-09 - Wind Facility Decommissioning**

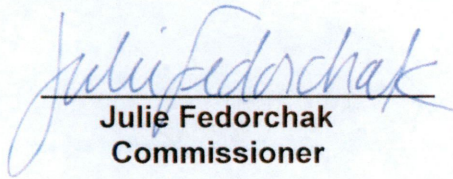
The purpose of the amendments are to clarify that decommissioning and financial assurance requirements apply to all wind facilities generating more than five hundred kilowatts that have not been granted a waiver by the Commission. The proposed rule is expected to have an impact on the regulated community in excess of \$50,000.

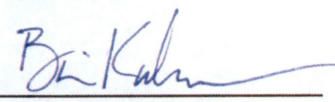
The proposed rules and amendments may be reviewed at the Public Service Commission's offices on the 12<sup>th</sup> floor of the State Capitol, 600 East Boulevard Ave, Dept. 408, Bismarck, North Dakota. A copy of the proposed rules or amendments and/or a regulatory analysis may be requested by writing the above address, emailing [ndpsc@nd.gov](mailto:ndpsc@nd.gov), or calling 701-328-2400, toll free 1-877-245-6685, Relay North Dakota TTY 1-800-366-6888. This information is also available on the Commission's web site at [www.psc.nd.gov](http://www.psc.nd.gov) under "Formal Actions/Case Search".

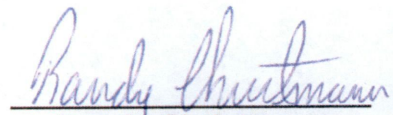
Interested persons may attend and submit comments at the hearing. Oral or written comments on the proposed rules may be submitted to the above address, email and phone numbers. Oral and written comments received by the close of business on September 30, 2019 will be fully considered.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please notify the Commission at the above telephone number or address at least 24 hours prior to the public hearing.

PUBLIC SERVICE COMMISSION

  
Julie Fedorchak  
Commissioner

  
Brian Kroshus  
Chairman

  
Randy Christmann  
Commissioner

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

**Public Service Commission**  
**Solar Decommissioning**  
**Rulemaking**

**PU-19-122**

**CHAPTER 69-09-10**  
**SOLAR FACILITY DECOMMISSIONING**

<u>Section</u>	
<u>69-09-10-01</u>	<u>Definitions</u>
<u>69-09-10-02</u>	<u>Decommissioning Responsibility</u>
<u>69-09-10-03</u>	<u>Abandonment and Useful Life - Certificate of Operation</u>
<u>69-09-10-04</u>	<u>Decommissioning Period</u>
<u>69-09-10-05</u>	<u>Decommissioning requirements</u>
<u>69-09-10-06</u>	<u>Decommissioning Plan</u>
<u>69-09-10-07</u>	<u>Existing Facilities</u>
<u>69-09-10-08</u>	<u>Financial Assurance</u>
<u>69-09-10-09</u>	<u>Failure to Decommission</u>
<u>69-09-10-10</u>	<u>Solar Energy Conversion Facility - Waiver</u>

**69-09-10-01. Definitions.**

- 1. "Capacity factor" means the ratio of the actual output generated by a facility for a period of time, to the output that could be produced at the nameplate generating capacity of that facility.**
- 2. "Certificate of operation" means an affidavit executed by the owner certifying to the commission a facility's:**
  - a. Nameplate generating capacity;**
  - b. Annual capacity factor;**
  - c. Annual megawatt hour output; and**
  - d. Monthly megawatt hour output.**
- 3. "Commercial solar energy conversion facility" means a solar energy conversion facility that has a total nameplate generating capacity equal to or greater than five hundred kilowatts.**
- 4. "Commission" means the public service commission.**

5. "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.
  
6. "Decommissioning plan" means a plan filed with the commission that includes:
  - a. The anticipated life of the facility;
  - b. A decommissioning cost estimate, excluding salvage offsets that reduce decommissioning cost;
  - c. A description of the method used for determining the decommissioning cost estimate;
  - d. The anticipated manner in which the project will be decommissioned;
  - e. A description of any expected effects on present and future natural resource development; and
  - f. A detailed plan of financial assurance sufficient to ensure decommissioning.
  
7. "Existing facility" means a facility for which a certificate of site compatibility has been issued prior to [date of publication] or, if no certificate of site compatibility was issued, a facility that commenced operation prior to [date of publication].
  
8. "Facility" means a commercial solar energy conversion facility, including solar modules, racking, anchors, bolts, foundations, bases, transformers, cables, lines, substations, concrete, fences, facility access roads, towers, and all areas disturbed by the construction, operation, maintenance, or decommissioning activities.
  
9. "Owner" a person who holds a certificate of site compatibility pursuant to North Dakota Century Code chapter 49-22, or if no certificate was issued, a person who owns a facility or part of a facility.

**History: Effective** \_\_\_\_\_, 2019.  
**General Authority: NDCC 28-32-02, 49-02-27**  
**Law Implemented: NDCC 49-02-27**

**69-09-10-02. Decommissioning responsibility.**

**The owner is responsible for decommissioning the facility and for all costs**

associated with decommissioning.

**History:** Effective \_\_\_\_\_, 2019.

**General Authority:** NDCC 28-32-02, 49-02-27

**Law Implemented:** NDCC 49-02-27

**69-09-10-03. Abandonment and useful life - Certificate of operation.**

1. After construction of a facility is complete, the owner shall annually file a certificate of operation with the commission for that facility by April first of each year.
2. A facility is presumed to be at the end of its useful life if its annual capacity factor is less than ten percent for two consecutive years.
3. A facility is presumed to be abandoned if, after commencement of construction and prior to completion, a period of twenty-four consecutive months has passed with no significant construction.
4. A presumption under this section may be rebutted by filing a plan for commission approval outlining the steps and schedule for continuing construction or operation of the facility.

**History:** Effective \_\_\_\_\_, 2019.

**General Authority:** NDCC 28-32-02, 49-02-27

**Law Implemented:** NDCC 49-02-27

**69-09-10-04. Decommissioning period.**

The owner shall begin decommissioning within twelve months after abandonment or the end of its useful life. Decommissioning must be completed within twenty-four months after abandonment or the end of its useful life unless the commission approves a plan specifying the steps and schedules to return the facility to operation.

**History:** Effective \_\_\_\_\_, 2019.

**General Authority:** NDCC 28-32-02, 49-02-27

**Law Implemented:** NDCC 49-02-27

**69-09-10-05. Decommissioning requirements.**

Decommissioning the facility includes:

1. Dismantling and removal of all panel racking, photovoltaic modules, supports, anchors, towers, fencing, overhead cables, foundations, buildings, and ancillary equipment;
2. Removal of underground cables to a depth of twenty-four inches [60.96

centimeters];

3. Site restoration and reclamation to the approximate original topography that existed prior to construction of the facility with topsoil respread over the disturbed areas at a depth similar to that in existence prior to the disturbance; and
4. Grading and restoring topsoil of areas disturbed by the facility, and reseeded according to natural resource conservation service recommendations, unless the commission approves an owner request signed by the applicable landowner, identifying the surface features the landowner prefers to remain in place, and the reason the landowner prefers those features to remain.

**History:** Effective \_\_\_\_\_, 2019.

**General Authority:** NDCC 28-32-02, 49-02-27

**Law Implemented:** NDCC 49-02-27

**69-09-10-06. Decommissioning plan.**

1. Prior to the commencement of operation of a facility, the owner must have an approved decommissioning plan.
2. The commission shall make a determination on the decommissioning plan no later than sixty days after the decommissioning plan is deemed complete by the commission.
3. A decommissioning cost estimate for a facility:
  - a. Must be made by a professional engineer licensed by the state of North Dakota and at the owner's expense;
  - b. May include a decommissioning cost estimate, including salvage value, in addition to the decommissioning cost estimate, excluding salvage value;
  - c. Must be updated and filed with the commission ten years after initial approval of the decommissioning plan and then continue to be updated and filed with the commission every five years until decommissioning is complete.
4. The commission may at any time require the owner to file an updated decommissioning plan.

**History:** Effective \_\_\_\_\_, 2019.

**General Authority:** NDCC 28-32-02, 49-02-27

**Law Implemented: NDCC 49-02-27**

**69-09-10-07. Existing facilities.**

**The owner of an existing facility shall provide financial assurance upon ten years of operation sufficient to complete decommissioning.**

**History: Effective \_\_\_\_\_, 2019.**

**General Authority: NDCC 28-32-02, 49-02-27**

**Law Implemented: NDCC 49-02-27**

**69-09-10-08. Financial assurance.**

- 1. Prior to commencement of construction of a facility, the owner shall provide financial assurance equal to five percent of the estimated cost of construction of the facility that may be used to decommission the facility in the event it is abandoned prior to operation. Within sixty days of receipt of written notice from the owner that the facility is commercially operational and receipt of financial assurance pursuant to 69-09-09-08(2), the commission shall return or release said financial assurance provided to the commission.**
- 2. Prior to commencement of operation of a facility, the owner shall provide financial assurance that is acceptable to the commission and sufficient to ensure complete decommissioning.**
- 3. Financial assurance may be in the form of a performance bond either as, or combination of, cash escrow held by a federal insured financial institution, a surety bond, irrevocable letter of credit, guarantee, parent guarantee, or another form of financial assurance that is acceptable to the commission to cover the anticipated costs of decommissioning.**
- 4. The commission may allow the owner to provide financial assurance through an incremental bond schedule. To be given consideration, an incremental bond schedule must include an initial bond increment prior to commencement of operation.**
- 5. The commission may accept a guarantee or parent guarantee if:**
  - a. The owner has been in continuous operation as a business entity for five years preceding the application. The commission may accept a guarantee with less than five years of continuous operation if guaranteed with a parent guarantee and the parent company has been in operation for at least five years preceding the application; and**

b. The owner or parent guarantor has or is one of the following:

- (1) A current rating in the "A" category or higher for its most recent bond issuance or issuer rating as issued by Moody's Investors Service, Standard and Poor's Corporation, or an equivalent rating by any other nationally recognized statistical rating organization, as defined and approved by the United States securities and exchange commission, that is acceptable to the commission. If an organization has different ratings among various rating organizations, the commission shall accept the higher of the ratings; or
- (2) An electric public utility as defined by subsection 2 of North Dakota Century Code section 49-03-01.5.

6. The total amount of an outstanding guarantee for decommissioning may not exceed twenty-five percent of the owner's tangible net worth in the United States.
7. The combined total amount of an outstanding guarantee and parent guarantee for decommissioning may not exceed twenty-five percent of the owner's and parent guarantor's combined tangible net worth in the United States.
8. If any financial assurance is modified, canceled, suspended, or revoked, the owner shall immediately notify the commission and provide financial assurance as soon as practicable sufficient to ensure complete decommissioning.
9. The commission may require additional financial assurance upon a finding that the current financial assurance for a facility is not sufficient to ensure complete decommissioning.

**History: Effective** \_\_\_\_\_, 2019.

**General Authority: NDCC 28-32-02, 49-02-27**

**Law Implemented: NDCC 49-02-27**

**69-09-10-09. Failure to decommission.**

If the owner does not complete decommissioning, the commission may take action to complete decommissioning, including action to require forfeiture of a bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the commission may take such action as may be necessary to decommission a facility, including the exercise by the commission, commission staff, and their contractors of the right of ingress and egress for the purpose of decommissioning the facility.

**History: Effective** \_\_\_\_\_, 2019.

**General Authority: NDCC 28-32-02, 49-02-27**

**Law Implemented: NDCC 49-02-27**

**69-09-10-10. Solar energy conversion facility - Waiver.**

**The commission may grant a waiver of any requirement described in sections 69-09-10-03, 69-09-10-06, or 69-09-10-08 for a commercial solar energy conversion facility with a nameplate generating capacity of no more than five megawatts of electricity upon a motion demonstrating good cause for the waiver.**

**History: Effective** \_\_\_\_\_, 2019.

**General Authority: NDCC 28-32-02, 49-02-27**

**Law Implemented: NDCC 49-02-27**

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

**Public Service Commission  
Pipeline Safety  
Rulemaking**

**Case No. GS-19-217**

**69-09-03-02. Adoption of regulations.** The following parts of title 49, Code of Federal Regulations in effect as of ~~December 31, 2017~~July 31, 2019, are adopted by reference:

1. Part 190 - Pipeline Safety Programs and Rulemaking Procedures.
2. Part 191 - Transportation of Natural Gas and Other Gas by  
Pipeline, Annual Reports, Incident Reports, and Safety-Related  
Condition Reports.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum  
Federal Safety Standards.
4. Part 193 – Liquefied Natural Gas Facilities: Federal Safety Standards
5. Part 194 – Response Plans for Onshore Oil Pipelines
6. Part 195 - Transportation of Hazardous Liquids by Pipeline.
7. Part 199 - Drug and Alcohol Testing.

Copies of these regulations may be obtained from:

Public Service Commission  
600 East Boulevard, Dept. 408  
Bismarck, ND 58505-0480

**History:** Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002; November 1,

2003; May 1, 2005; July 1, 2006; April 1, 2008; January 1, 2010; April 1, 2012; April 1, 2015; October 1, 2016, July 1, 2018; \_\_\_\_\_, 2019.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-02-01.2

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

**Public Service Commission**  
**Energy Conversion Facility Siting Criteria**  
**Rulemaking**

**PU-19-290**

**CHAPTER 69-06-08**  
**CRITERIA**

Section	
69-6-8-1	Energy Conversion Facility Siting Criteria
69-6-8-2	Transmission Facility Corridor and Route Criteria

**69-06-08-01. Energy conversion facility siting criteria.**

The following criteria must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process.

1. **Exclusion areas.** The following geographical areas must be excluded in the consideration of a site for an energy conversion facility.
  - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; historic districts; monuments; wilderness areas; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
  - b. Designated or registered state: parks; forests; forest management lands; historic sites; monuments; historical markers; archaeological sites; grasslands; wild, scenic, or recreational rivers; game refuges; game management areas; management areas; and nature preserves.
  - c. County parks and recreational areas; municipal parks; parks owned or administered by other governmental subdivisions; hardwood draws; and enrolled woodlands.
  - d. Areas critical to the life stages of threatened or endangered animal or plant species.
  - e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
  - f. Areas within one thousand two hundred feet of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch

control facility.

- g. Areas within thirty feet on either side of a direct line between intercontinental ballistic missile (ICBM) launch or launch control facilities to avoid microwave interference.

2. **Additional exclusion areas for wind energy conversion facilities.** The following geographical areas must be excluded in the consideration of a site for a wind energy conversion facility:

a. Areas within:

- (1) One and one-tenth times the height of the turbine from the nearest edge of an interstate or state roadway right of way;
- (2) One and one-tenth times the height of the turbine plus seventy-five feet from the centerline of any county or maintained township roadway;
- (3) One and one-tenth times the height of the turbine from the nearest edge of any a railroad right of way;
- (4) One and one-tenth times the height of the turbine from a the nearest edge of a one hundred fifteen kilovolt or higher transmission line right of way; and
- (5) One and one-tenth times the height of the turbine from the property line of a nonparticipating landowner and three times the height of the turbine from an inhabited rural residence of a nonparticipating landowner, unless a variance is granted. A variance may be granted if an authorized representative or agent of the permittee, the nonparticipating landowner, and affected parties with associated wind rights file a written agreement expressing all parties' support for a variance to reduce the setback requirement in this subsection. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in North Dakota Century Code chapter 17-04.

3. **Avoidance areas.** The following geographical areas may not be approved as a site for an energy conversion facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility the

commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative sites. Economic considerations alone will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area must be included. Natural screening may be considered in determining the width of the buffer zone.

- a. Historical resources which are not designated as exclusion areas.
  - b. Areas within the city limits of a city or the boundaries of a military installation.
  - c. Areas within known floodplains as defined by the geographical boundaries of the hundred-year flood.
  - d. Areas that are geologically unstable.
  - e. Woodlands and wetlands.
  - f. Areas of recreational significance which are not designated as exclusion areas.
4. **Additional avoidance areas for wind energy conversion facilities.** A wind energy conversion facility site must not include a geographic area where, due to operation of the facility, the sound levels within one hundred feet of an inhabited residence or a community building will exceed fifty forty-five dBA. The sound level avoidance area criteria may be waived in writing by the owner of the occupied residence or the community building.
5. **Selection criteria.** A site may be approved in an area only when it is demonstrated to the commission by the applicant that any significant adverse effects resulting from the location, construction, and operation of the facility in that area as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. The effects to be considered include:
- a. The impact upon agriculture:
    - (1) Agricultural production.
    - (2) Family farms and ranches.
    - (3) Land which the owner demonstrates has soil, topography, drainage, and an available water supply that cause the land

to be economically suitable for irrigation.

- (4) Surface drainage patterns and ground water flow patterns.
  - (5) The agricultural quality of the cropland.
- b. The impact upon the availability and adequacy of:
- (1) Law enforcement.
  - (2) School systems and education programs.
  - (3) Governmental services and facilities.
  - (4) General and mental health care facilities.
  - (5) Recreational programs and facilities.
  - (6) Transportation facilities and networks.
  - (7) Retail service facilities.
  - (8) Utility services.
- c. The impact upon:
- (1) Local institutions.
  - (2) Noise-sensitive land uses.
  - (3) Light-sensitive land uses.
  - (4) Rural residences and businesses.
  - (5) Aquifers.
  - (6) Human health and safety.
  - (7) Animal health and safety.
  - (8) Plant life.
  - (9) Temporary and permanent housing.
  - (10) Temporary and permanent skilled and unskilled labor.

- d. The cumulative effects of the location of the facility in relation to existing and planned facilities and other industrial development.
6. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits. The benefits to be considered include:
- a. Recycling of the conversion byproducts and effluents.
  - b. Energy conservation through location, process, and design.
  - c. Training and utilization of available labor in this state for the general and specialized skills required.
  - d. Use of a primary energy source or raw material located within the state.
  - e. Not relocating residents.
  - f. The dedication of an area adjacent to the facility to land uses such as recreation, agriculture, or wildlife management.
  - g. Economies of construction and operation.
  - h. Secondary uses of appropriate associated facilities for recreation and the enhancement of wildlife.
  - i. Use of citizen coordinating committees.
  - j. A commitment of a portion of the energy produced for use in this state.
  - k. Labor relations.
  - l. The coordination of facilities.
  - m. Monitoring of impacts.
  - n. A commitment to install lighting mitigation technology for wind energy conversion facilities subject to commercial availability and federal aviation administration approval.

**History:** Amended effective August 1, 1979; July 1, 2006; April 1, 2013; July 1, 2017; July

1, 2018; amended effective \_\_\_\_\_, 2019.

**General Authority:** NDCC 28-32-02, 49-22-18

**Law Implemented:** NDCC 49-22-05.1, 49-22.1-03

**69-06-08-02. Transmission facility corridor and route criteria.**

The following criteria must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process. Exclusion and avoidance areas may be located within a corridor, but at no given point may such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

1. **Exclusion areas.** The following geographical areas must be excluded in the consideration of a route for a transmission facility. A buffer zone of a reasonable width to protect the integrity of the area must be included. Natural screening may be considered in determining the width of the buffer zone.
  - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; monuments; and wilderness areas.
  - b. Designated or registered state: parks; historic sites; monuments; historical markers; archaeological sites; and nature preserves.
  - c. County parks and recreational areas; municipal parks; and parks owned or administered by other governmental subdivisions.
  - d. Areas critical to the life stages of threatened or endangered animal or plant species.
  - e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
  - f. Areas within one thousand two hundred feet of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.
  - g. Areas within thirty feet on either side of a direct line between intercontinental ballistic missile (ICBM) launch or launch control facilities to avoid microwave interference.
2. **Avoidance areas.** The following geographical areas may not be considered in the routing of a transmission facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility,

the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative routes. Economic considerations alone will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area will be included unless a distance is specified in the criteria. Natural screening may be considered in determining the width of the buffer zone.

- a. Designated or registered national: historic districts; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
  - b. Designated or registered state: wild, scenic, or recreational rivers; game refuges; game management areas; management areas; forests; forest management lands; and grasslands.
  - c. Historical resources which are not specifically designated as exclusion or avoidance areas.
  - d. Areas which are geologically unstable.
  - e. Within five hundred feet [152.4 meters] of a residence, school, or place of business. This criterion shall not apply to a water pipeline transmission facility.
  - f. Reservoirs and municipal water supplies.
  - g. Water sources for organized rural water districts.
  - h. Irrigated land. This criterion shall not apply to an underground transmission facility.
  - i. Areas of recreational significance which are not designated as exclusion areas.
3. **Selection criteria.** A corridor or route shall be designated only when it is demonstrated to the commission by the applicant that any significant adverse effects which will result from the location, construction, and maintenance of the facility as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. The effects to be considered include:
- a. The impact upon agriculture:
    - (1) Agricultural production.
    - (2) Family farms and ranches.

(3) Land which the owner can demonstrate has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.

(4) Surface drainage patterns and ground water flow patterns.

b. The impact upon:

(1) Sound-sensitive land uses.

(2) The visual effect on the adjacent area.

(3) Extractive and storage resources.

(4) Wetlands, woodlands, and wooded areas.

(5) Radio and television reception, and other communication or electronic control facilities.

(6) Human health and safety.

(7) Animal health and safety.

(8) Plant life.

4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits. The benefits to be considered include:

a. Location and design.

b. Training and utilization of available labor in this state for the general and specialized skills required.

c. Economies of construction and operation.

d. Use of citizen coordinating committees.

e. A commitment of a portion of the transmitted product for use in this state.

f. Labor relations.

- g. The coordination of facilities.
- h. Monitoring of impacts.
- i. Utilization of existing and proposed rights of way and corridors.
- j. Other existing or proposed transmission facilities.

**History:** Amended effective August 1, 1979; January 1, 1982; February 1, 1995; July 1, 2006; April 1, 2013.

**General Authority:** NDCC 49-22-18

**Law Implemented:** NDCC 49-22-05.1

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

**Public Service Commission**  
**Wind Decommissioning**  
**Rulemaking**

**PU-19-291**

**CHAPTER 69-09-09**  
**WIND FACILITY DECOMMISSIONING**

**Section**

69-09-09-01	Definitions
69-09-09-02	Decommissioning Responsibility
69-09-09-03	Abandonment and Useful Life - Certificate of Operation
69-09-09-04	Decommissioning Period
69-09-09-05	Decommissioning requirements
09-09-09-06	Decommissioning Plan
69-09-09-07	Existing Facilities
69-09-09-08	Financial Assurance
69-09-09-09	Failure to Decommission
69-09-09-10	Wind Energy Conversion Facility - Waiver

**69-09-09-01. Definitions.**

1. "Capacity factor" means the ratio of the actual output generated by a facility for a period of time, to the output that could be produced at the nameplate generating capacity of that facility.
2. "Certificate of operation" means an affidavit executed by the owner certifying to the commission a facility's:
  - a. Nameplate generating capacity;
  - b. Annual capacity factor;
  - c. Annual megawatt hour output; and
  - d. Monthly megawatt hour output.
3. "Commercial wind energy conversion facility" means a wind energy conversion facility with one or more wind turbines that has a total nameplate generating capacity equal to or greater than five hundred kilowatts.
4. "Commission" means the public service commission.

5. "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.
6. "Decommissioning plan" means a plan filed with the commission that includes:
  - a. The anticipated life of the facility;
  - b. A decommissioning cost estimate, excluding salvage value of the turbines and equipment offsets that reduce decommissioning cost;
  - c. A description of the method used for determining the decommissioning cost estimate;
  - d. The anticipated manner in which the project will be decommissioned;
  - e. A description of any expected effects on present and future natural resource development; and
  - f. A detailed plan of financial assurance sufficient to ensure decommissioning.
7. "Existing facility" means a facility for which a certificate of site compatibility has been ~~was~~ issued prior to July 1, 2017 or, if no certificate of site compatibility was issued, a facility that commenced operation prior to [date or publication].
8. "Facility" means a commercial wind energy conversion facility, including wind turbines, turbine towers, tower bases, blades, pad transformers, ~~collector~~ cables, lines, substations, concrete, fences, facility access roads, ~~meteorology towers~~, and all areas disturbed by the construction, operation, maintenance, or decommissioning activities.
9. "Owner" means a person who holds a certificate of site compatibility pursuant to North Dakota Century Code chapter 49-22, or if no certificate was issued, a person who owns a facility or part of a facility.

**History:** Effective October 1, 2008; amended effective July 1, 2017, amended effective  
2019.

**General Authority:** NDCC 28-32-02, 49-02-27

**Law Implemented:** NDCC 49-02-27

#### **69-09-09-02. Decommissioning responsibility.**

The owner is responsible for decommissioning the facility and for all costs associated with decommissioning.

**History:** Effective October 1, 2008; amended effective July 1, 2017.

**General Authority:** NDCC 28-32-02, 49-02-27

**Law Implemented:** NDCC 49-02-27

#### **69-09-09-03. Abandonment and useful life - Certificate of operation.**

1. After construction of a facility is complete, the owner shall annually file a certificate of operation with the commission for that facility by April first of each year.
2. If no energy is generated by one or more wind turbines for the time period specified in the certificate of operation, a written explanation for the nongenerating wind turbines must accompany the certificate of operation.
3. A facility is presumed to be at the end of its useful life if its annual capacity factor is less than ten percent for two consecutive years.
4. A facility is presumed to be abandoned if, after commencement of construction and prior to completion, a period of twenty-four consecutive months has passed with no significant construction.
5. A presumption under this section may be rebutted by filing a plan for commission approval outlining the steps and schedule for continuing construction or operation of the facility or wind turbine.

**History:** Effective October 1, 2008; amended effective July 1, 2017.

**General Authority:** NDCC 28-32-02, 49-02-27

**Law Implemented:** NDCC 49-02-27

#### **69-09-09-04. Decommissioning period.**

The owner shall begin decommissioning within twelve months after abandonment or the end of its useful life. Decommissioning must be completed within twenty-four months after abandonment or the end of its useful life unless the commission approves a plan specifying the steps and schedules to return the facility to operation.

**History:** Effective October 1, 2008; amended effective July 1, 2017.

**General Authority:** NDCC 28-32-02, 49-02-27

**Law Implemented:** NDCC 49-02-27



- a. Must be made by a professional engineer licensed by the state of North Dakota and at the owner's expense;
  - b. May include a decommissioning cost estimate, including salvage value, in addition to the decommissioning cost estimate, excluding salvage value;
  - c. Must be updated and filed with the commission ten years after initial approval of the decommissioning plan and then continue to be updated and filed with the commission every five years until decommissioning is complete.
4. The commission may at any time require the owner to file an updated decommissioning plan.

**History:** Effective October 1, 2008; amended effective October 1, 2010; July 1, 2017.

**General Authority:** NDCC 28-32-02, 49-02-27

**Law Implemented:** NDCC 49-02-27

**69-09-09-07. Existing facility facilities.**

The owner of an existing facility shall provide financial assurance ~~after the tenth~~ upon ten year years of operation sufficient to complete decommissioning.

**History:** Effective October 1, 2008; amended effective July 1, 2017; amended effective \_\_\_\_\_, 2019.

**General Authority:** NDCC 28-32-02, 49-02-27

**Law Implemented:** NDCC 49-02-27

**69-09-09-08. Financial assurance.**

1. Prior to commencement of construction of a facility, the owner shall provide financial assurance equal to five percent of the estimated cost of construction of the facility that may be used to decommission the facility in the event it is abandoned prior to operation. Within sixty days of receipt of written notice from the owner that the facility is commercially operational and receipt of financial assurance pursuant to 69-09-09-08(2), the commission shall return or release said financial assurance provided to the commission.
2. Prior to commencement of operation of a facility, the owner shall provide financial assurance that is acceptable to the commission and sufficient to ensure complete decommissioning.
3. Financial assurance may be in the form of a performance bond either as, or combination of, cash escrow held by a federal insured financial

institution a surety bond, irrevocable letter of credit, ~~self-guarantee~~guarantee, parent guarantee, or another form of financial assurance that is acceptable to the commission to cover the anticipated costs of decommissioning.

4. The commission may allow the owner to provide financial assurance through an incremental bond schedule. To be given consideration, an incremental bond schedule must include an initial bond increment prior to commencement of operation.
5. The commission may accept a ~~self-guarantee~~ guarantee or parent guarantee if:
  - a. The owner has been in continuous operation as a business entity for five years preceding the application. The commission may accept a ~~self-guarantee~~ guarantee with less than five years of continuous operation if guaranteed with a parent guarantee and the parent company has been in operation for at least five years preceding the application; and
  - b. The owner or parent guarantor has or is one of the following:
    - (1) A current rating in the "A" category or higher for its most recent bond issuance or issuer rating as issued by Moody's Investors Service, Standard and Poor's Corporation, or an equivalent rating by any other nationally recognized statistical rating organization, as defined and approved by the United States securities and exchange commission, that is acceptable to the commission. If an organization has different ratings among various rating organizations, the commission shall accept the higher of the ratings; or
    - (2) ~~A tangible net worth of at least ten million dollars, a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liability of 1.2 or greater; or~~
    - (3) An electric public utility as defined by subsection 2 of North Dakota Century Code section 49-03-01.5.
6. The total amount of an outstanding ~~self-guarantee~~ guarantee for decommissioning may not exceed twenty-five percent of the owner's tangible net worth in the United States.
7. The combined total amount of an outstanding ~~self-guarantee~~ guarantee and parent guarantee for decommissioning may not exceed twenty-five percent of the owner's and parent guarantor's combined tangible net worth

in the United States.

8. If any financial assurance is modified, canceled, suspended, or revoked, the owner shall immediately notify the commission and provide financial assurance as soon as practicable sufficient to ensure complete decommissioning.
9. The commission may require additional financial assurance upon a finding that the current financial assurance for a facility is not sufficient to ensure complete decommissioning.

**History:** Effective October 1, 2008; amended effective July 1, 2017; amended effective  
2019.

**General Authority:** NDCC 28-32-02, 49-02-27

**Law Implemented:** NDCC 49-02-27

**69-09-09-09. Failure to decommission.**

If the owner does not complete decommissioning, the commission may take action to complete decommissioning, including action to require forfeiture of a bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the commission may take such action as may be necessary to decommission a facility, including the exercise by the commission, commission staff, and their contractors of the right of ingress and egress for the purpose of decommissioning the facility.

**History:** Effective October 1, 2008; amended effective July 1, 2017.

**General Authority:** NDCC 28-32-02, 49-02-27

**Law Implemented:** NDCC 49-02-27

**69-09-09-10. Wind energy conversion facility - Waiver.**

The commission may grant a waiver of any requirement described in sections 69-09-09-03, 69-09-09-06, or 69-09-09-08 for a commercial wind energy conversion facility with a nameplate generating capacity of no more than five megawatts of electricity upon a motion demonstrating good cause for the waiver.

**History:** Effective July 1, 2018.

**General Authority:** NDCC 28-32-02, 49-02-27

**Law Implemented:** NDCC 49-02-27