

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

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

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

**COMMENTS OF SUNFLOWER WIND PROJECT, LLC AND NOVATUS ENERGY**

**I. Introduction.**

The North Dakota Public Service Commission (“Commission”) has proposed changes to N.D.A.C. Ch. 69-09-09 Wind Facility Decommissioning. Sunflower Wind Project, LLC and Novatus Energy respectfully provide the following comments regarding the proposed changes to the Commission’s decommissioning rules.

**II. Background Regarding Sunflower Wind Project, LLC and Novatus Energy.**

Sunflower Wind Project, LLC, owns the 104 megawatt (“MW”) Sunflower wind farm located in Stark and Morton Counties, North Dakota (the “Project”). The Project received a Certificate of Site Compatibility from the Commission on June 25, 2014 in Case No. PU-14-105, and commenced commercial operations in December 2016. During the past approximately two and one-half years, the Project has supported the surrounding community by paying property taxes, paying royalties to landowners, and providing scholarships to graduating high school students, as well as providing other local donations. The Project is expected to continue to support the local community throughout its useful life.

Sunflower Wind Project, LLC, is a subsidiary of Novatus Energy, a North American privately-held renewable energy platform that currently owns interests in a 1.6 gigawatt portfolio of operational wind projects (1,043 MW) and solar PV projects (543 MWac) in the United States. Novatus Energy is wholly owned by institutional investors advised by J.P. Morgan Asset Management. Additional information regarding Novatus Energy is available at [www.novatusenergy.com](http://www.novatusenergy.com).

**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, in order to provide a guarantee an independent power producer or its parent company would have to have a bond issuance or issuer rating in the “A” category or higher. *See* N.D.A.C. § 69-09-09-08(5)(b)(1).

We understand the benefit to local communities of having assurance that wind farm decommissioning obligations will be met at no cost to the community. This is a legitimate concern, and we agree that wind farms should provide financial assurance from a credit-worthy entity to backstop these obligations. Sunflower Wind Project, LLC has the financial wherewithal to support a self-guarantee covering its decommissioning obligation for the Project, as demonstrated in the Decommissioning Plan filed with the Commission on May 25, 2018 in Case No. PU-16-661, a copy of which is enclosed.

We believe that the financial tests for the self- and parent-guarantee in the current provision N.D.A.C. § 69-09-09-08(5)(b)(2) are reasonable for demonstrating the financial strength to fulfill decommissioning obligations. To alleviate any concerns that the Commission may have about a wind farm's ongoing solvency and risk of bankruptcy in relation to decommissioning obligations, the Commission could require annual certification as to meeting the financial tests and/or provision of audited financial statements.

Very few independent power producers have investment-grade credit ratings. In fact, over the past 30 years, the entire function of the project financing sector – which has financed the vast majority of renewable energy facilities – has been to allow generation projects to be built and financed on their own credit merits, without needing credit support from a parent company. Therefore, eliminating N.D.A.C. § 69-09-09-08(5)(b)(2) ignores the underlying credit-worthiness of the independent power producer itself and would eliminate the self-guarantee as a financial assurance option for independent power producers. Likewise, since the parent companies of many independent power producers – including Novatus Energy – do not have “A” credit ratings, the option of a parent guarantee is also eliminated.

The remaining options for providing financial assurance – cash escrow, surety bond, or irrevocable letter of credit – would be costly to a wind farm in terms of financial cost paid or income trapped in cash escrow deposits. As a result, the Project and other wind farms in North Dakota will incur significant added cost to provide a different form of financial assurance for no real incremental benefit to the community compared to the current self- or parent-guarantee. Novatus Energy and Sunflower Wind Project, LLC are fully committed to cover the expected decommissioning expenses required at the end of the wind farm's useful life regardless the form of financial assurance required, but see the considerable financial burden (see below) of using these remaining options as unnecessary and of little benefit.

Since Sunflower Wind Project, LLC does not have a parent company with the required upper-tier investment grade rating, the most cost-effective form of the remaining financial assurance options would be for Sunflower Wind Project, LLC to provide a letter of credit from a financial institution. The following outlines the added cost compared to a self or parent guarantee:

- The cost of a letter of credit for Sunflower Wind Project, LLC would be approximately \$150,000 a year. This is based on a 2 percent letter of credit fee paid with respect to the \$7,645,234 estimated gross cost of decommissioning (which excludes decommissioning revenues (scrap and salvage values)), as reflected in the enclosed Decommissioning Plan.

- The letter of credit would be posted during the 10th year of operation and it would remain in place until the Project reaches the end of its useful life and is decommissioned (estimated to be in the 30th year of operation).
- The total cost to Sunflower Wind Project, LLC of providing financial assurance during these 21 years would be approximately \$3,200,000. This would increase the estimated cost of decommissioning by 42%.
- The cost of a letter of credit for the net cost of decommissioning (including scrap and salvage values) would be approximately half of the figures above.

This added cost was not contemplated at the time the Project was constructed and financed, or at the time the output was contracted for sale; thus, this is a truly unexpected cost that significantly impacts the Project's cash flow. Additionally, it may reduce the cash available for Sunflower Wind Project, LLC to continue to financially support the local community, as it has done in the past.

#### **IV. Conclusion.**

For all of the reasons discussed above, Sunflower Wind Project, LLC and Novatus Energy respectfully request that N.D.A.C. § 69-09-09-08(5)(b)(2) remain in its current form so that the self- and parent-guarantee options continue to be viable options for independent power producers to satisfy their decommissioning security obligations.