

September 30, 2019



**Via Email Only**

North Dakota Public Service Commission  
600 East Boulevard Ave, Dept. 408  
Bismarck, North Dakota 58505  
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*Re: Comments of Northwest Landowners Association  
PSC Case No. PU-19-122 Solar Decommissioning Rulemaking  
PSC Case No. PU-19-290 Energy Conversion Facility Siting Criteria Rulemaking  
PSC Case No. PU-19-291 Wind Decommissioning Rulemaking*

Commissioners Kroshus, Fedorchak, and Christmann:

Thank you for soliciting comments on proposed amendments to the North Dakota Administrative Code chapters that govern wind facility decommissioning (ch. 69-09-09), solar facility decommissioning (ch. 69-09-10), and energy conversion facility siting criteria (ch. 69-06-08). The Northwest Landowners Association generally supports the proposed amendments and would like to offer the following additional comments.

**Solar Facility Decommissioning Criteria**

Northwest Landowners supports the addition of this chapter. We agree with the Commission that it is important to require financial assurances of these projects and that there is a decommissioning plan in place before construction. We also agree that these plans should be updated as deemed necessary by the Commission and within ten years as a matter of course. We also support regulating these facilities similar to wind facilities. As renewable energy continues to grow and supply benefits to the state, it is important to adopt reasonable regulations that mitigate impacts and reduce the potential for conflict between landowners, neighbors, and developers.

**Decommissioning Requirements—N.D.A.C. §§ 69-09-09-05 (Wind) & 69-09-10-05 (Solar)**

The decommissioning requirements for both wind and solar require “Removal of underground cables to a depth of twenty-four inches [60.96 centimeters].” Northwest Landowners Association asks that this be modified to require removal of all cables unless otherwise agreed to in writing by the landowner. With changing weather patterns in the State of North Dakota, and excess water in so many parts of the state, there is a strong likelihood that more and more farmers will be looking to drain tile to alleviate some of the water backing up on cropland. It

will be very difficult for farmers to install drain tile if there are cables running throughout a piece of property below the surface. Northwest Landowners believes that no structures should be allowed to remain on the property without their approval, but at least with foundational structures there are only a few on the property, and they are relatively practical to work around. Cables running across a property, however, will cause significant issues for a farmer who may want to install drain tile.

Northwest Landowners supports the addition of language requiring the restoration of topsoil. Productive topsoil is essential for the success of farmers and ranchers. We suggest that the language in these sections could be improved by specifying that restoration means restoring the soil productivity as close to its original condition as is practicable and gauging restoration by reference to surrounding undisturbed areas. This is the reclamation standard that has been established for other energy producers such as the coal and oil industries. *See* N.D.A.C. §§ 69-05.2-22-01 (postmining agricultural land); 43-02-03-34.1 (wellpads, treating plants, and saltwater handling facilities).

An example of language tying soil restoration to the revegetation of surrounding lands follows:

Soil productivity levels will be measured with reference to re-vegetation success. Revegetation on hay land, pastureland, and native prairie shall be considered successful if the density and cover of non-nuisance, desirable plant species is equal to or greater than adjacent undisturbed portions of the same field. On cropland, re-vegetation shall be considered successful if crop yields are equal to adjacent undisturbed portions of the same field.

While the details of soil restoration may be left to some extent to the decommissioning plan itself, it is important to set the baseline standard (i.e. “original condition”) in the rules. Creating a uniform standard for reclamation of decommissioned sites ensures a level playing field for all energy producers, and also assists landowners who are attempting to protect their land through private agreements by setting a general expectation across all energy industries and ensuring that while we encourage energy development, we do not do so at the expense of our farmers and ranchers.

**Reduction of Decibel Level Limit in Avoidance Area Criteria N.D.A.C. 69-06-08-01(4)**

Northwest Landowners supports this amendment. Reducing the allowable noise limit registered at an occupied residence or community building is significant and welcome. It is important to note that the properties of noise vary considerably with factors such as wind direction, topography, ground cover, and even the variability of wind speed. The sound generated by wind generation facilities has the potential to be bothersome and overpower the natural sounds of the prairie. While a sound that registers 50dBA is comparable to a large electric transformer at 100 feet, a sound that registers 45 dBA is comparable to bird calls in volume.

This change will help to preserve one of the best features of a rural lifestyle and reduce the potential for conflict between developers and landowners. It is important to note that this standard can be waived by the landowner, and we support the freedom of residents to choose whether a higher threshold is acceptable to them. Additionally, if a developer believes a higher threshold is reasonable and would like that accepted by a community, it should not have any difficulty doing so through private contract. We have heard complaints from members about the noise associated with wind farms, and we believe this is a very good step in the right direction to address these landowner concerns.

### **Pooling and spacing for wind development**

One of the most common complaints we hear from member landowners is that wind developers often will only negotiate with people who do not push too hard for protections and favorable provisions. It seems very easy for wind developers to simply find the people in a community who are willing to sign a less-than-favorable lease for the landowner and sign them up. This is extremely problematic because it allows situations where a few landowners end up surrounded by a wind farm, but who receive zero benefits. This situation creates a race to the bottom when it comes to lease or easement language that protects the land and landowners. Additionally, when a few landowners are stranded in the midst of a large wind farm but receive no compensation, it is unjust because their wind resource is being rendered undevelopable. Many wind leases contain provisions that prohibit landowners from granting rights for any other wind development, so that these landowners who have not signed on for a given project truly are being prevented from developing their wind resource in some situations. The Public Service Commission, through its siting, is allowing these islands of land to be shut off from development, so we would ask that the Commission consider adopting rules that would allow the wind resources in North Dakota to be spaced and pooled similar to what is done with oil and gas. This conceptual framework would allow landowners being surrounded by a wind development to continue to receive their just and equitable share of the proceeds from development of their wind resource.

We do not support spacing and pooling regulations that would give wind developers the right to use the surface estate of lands that have not voluntarily entered into agreements for this development. It is possible, however, to require wind developers to compensate the owners of wind resources that are being stranded as part of the siting of a wind project, and we would support rules focused in that direction. While we recognize that this is beyond the scope of the present rule-making, and is also a very complicated and involved proposal, we want to take this opportunity to voice our support for the concept of application of spacing and pooling frameworks to wind development. Of primary importance to Northwest Landowners is a siting system whereby non-consenting owners surrounded by a wind development still receive their just and equitable share of the proceeds obtained from development of their wind resource.

## **Conclusion**

While we understand that regulations are rarely welcomed by businesses, we would also like to point out that such reasonable regulations of certain industries can actually benefit these industries in the long term. With any energy development, there are always at least a few bad actors. Having standards that ensure these industries operate in our state with the lives and lifestyles of our rural residents in mind not only helps to preserve the rural way of life that makes North Dakota such a great place to live – it also leads to energy industries that are more welcomed into that rural landscape. In the long term, standards that help rural communities accommodate energy development are good for energy developers, despite the additional regulation that may come with them. Landowner fatigue is an understatement that describes all-too-many rural residents in North Dakota, and passing some reasonable regulations to accommodate the folks living and making their home in the country makes good sense.

Sincerely,

Northwest Landowners Association

By: Troy Coons, Chairman