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STATE OF NORTH DAKOTA  
 PUBLIC SERVICE COMMISSION

Public Service Commission Solar Decommissioning Rulemaking	PU-19-122
Public Service Commission Energy Conversion Facility Siting Criteria Rulemaking	PU-19-290
Public Service Commission Wind Decommissioning Rulemaking	PU-19-291

COMMENTS OF APEX CLEAN ENERGY

The North Dakota Public Service Commission (“PSC”) has proposed rulemakings in the above captioned dockets. Apex Clean Energy respectfully submits these comments in response to these proposed rulemakings.

Apex Clean Energy (“Apex”) is an independent renewable energy company based in Charlottesville, Virginia. Apex has one of the nation’s largest, most diversified portfolios of renewable energy resources in development, capable of producing more than 17,000 MW of clean electricity. Apex has commercialized over 5,000 MW of projects since the company’s founding in 2009 and has 1,800 MW under management. Apex is currently developing several utility-scale wind and solar projects in North Dakota.

**PU-19-122: Chapter 69-09-10 Solar Facility Decommissioning**

The PSC proposes a new chapter related to solar facility decommissioning. This proposed rulemaking follows the North Dakota Legislature’s enactment of Senate Bill 2100, which amends section 49-02-27 of the North Dakota Century Code and authorizes the PSC to adopt rules governing the decommissioning of commercial solar energy conversion facilities.

***Size Threshold***

Our primary concern is the proposed rule’s applicability to solar energy facilities with a nameplate generating capacity greater than five (5) megawatts (“MW”), but less than fifty (50) MW. The proposed rule defines “commercial solar energy conversion facility” as a solar plant equal to or greater than five hundred (500) kilowatts (“kW”)<sup>1</sup> and provides a waiver from the proposed

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<sup>1</sup> 69-09-10-01 (3) 12 PU-19-291 Filed 09/18/2019 Pages: 4  
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decommissioning requirements for a solar plant with a nameplate capacity of no more than 5 MW.<sup>2</sup>

Current law requires a certificate of site compatibility prior to the construction of an electric energy conversion facility that exceeds 50 MW, unless the plant is a wind energy conversion system, in which case the threshold is 500 kW.<sup>3</sup> A solar plant below 50 MW requires permits only from a local government prior to construction. Accordingly, the proposed rule could create a situation whereby a solar plant could be subject to PSC regulation for decommissioning, even though the PSC does not have permitting authority for the plant.

Decommissioning requirements and standards will be included in any local government's solar energy zoning ordinance. Imposing a second (and perhaps differing) layer of decommissioning regulation will result in more than an unnecessary financial burden on the solar plant's owner—it will also result in uncertainty for the local unit of government that has permitting authority over the project. By including a section allowing for a smaller project (below 5 MW) to seek a waiver, it appears the PSC recognizes the potential for and challenges of this redundancy.

We propose the PSC amend its proposed rule to address this issue. Our preferred approach would be to amend the definition of "commercial solar energy conversion facility" in the proposed rule to change the nameplate capacity from 500 kW to 50 MW. This would make the proposed rule's applicability consistent with ND Century Code. Alternatively, the PSC could amend the proposed rule's waiver section to allow projects up to 50 MW to seek a waiver from these new requirements.

### ***Salvage Value***

For a solar plant with a nameplate capacity greater than 50 MW, we propose several modifications to the proposed rule to better align the language with industry best practices. First, we recommend the inclusion of salvage value in all elements of the decommissioning plan. Solar modules will continue to produce, meaning they can be reused, and the various other commodities included in a solar facility all have value. The proposed rule allows the owner to revise the decommissioning cost estimate every five years, which will ensure accurate, up-to-date assumptions for commodity pricing (e.g. scrap steel). The failure to not include these salvage values will artificially inflate the project's decommissioning costs, resulting in an unnecessary cost obligation on the part of the project owner.

### ***Definition of Project Abandonment***

The proposed definition of project abandonment should be modified to reflect the technological differences between wind and solar. The intent of statewide decommissioning rules is to protect the interests of landowners, and the primary concern for landowners hosting a solar plant is continued land lease payments. Since there are no alternative agricultural uses for land beneath a solar plant, if land lease payments are made, the project should not be rendered abandoned, even if net capacity factors (NCF) fall below ten percent. We propose tying the definition of abandonment to land lease payments, or the lack thereof. In the alternative, the NCF threshold should be reduced in the proposal rules. A solar plant in North Dakota will start at a much lower

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<sup>2</sup> 69-09-10-10

<sup>3</sup> North Dakota Century Code, Chapter 49-22

NCF than a comparable wind plant, and as module efficiency declines, it is not unrealistic to imagine a solar plant with an NCF below ten percent after 30 years of operation, even though land lease payments and energy production continue.

### ***Financial Assurance***

We have several concerns about Section 69-09-10-08, related to financial assurances. First, the proposal does not allow a parent company to qualify as a guarantor if it has “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.” This section is currently included in the PSC’s wind decommissioning rules (though we recognize the PSC proposes to remove this section in that Chapter as well). Apex seeks to preserve as much flexibility as possible in decommissioning regulations to account for the varying business models of our project partners. Discarding this section would likely remove an important tool that a project owner could use to meet the financial assurance obligations of the rules.

We are also concerned by Section 69-09-10-08 (9), which gives the PSC the authority to modify the financial assurance obligations upon its own finding at an undetermined point in the future. This presents a significant uncertainty in determining the long-term costs for a project, which will create challenges for project finance on the front end. A project owner is already obligated to provide financial assurance sufficient to complete decommissioning and must periodically update those cost assumptions. We believe it is not necessary for the PSC to have unilateral authority to increase the required security. If adjustments are made to the project owner’s financial assurance obligations, they should be expressly tied to adjustments in the net removal cost for the project (which, again, should include salvage value), which would be updated every five years, per Chapter 69-09-10-06(3)c.

### ***Decommissioning Requirements***

Lastly, we propose one minor modification to the section on decommissioning requirements. Section 69-09-10-05 (3) should include additional flexibility to accommodate the interests of the landowner. As written, if a solar company leveled uneven land during project construction, the owner must return the land to its previous, uneven state, even if the landowner prefers the land leveled. This section should include language allowing a landowner to waive this requirement, similar to subsection (4) in this section.

## **PU-19-290: Chapter 69-06-08 Energy Conversion Facility Siting Criteria**

The PSC proposes to modify its definition of exclusion and avoidance areas related to sound levels, specifically for wind energy conversion facilities, from fifty dBA to forty-five dBA.<sup>4</sup> We are not aware of any credible, scientific basis for this modification, nor do we understand the genesis for the PSC’s desire to amend this section at this time. Apex Clean Energy believes this modification is unnecessary.

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<sup>4</sup> Chapter 69-06-08-01 (4)

**PU-10-291: Chapter 69-09-09 Wind Facility Decommissioning**

In accordance with our comments on the proposed solar decommissioning Chapter, we highlight two concerns that affect wind decommissioning. First is the modification to remove the parent guarantor qualification language in 69-09-09-08(5)b(2). Second, although the PSC is not proposing modifications to this language, we highlight again our concerns about the PSC having unilateral authority to increase the security amount for decommissioning in the future, which creates uncertainty for a project, and believe this section should be either removed or revised to give the project owner an opportunity for input.

Thank you for the opportunity to provide comments on these matters.