

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Wind Decommissioning
Rulemaking

Case No. PU-19-291

COMMENTS OF MEADOWLARK WIND I LLC
AND CAPITAL POWER CORPORATION

I. Introduction.

The North Dakota Public Service Commission (“Commission”) has proposed changes to N.D.A.C. Ch. 69-09-09 Wind Facility Decommissioning. Meadowlark Wind I LLC (“Meadowlark”) and Capital Power Corporation (“Capital Power”) respectfully provide the following comments regarding the proposed changes to the Commission’s decommissioning rules.

II. Background Regarding Meadowlark Wind I LLC and Capital Power Corporation.

Meadowlark owns the 100.2 megawatt (“MW”) New Frontier Wind Project located in McHenry County, North Dakota (the “Project”). The Project received a Certificate of Site Compatibility from the Commission on April 12, 2012 and an Order of Continuing Suitability on May 10, 2017 (Case No. PU-11-069). The Project commenced commercial operations on December 21, 2018.

Meadowlark is a wholly-owned subsidiary of Capital Power Investments, LLC, which is a subsidiary of Capital Power Corporation. Capital Power is an independent power producer that currently owns nearly 6,000 megawatts of power generation across North America. In the U.S., Capital Power owns three wind facilities, a solar facility, two natural gas plants, two solid fuels plants, and a development portfolio of solar and wind projects, including an additional wind development site in North Dakota.

III. Comments Regarding N.D.A.C. § 69-09-09-08.

Included in the proposed revisions to N.D.A.C. Ch. 69-09-09 is the removal of current provision N.D.A.C. § 69-09-09-08(5)(b)(2), which allows the owner of a wind energy facility or its parent company to provide a guarantee as financial assurance for decommissioning costs if the entity 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.” If this provision were removed, an independent power producer or its parent company would have to have a bond issuance or issuer rating in the “A” category or higher in order to provide a guarantee. *See* N.D.A.C. § 69-09-09-08(5)(b)(1).

Requiring an independent power producer to have an “A” bond issuance or issuer rating in order to provide a guarantee is at odds with what is generally accepted by financial institutions and within the electric industry. Typically, an investment grade rating, which is BBB- or better, is required to provide a guarantee. For example, other states, regional transmission operators (“RTOs”) (including the Midcontinent Independent System Operator), and business counterparties (including investor-owned utilities) accept an investment grade rating as the basis for allowing parental guarantees for obligations, including credit for purchases and to guarantee future obligations. Capital Power provides guarantees to RTOs, banks, equipment suppliers and others as a matter of course, and we do not have an “A” bond issuance or issuer rating. In essence, while an investment grade rating has a broad range of commercial uses and precedents, an “A” bond issuance or issuer rating requirement is arbitrary and inconsistent with what is generally required of electric energy producers. Such onerous requirements are likely to have a negative impact on wind development in North Dakota and may arbitrarily limit competition.

The alternative, providing financial assurance in another acceptable form, such as a letter of credit, is equally problematic. The cost of such assurances is significant. Capital Power estimates decommissioning costs for the Project at \$3.51 million. Therefore, at a minimum, providing a letter of credit as financial assurance would cost 1.5 to 2 percent of the credited amount, or \$53,000 to \$70,000 per year. The Project must provide financial assurance during the tenth year of operation and it must remain in place for the life of the Project. Assuming an estimated life of 30 years, the cost to keep the letter of credit in place for the last 20 years is up to \$1.4 million. Given the highly competitive nature of wind development in North America, the impact to project economics is considerable. Revenue streams for existing projects will be impacted, as these projects did not contemplate such costs during financing and construction, or in offtake agreements. In the case of the Project, these unexpected costs will impact the Project’s revenue stream and, in turn, the revenue available to Project participants. New project economics will also be impacted. Capital Power is in the process of developing a second wind project in North Dakota that will be required to provide decommissioning financial assurance at the time of commercial operation – leading to even more significant costs for new projects.

Furthermore, the additional costs of providing financial assurance in such forms does not seem commensurate with any potential risk. The potential for an independent power producer to go bankrupt has been referenced. However, the reality is that a wind project retains significant value throughout its life. For example, when Kenetech went bankrupt in 1996, FPL (now NextEra) purchased Kenetech’s projects at a considerable discount and continued to operate the assets. NextEra understood that purchasing those projects was good business, and NextEra is now the largest renewable energy project owner in North America. Even at the end of the current technology’s useful life, a project that already has leases and infrastructure in place can be re-powered with updated technology and continue to operate. Thus, actual risk of a project being “abandoned” and not decommissioned is minimal. Additionally, an investment grade rating takes into consideration bankruptcy risk, as a rating in the “C” range identifies a serious risk of bankruptcy. Thus, requiring an investment grade rating, in and of itself, avoids or at least reduces the risk of bankruptcy.

For these reasons, we urge the Commission to retain the current version of N.D.A.C. § 69-09-09-08(5)(b)(2). In the alternative, we urge the Commission to revise N.D.A.C. § 69-09-

09-08(5)(b)(1) to allow a self or parent guarantee where the entity has an investment grade rating, rather than the current “A” bond issuance or issuer rating.

IV. Conclusion.

For all of the reasons discussed above, Meadowlark and Capital Power respectfully request that the Commission either retain N.D.A.C. § 69-09-09-08(5)(b)(2), or change the rating qualification requirement to an investment grade rating.