



Public Service Commission

State of North Dakota

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20 March 2020

The Honorable Wayne Stenehjem
North Dakota Attorney General
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0040

Re: Proposed Amendments to Administrative Rules
PSC Case Numbers PU-19-122, GS-19-217, PU-19-290, and PU-19-291

Dear Attorney General Stenehjem:

Enclosed please find proposed amendments to the North Dakota Administrative Code by the North Dakota Public Service Commission. In accordance with N.D.C.C. § 28-32-14, the North Dakota Public Service Commission requests your examination of these rules as to their legality so they may be considered for formal adoption and publication in the North Dakota Administrative Code.

Enclosed for purposes of review is a copy of each of the following:

- The 18 March 2020 Public Service Commission Order Submitting Rules to Attorney General, with the final proposed rules attached. The order summarizes the written and oral comments received, the Commission’s consideration of the comments, and the Commission’s conclusions.
- The 6 August 2019 Commission Motion proposing rules, with rules as originally proposed.
- Full Notice of Intent to Amend Administrative Rules;
- Abbreviated Notice of Intent to Amend Administrative Rules;
- Affidavit of Publication from the North Dakota Newspaper Association;
- A copy of one of the actual notices, as published (others are available if you want them);
- North Dakota Newspaper Association invoice showing the names of the newspapers in which the abbreviated Notice was published;
- A copy of the cover letter filing the Notice and Administrative Rules with the Legislative Council, with the filing acknowledgment;
- A statement or analysis for each rule case regarding the required regulatory analysis and takings assessments, small entity regulatory analyses, and economic impact statement and taking assessments;

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Request to Attorney General regarding legality of proposed rules
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The Honorable Wayne Stenehjem

20 March 2020

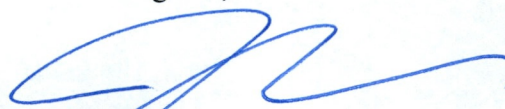
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- Testimony from the public hearing and other written comments received; and
- A Fiscal Note regarding the proposed rules.

The amendments are not a result of emergency rulemaking. Amendments to Section 69-06-08-01 do not implement any recently enacted legislation. A fiscal note was not required because these rules have no fiscal effect.

Thank you for your consideration of the rules. If you have any questions please do not hesitate to call or email.

Best regards,



John Schuh
Special Assistant Attorney General

enclosures

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

ORDER SUBMITTING RULES TO ATTORNEY GENERAL

March 18, 2020

Appearances

Commissioners Brian Kroshus, Julie Fedorchak, and Randy Christmann

Preliminary Statement

On August 6, 2019, the North Dakota Public Service Commission (Commission) issued a formal Notice of Intent to Amend Administrative Rules and Notice of Public Hearing and Abbreviated Notice of Intent to Amend Administrative Rules and Notice of Public Hearing, proposing to create new Chapter 69-09-10, proposing to amend Section 69-09-03-02, amend Section 69-06-08-01, and amend Chapter 69-09-09 of the North Dakota Administrative Code.

On August 6 and August 9, 2019, Staff filed statements regarding the required regulatory analysis, small entity analysis, and takings assessments.

On August 7, 2019, the Commission forwarded the notices to the Legislative Council for publication at least 30 days in advance of the hearing.

The Abbreviated Notice was published once in each of the 52 official county newspapers in the state during the weeks of August 14 through August 20, 2019.

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On September 19, 2019, the Commission held the public hearing as noticed, beginning at 1:30 p.m., CST, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The Commission allowed a comment period until September 30, 2019, during which the Commission received and considered data, views, or written or oral comments concerning the proposed rulemaking as part of the rulemaking record.

The proposed rules and amendments are summarized 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 – Pipeline Safety

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 – Proposed Amendments to Section 69-06-08-01 - Energy Conversion Facility Siting Criteria

The purpose of the amendments is 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 is 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.

Public Hearing and Comments

The Commission reviewed and considered all comments. The written and oral comments that were received are summarized and discussed below by case number. The Commission received a number of comments that were unrelated to the current rulemaking or the Commission's jurisdiction, or were for providing information to the Commission. The Commission appreciates the information and participation, but they may not be directly discussed in the following summary.

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

Written comments were provided by Lightspring, LLC ("Lightspring"), Northwest Landowner's Association ("Northwest"), and Montana-Dakota Utilities Co. ("Montana-Dakota"). Written and oral comments were provided by Commission Staff and Apex Clean Energy ("Apex").

The following is a summary of the comments provided regarding Solar Facility Decommissioning.

69-09-10-01: Solar Facility Decommissioning Size Threshold

Proposed N.D. Admin. Code § 69-09-10-01(3) defines a commercial solar energy conversion facility as a project with a total nameplate generating capacity equal to or greater than five hundred kilowatts (kW). A facility with a nameplate generation capacity equal to or greater than five hundred kW would be subject to the Commission's decommissioning and financial assurance requirements. Proposed N.D. Admin. Code § 69-09-10-10 provides that the Commission may grant a waiver of many of the decommissioning plan and financial assurance requirements for a project with a nameplate generating capacity of less than 5 megawatts (MW).

Apex commented that a different threshold for decommissioning and siting permitting may cause confusion within the regulated community and political subdivisions.¹ Apex recommended that the Commission set the threshold for decommissioning requirements at fifty MW, or amend the waiver provision to allow the Commission to grant a waiver for a project up to fifty MW.

¹ Pursuant to N.D.C.C. ch. 49-22, a company may not begin construction of an electric energy conversion facility that exceeds fifty MW of electricity without first having obtained a site certificate.

LightSpring recommended that the decommissioning threshold be set at fifty MW or higher to maintain consistency with the Siting Act.

The hearing record and the Commission's experience with solar facility siting provides that a low MW facility may result in impacts to a large footprint.² Therefore it is in the public interest for the Commission to retain authority to require decommissioning and financial assurances for projects equal to or greater than five hundred kW. The industry is sufficiently sophisticated to recognize two size thresholds: one to receive a siting permit, and one to ensure decommissioning. Proposed N.D. Admin. Code § 69-09-10-10 allows the owner to request a waiver of decommissioning requirements for facilities up to five MW.

69-09-10-01(8): Facility Definition:

Montana-Dakota recommended inverters be added to the definition of "Facility" under N.D. Admin. Code § 69-09-10-01(8).

The Commission considered the recommendation, but the definition of "Facility" is not meant to be exhaustive. The Commission may revisit this in a future rulemaking if further clarification is needed. At this time, the Commission proposes to adopt this section consistent with N.D. Admin. Code ch. 69-09-09 without modification.

69-09-10-03: Abandonment and Useful Life

The Proposed N.D. Admin. Code § 69-09-10-03 provides that a certificate of operation must be annually filed with the Commission and codifies presumptions regarding abandonment and end of useful life of the facility. Proposed N.D. Admin. Code § 69-09-10-03(2) provides that 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.

Montana-Dakota commented that North Dakota solar facilities are expected to have an eighteen percent annual capacity factor. Due to the lower capacity factor, Montana-Dakota recommended a five percent annual capacity factor for two consecutive years to create the presumption of end of useful life.

Apex commented that solar facilities have a lower capacity factor than solar facilities. As a result, the capacity factor may fall below ten percent after thirty years of operation and as efficiency declines. Apex recommended tying end of useful life to lease payments, or in the alternative, reducing the capacity factor.

² During the rulemaking hearing, it was discussed that one MW of solar generation may require up to eight acres of footprint. The resulting calculation may result in an impact to three hundred and ninety-two acres for forty-nine MW of solar generation.

Lightspring expressed concern with the capacity factor, but disagreed with Apex's recommendation of tying the useful life to lease payments. Based upon these comments, Lightspring supported alteration of the rules to state that a facility is "presumed to be at the end of its useful life if its annual capacity factor is less than ten percent of its original capacity factor for two consecutive years."

The Commission continues to refrain from basing its decisions upon what is contained in private negotiations and leases and considers annual capacity factor to be a clear and simple baseline to evaluate the functional use of a project. Based upon the Commission's understanding of solar capacity factors and degradation of most photovoltaic facilities, the Commission considers a five percent annual capacity for a period of two years to be low, particularly when the administrative code allows an owner receive approval for continued operation of the facility from the Commission in spite of a presumption of abandonment.

However, recognizing that solar generation is in early development in North Dakota, the Commission finds that conservatively modifying Proposed N.D. Admin. Code § 69-09-10-03(2) to lower the annual capacity factor for a period of two years from ten MW to five MW as a reasonable request until additional data is developed regarding solar operations in North Dakota.

69-09-10-05: Decommissioning Requirements

Montana-Dakota recommended the inclusion of inverters, transformers, and substations to N.D. Admin. Code § 69-09-10-05; however, it recommended leaving the transformers and substations as optional due to the possibility of continued use after facility decommissioning. Montana-Dakota also recommended that foundation depth of removal be added and that an exemption be added to address landowner preference or lease arrangements.

As with the definition of "facility", the Commission does not view the list of decommissioning items as exhaustive, but will provide these changes for additional clarity. The Commission agrees that Montana-Dakota's recommendation for allowing flexibility in the decommissioning process to accommodate landowner requests is a good one. To accommodate this recommendation, Proposed N.D. Admin. Code § 69-09-10-05 is revised to allow for a waiver of a decommissioning requirement upon receipt of a request signed by a landowner and a finding of good cause that the requirement be waived.

The Commission also revises Proposed N.D. Admin. Code § 69-09-10-05 to provide a depth of removal for anchors, pilings, foundations, buildings, and ancillary equipment to a depth of four feet. Due to the similar concerns and the similarity between the wind and solar decommissioning rules, the Commission also revises the wind decommissioning rules to maintain consistency.

Lightspring recommended that the Commission allow the industry to continue to determine the best practices for foundation and piling removal over the next three years and to implement removal guidelines once more data has been received and practices have been established.

Given the legal applicability of administrative rules and the time it takes to promulgate and publish rules, the Commission will decline this recommendation. Although the Commission may change the decommissioning requirements as the industry develops, these rules are intended to provide some baseline guidance.

Northwest recommended modifying the requirement of removal of underground cables to a depth of twenty-four inches to remove all cables unless agreed to in writing by the landowner. Northwest asserts that cables interfere with the installation of drain tile for future landowners. Northwest also suggested language requiring the restoration of productive topsoil and set a baseline by referencing surrounding undisturbed areas, as is done with coal and oil. Northwest expressed that the uniformity would assist landowners in protecting their land as they negotiate private agreements by setting a general expectation across industries.

The Commission agrees that the recommendations set forth by Northwest are good practices; however, the Commission is going to decline modifications based on Northwest's recommendations at this time. The Commission has generally taken a baseline approach to decommissioning to ensure that the public is protected, but allow the flexibility for the companies and landowners to negotiate more rigorous standards. The Commission will take these recommendations under advisement for future rulemaking where additional notice to interested parties is provided.

69-09-10-06: Decommissioning Plan

Apex recommended the inclusion of salvage value for the decommissioning cost estimate to align with industry best practices. Apex commented that the updated cost estimate every five years will ensure up-to-date assumptions for pricing and the exclusion of the value will inflate decommissioning costs and result in an unnecessary obligation on the owner.

Proposed N.D. Admin. Code § 69-09-10-06 allows the Commission discretion to consider the appropriate level and type of financial assurance to ensure complete decommissioning. An owner may provide an estimate including salvage value in addition to a cost estimate that excludes salvage value for consideration. However, the price of salvage materials is subject to market price and is often volatile. This does create a reluctance within the Commission to accept a financial assurance based upon an estimate that includes salvage value. For ease of administration, it is preferred to maintain consistency with the current wind decommissioning rules.

Having considered the comments, Commission proposes to adopt this section without revision.

Montana-Dakota recommended that N.D. Admin. Code § 69-09-10-06(3)(a) be modified to allow the cost estimate be done by a qualified contractor with experience in facility decommissioning, instead of solely by a professional engineer licensed by the state of North Dakota.

This recommendation is similar to the one provided by Montana-Dakota during the promulgation of the wind decommissioning rules³ which did not result in revisions during that rulemaking process. To maintain consistent with wind decommissioning, the Commission will continue to require a professional engineer to provide the cost estimate at this time.

Having considered the comments, the Commission adopts this section without revision.

69-09-10-08: Financial Assurance

Apex expressed a number of concerns with N.D. Admin. Code § 69-09-10-08. Apex requested the inclusion of 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” (financial metrics) as an option that allows an owner to request that the Commission accept a parent guarantee. Apex expressed that this preserves flexibility to account for various business models.

Apex also requested that the proposed rules be revised to limit the Commission from requiring additional financial assurance upon a finding that it is not sufficient to ensure complete decommissioning between a five-year cost update. The concern is that it provides uncertainty in determining the long-term costs for a project. Apex suggested tying financial assurances to adjustments in the net removal cost for a project updated every five years.

The Commission proposed the solar decommissioning rules with an omission of tangible net worth, debt to equity ratio, and short-term liquidity ratio as a requirement to accept guarantees simultaneously with their removal from the wind decommissioning rules. The Commission has experience with evaluating financial metrics with coal reclamation. Based upon this experience, the Commission recognizes the burdens of due diligence required for continual financial evaluation. It is a cumbersome process subject to dispute, and the Commission is seeing a movement away from guarantees as a financial assurance nationwide for coal reclamation.

³ See PU-17-23

The Commission has viewed the use of nationally recognized statistical rating agencies as a simple and nationally recognized manner of monitoring risk and financial stability. Separately, utilities are rate regulated by the Commission and therefore subject to rigorous review and monitoring. The result of omission of the financial metric standard favoring large developers and public utilities coincides with the stability provided by larger developers and public utilities. However, the Commission recognizes that this may have a disproportionate effect on small to intermediate independent developers. To allow for flexibility in business model and size, the Commission will allow an owner to submit financial metrics for Commission consideration. However, in practice, the Commission will be reticent to accept a guarantee based upon the financial metric as a sole financial assurance for wind or solar facilities and may require additional filing requirements for continued monitoring.

The Commission also declines to revise the proposed rules to limit the Commission's ability to require additional financial assurances between the five year cost updates. The policy goal is to ensure that sufficient funds are available to decommission and restore the site. If there is a finding that a financial assurance is inadequate, the statutory purpose requires additional financial assurances. The stated concerns of uncertainty in long-term cost projections are most likely attributed to unforeseen changes in decommissioning costs or an inadequate cost estimate provided by the owner. Both of these concerns would likely be the very purpose for re-evaluation of a financial assurance. The process requires a basis for the Commission's finding and the owner may refute the basis.

Having considered the comments, the Commission proposes to revise this section to provide the Commission the discretion to consider the financial metrics standard for acceptance of a guarantee.

Montana-Dakota commented that the proposed rule has an incorrect cite. The Commission will revise the proposed rules to correct this error. N.D. Admin. Code 69-09-10-08(1) is revised to correct the cite from 69-09-09-08(2) to 69-09-10-08(2).

Case No. GS-19-217 - Section 69-09-03-02 – Pipeline Safety

Written and oral comments by Jerry Lein of Commission Staff were provided at the hearing. The Commission received no further comments regarding this section.

Commission Staff provided comments that under North Dakota Administrative Code chapter 69-09-03, the Commission adopts by reference the most recent amendments to pipeline safety regulations adopted by PHMSA.

This proposed amendment updates and adopts by reference the PHMSA safety regulations in effect on July 31, 2019, for intrastate gas pipelines, intrastate liquefied natural gas facilities and intrastate hazardous liquids pipelines.

The Commission received no further comments regarding this section and proposes to adopt these amendments without revision.

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

Written and oral comments by Jerry Lein of Commission Staff were provided at the hearing. Written and oral comments were provided by Apex, the Department of Defense Regional Environmental Coordinator (DOD), and Colonel Todd Sauls, Director of Operations for the 20th Air Force (Air Force). Written comments were received by the Office of the Assistant Secretary of Defense – Military Aviation and Installation Assurance Siting Clearinghouse (Secretary of Defense); Ruso Wind Partners, LLC (Ruso); NextEra Energy Resources, LLC (NextEra); Geronimo Energy, LLC (Geronimo); and Lyle Best.

Sound Level – N.D. Admin. Code § 69-06-08-01(4)

Commission Staff testified that the proposed changes lowers the acceptable sound levels from fifty decibels (dBA) at a distance of one hundred feet from an occupied residence to forty-five dBA for new projects. Mr. Lein explained that the changes are proposed because of concerns expressed by landowners and expert testimony presented to the Commission during siting cases. The purpose of lowering the dBA is to protect a landowner's residence from noise produced from a facility.

Past expert testimony during Commission siting hearings have discussed that a project designed consistent with community welfare and acceptance of the project should have a lower dBA, particularly for non-participants to the project. Staff testified that it believed the forty-five dBA is an appropriate level to protect non-participating landowners from exposure to excessive noise nuisance while not standing in the way of economic development. A number of South Dakota wind projects have been sited with a forty-five dBA limitation. Having this guidance in rules allows a developer to accommodate these changes earlier in the design and modeling process. The rules continue to allow an owner of an occupied residence or community building to waive the sound level avoidance area.

Montana-Dakota opposed lowering the maximum sound level to forty-five dBA. Montana-Dakota also provided an alternative by lowering the threshold to forty-five dBA for non-participating landowners and retaining the fifty dBA maximum threshold for participating landowners.

Apex commented that there is no credible scientific basis for this modification and that the rule change is unnecessary. During the hearing, Apex explained that it did have projects in South Dakota with a forty-five dBA limit for non-participating landowners and a fifty dBA for participating landowners. Apex stated that given what he observed in South Dakota, forty-five dBA is viable from a developmental standpoint and that the sound levels

would not be out of step with the other jurisdictions. However, Apex warned that lowering the dBA below forty-five may hinder development.

NextEra commented that they do not believe there is a need to reduce the sound criteria and that they have received few sound complaints. NextEra submitted that the practice is not supported by evidence or practices in other states and may restrict areas for wind development without additional community or health benefit.

NextEra's comments discussed a number of scientific articles which concluded that there is no health or welfare issue associated with non-participants experiencing sound at or below forty-five dBA at the exterior of their residences. The cited studies also note that increased annoyance during the study may have been driven by visual impacts and attitudes towards the wind project.⁴ NextEra also stated that a study showed that the average annoyance levels from a study range of 30 dBA to 50 dBA were comparable to levels associated with traffic noise.

NextEra also addressed the South Dakota projects discussed during the rulemaking hearing. NextEra stated that there is not a statewide sound limitation for wind projects in South Dakota and that South Dakota addresses the issue case-by-case. NextEra corroborates that the South Dakota Public Utilities Commission has sited projects as low as 40 dBA for non-participating landowners and 45 for participating landowners on an occasion, but has also approved wind projects with a 50 dBA sound limitation. NextEra recommended that the existing sound level not extend below 45 dBA and that it be limited to non-participating landowners.

Geronimo provided a memorandum by a firm that conducts pre- and post-construction noise assessments. RSG commented that the sound level of forty-five dBA is commonly applied to wind power projects throughout the country. However, the proposed rule does not specify a sound metric or averaging time leaving the rule ambiguous. RSG states that South Dakota has used a two-week period and that the World Health Organization also uses an outdoor guideline level of forty-five dBA averaged over the course of an eight-hour night to protect against sleep disturbance. RSG's comments echoed NextEra's comments that annoyance with sound may be attributed to other prerogatives such as opposition to a wind project.

Northwest commented in support of reducing the dBA level of allowable noise registered at an occupied residence or community building. In support, Northwest expressed that the organization has heard complaints of noise associated with wind facilities from members and that noise resulting from wind facilities has the potential to

⁴ NextEra cites a Health Canada study that indicates that there is a statistically significant increase in annoyance when the wind turbine noise exceeds 35 dBA, but also shows that annoyance was significantly lower among participants who received a personal benefit such as payments. <https://www.canada.ca/en/health-canada/services/health-risks-safety/radiation/everyday-things-emit-radiation/wind-turbine-noise/wind-turbine-noise-health-study-summary-results.html>

overpower natural sounds. Northwest commented that the reduction will help preserve features of a rural lifestyle, reduce potential conflict between landowners and developers, and provide the freedom of residents to waive the requirement if they find the higher level acceptable.

Mr. Best recommended parity by deleting the lower noise standard from the proposed rules for wind facilities or apply the equivalent regulations to oil and gas. He also commented that his house measures fifty-nine dBA from the nearest well site and characterized the sounds as a “not-so-distant jet engine.” He expressed that he would be “delighted” to know that the siting agency for oil pads had a regulation on noise.

The Commission appreciates the extensive comments and expertise provided by stakeholders. Many of Mr. Best’s comments were unrelated to the Commission’s jurisdiction; however, the annoyance expressed with the sound of nearby oil pads from his residence is what the Commission aspires to avoid through the creation of avoidance areas and reviewing sound-sensitive land uses in its selection criteria. The Commission will consider Geronimo/RSG’s recommendation to clarify the sound metrics and span for averaging time in future rulemaking, opinions, or guidance documents.

While there is disagreement on the need for the rule change, the comments and Commission’s experience with siting wind facilities demonstrate the ability of the industry to continue to develop at the lower dBA. The sound avoidance area continues to allow a waiver from the owner of an occupied residence or community building.

Having considered the comments, the Commission adopts Proposed N.D. Admin. Code § 69-06-08-01(4) as proposed.

Pooling and Spacing for Wind Development

Northwest provided comments to support the concept of wind development pooling and spacing to ensure that a non-participating landowner receives a just and equitable share from the use of the wind resource. Northwest expressed concern that wind developers shop for landowners that will sign a less favorable lease and will not push for protections. Northwest submits that this is problematic in that it results in assertive landowners being surrounded by facilities while having no benefit of the project. The result is unjust because it renders a non-participating landowner’s wind resource undevelopable while the landowner receives no compensation. Northwest recommended the adoption of rules requiring resources to be spaced and pooled to allow for a just and equitable sharing of proceeds from the development of a wind resource.

Northwest recognized that this was complicated and beyond the scope of the present rulemaking, but wanted to voice support for the concept as wind continues to develop in the state.

The Commission will monitor this issue as the discussion continues with the policymakers of the state.

ICBM Launch Facilities Exclusion Area – N.D. Admin. Code § 69-06-08-01(1)(g).

Commission Staff commented that the proposed addition, N.D. Admin. Code § 69-06-08-01(1)(g) provides that a new subsection be added to define areas within thirty feet of a direct line between an ICBM launch or launch control facilities to avoid microwave interference. During the hearing, Staff commented that the “or” should be changed to an “and.”

Ruso requested revisions to the proposed exclusion area to clarify the specific facilities between line-of-sight that are to be maintained and that the proposed rule’s application is limited to aboveground structures.

Geronimo commented that launch control facilities have not been readily available by the U.S. Air Force and that consultation occurs by providing proposed project facilities to the U.S. Air Force for review. Geronimo suggests that the Commission ask the U.S. Air Force to make maps and other information regarding the location of ICBM launch and launch control facilities available so that the exclusion areas may be identified early in the project siting. If this information is not made available, then Geronimo requests that this not be added as an exclusion area.

DOD commented that wind turbine placement impacts operations of the Minot Air Force Base (MAFB) and missile launch facilities. The DOD recommended wind turbine setbacks be increased from 1,200 feet to a two nautical mile radius from the center of a launch facility or launch control facility and that the developer be required to provide early notification to allow identification of any potential adverse impact to missile field operations. The DOD also recommended that the towers be equipped with collision avoidance lighting compatible with the use of night vision goggles. It was suggested that a company be required to request an informal review through the Military Aviation and Installation Assurance Siting Clearinghouse to identify impacted military missions.

The Secretary of Defense recommended the addition of a facility siting criteria to prevent impacts to ballistic missile silos and launch facilities, lower level military airspace, weather radars, air traffic control radar, and military missions.

The Air Force provided comments during the hearing regarding the impact of wind turbines on ICBM operations and military security response. Col. Sauls stated that wind turbines within two nautical miles of an ICBM facility create a safety hazard for helicopter response teams. He also characterized areas within 1.5 miles as high risk, and areas within half a mile as an extreme risk to personnel and aircraft operations. The level of risk may increase with inclement weather and night conditions. Col. Sauls commented that the wind turbines interfere with helicopter approach avenues, turn radius, and impact

air to ground security operations. The Air Force also expressed concern that it is notified late in the process after easements, leases, and turbine locations are set, which causes difficulty in mitigating impact of the turbine locations. The Air Force recommends the two-mile setback and earlier notification in the process to provide input. Regarding the Commission's proposed rule, the Air Force testified in favor of the proposed addition of an exclusion area within 30 feet on either side of a direct line between ICBM launch or launch control facilities to avoid microwave interference.

Apex testified that the DOD's clearinghouse has been an effective process and no project has gone forward over DOD's concerns. Apex expressed that the industry would like the opportunity to engage in the discussion and recommendations.

A number of comments expanded upon the noticed rulemaking regarding ICBM missile sites, operations, and security. Based upon the concerns noted by the DOD, Secretary of Defense, and Air Force, the Commission may begin a subsequent rulemaking to address the concerns and to provide adequate notice to interested stakeholders.

Upon reviewing the comments related to N.D. Admin. Code § 69-06-08-01(1)(g), the Commission has revised the section to clarify that the rule applies to above-ground facilities. To retain consistency, the Commission also revises N.D. Admin. Code § 69-06-08-02(1)(g) with the same changes.

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

Written and oral comments were provided by Jerry Lein of Commission Staff at the hearing. Written comments were provided by Basin Electric Power Cooperative (Basin Electric); Apex; Acciona Wind Energy USA, LLC (Acciona); Montana-Dakota; Northwest; Meadowlark Wind I LLC, and Capital Power Corporation (Capital Power); Sunflower Wind Project, LLC and Novatus Energy (Sunflower); and Lyle Best.

69-09-09-05: Decommissioning Requirements

Montana-Dakota provided comments consistent with its comments on Proposed N.D. Admin. Code ch. 69-09-10. These comments include adding substations and transformers to N.D. Admin. Code § 69-09-09-05(1); allowing an exception to address landowner preference or lease arrangements rather than specifying restoration and reclamation to the approximate original topography; and proposing a qualified contractor with experience in facility decommissioning be added as an option for providing a cost estimate for decommissioning a facility.

A number of these issues mirror, and were addressed under, the Proposed ch. 69-09-10. To echo the previous explanation, the Commission will provide these changes for additional clarity. The Commission agrees that Montana-Dakota's recommendation for

allowing flexibility in the decommissioning process to accommodate exigent circumstances and consider landowner requests is a good one. To accommodate this recommendation, Proposed N.D. Admin. Code § 69-09-09-05 is revised to allow for a waiver of a decommissioning requirement upon receipt of a request signed by a landowner and a finding of good cause that the requirement be waived. This is changed to retain consistency between the two decommissioning programs.

Northwest commented that the requirement of removal of underground cables to a depth of twenty-four inches should be modified for complete removal of the cables. The remaining cables may be an impediment for the installation of future drain tile on the property. Northwest also recommends the addition of language requiring restoration of topsoil to ensure that soil productivity is as close to its original condition as practicable by using the original soil condition as the baseline standard. Northwest states that this is the restoration standard for other energy producers such as coal mining, well pads, and treatment plants. Northwest states that this creates a level playing field for all energy producers and assists landowners as they attempt to protect their land through private agreements.

As stated with the proposed solar decommissioning rules, the Commission agrees that the recommendations set forth by Northwest are good practices; however, the Commission is going to decline modification of the proposed rules to accommodate the practices at this time. The Commission also has generally taken a baseline approach to decommissioning to ensure that the public is protected, but allow the flexibility for the companies and landowners to negotiate more rigorous standards through private agreements. The Commission will take these recommendations under advisement for future rulemakings where they may be addressed simultaneously with wind decommissioning and additional notice is provided to interested parties.

69-09-09-08: Financial Assurance

Basin Electric requested revising N.D. Admin. Code § 69-09-09-08(5)(b)(3) to expand upon which entities may provide a guarantee or parent guarantee by changing “electric public utility” as defined by subsection 2 of N.D.C.C. § 49-03-01.5 to “electric provider” so that electric cooperatives may provide a guarantee as a form of financial assurance for decommissioning.

The Commission previously considered allowing cooperatives to provide guarantees as a financial assurance. Allowing public utilities the opportunity to provide guarantees was tied to the financial scrutiny and regulatory authority that they are subject to. While the Commission acknowledges that independent developers and cooperatives are not similarly situated, Cooperatives are not subject to Commission financial oversight. The requested revision was not one contemplated by the current rulemaking, but the Commission may continue this discussion in future rulemakings.

Apex, Acciona, Capital Power, and Sunflower all expressed concerns over the removal of N.D. Admin. Code § 69-09-09-08(5)(b)(2).

Apex expressed concerns regarding the removal of the financial metrics that mirror its comments for the solar decommissioning rules. Apex commented that the removal of the guarantee qualification of 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” reduces flexibility for various business models. Apex also reiterated its concern for the possibility that the Commission may unilaterally increase the financial assurance required or revise the rule to the project owner opportunity for input.

Acciona commented that it does not have objections to the decommissioning rules applying to non-sited facilities, including the two that it operates in North Dakota. It had already taken steps to comply as if they extended to its facilities. However, they do object to the proposed removal of 69-09-09-08(5)(b)(2), eliminating the financial criteria that allows an entity to qualify to provide a guarantee for decommissioning. Acciona is not a credit-rated agency or a public utility, but it does meet the financial criteria under the current rules. Acciona stated that companies have to pay to have credit agencies provide an analysis and a credit rating and that ongoing maintenance of a credit rating is quite costly. Acciona submits that the balance sheets and financials should be adequate to demonstrate financial stability.

Capital Power recommended that the Commission retain the current 69-09-09-08(5)(b)(2) and commented that the removal of 69-09-09-08(5)(b)(2) functionally requires an independent power producer to have an “A” bond issuance or issuer credit rating to provide a guarantee. Capital Power stated that this is at odds with industry practice of accepting guarantees for “investment grade” ratings and may result in a negative impact on wind development in North Dakota. The cost of financial assurances is significant with a 1.5 to 2 percent of credited amount per year for a letter of credit and that the additional cost does not commensurate with potential risk. If the Commission does remove the current 69-09-09-08(5)(b)(2), Capital Power urges the Commission to accept a guarantee if an entity has an investment grade rating.

Sunflower supported wind farms providing financial assurance to ensure decommissioning of wind farms to protect communities. However, Sunflower opposed the removal of the current 69-09-09-08(5)(b)(2). It commented that the current financial tests to provide for a guarantee are reasonable. To alleviate any concern about a wind farm’s ongoing solvency and risk of bankruptcy, the Commission may consider requiring annual certifications and audited financial statements. Sunflower stated that very few independent power producers have investment grade ratings and that the remaining options would result in costly alternatives. Sunflower commented that the added cost to implement the alternative financial assurances for facilities without salvage value included was not contemplated at the time that their project was financed and constructed and that

it would significantly impact the project's cash flow and financial support to the local community.

Consistent with the discussion and revision to the proposed solar decommissioning rules, the Commission will modify the proposed wind decommissioning rules to retain the financial metrics standard allowing an owner to request the Commission accept a guarantee as a financial assurance.

General Comments

Mr. Best provided comments that although he did not know how the decommissioning and bonding regulations compare between renewable and fossil fuel, he hoped that North Dakota has learned lessons from the abandoned strip mines. He states that he is in favor of decommissioning regulations that are reasonable as long as they are similar to fossil fuel facility regulations to return oil pads, gas plants, coal fired generators, and mines to their former conditions. A number of comments are outside of the Commission's jurisdiction, and relate to regulations set forth by other agencies or local authorities.

In 1975, the Commission was charged with the responsibility of administering the State's program regulating the surface mining of coal. Upon the passage of the Surface Mine Control and Reclamation Act of 1977 (P.L. 95-87, Title IV), the Commission was tasked with the state program for reclaiming abandoned mine lands. Although the Commission is unable to speak to the regulatory requirements of oil pads and local reclamation standards, the reclamation requirements for solar and wind generation are, if anything, less stringent than what is required for coal mining.

Discussion

Having reviewed the proposed rules, and the testimony and comments received, the Commission finds good cause for submitting the revised proposed rules, attached to and made a part of this order, to the Attorney General for an opinion as to legality.

ORDER

The Commission orders that the revised proposed rules and amendments to the North Dakota Administrative Code, as attached to and made a part of this order, be submitted to the Attorney General for an opinion that the rules are approved as to their legality.

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

Section

<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>09-09-10-06</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 _____, 2020.

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 _____, 2020.

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 five 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 _____, 2020.

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 _____, 2020.

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

Law Implemented: NDCC 49-02-27

69-09-10-05. Decommissioning requirements.

1. Decommissioning the facility includes:
 - a. Dismantling and removal of all panel racking, photovoltaic modules, supports, anchors, towers, fencing, overhead cables, inverters, transformers, substations and other equipment;

- b. Removal of underground cables to a depth of twenty-four inches [60.96 centimeters];
 - c. Removal of pilings and anchors, foundations, buildings, and ancillary equipment to a depth of four feet [121.92 centimeters].
 - d. 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
 - e. Grading and restoring topsoil of areas disturbed by the facility, and reseeding according to natural resource conservation service recommendations.
2. The Commission may waive a decommissioning requirement upon receipt of a request signed by the applicable landowner and finding good cause that the requirement be waived.

History: Effective _____, 2020.

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 _____, 2020.

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 _____, 2020.

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 69-09-10-08(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;
 - (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 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 _____, 2020.

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 _____, 2020.

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 _____, 2020.

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; _____, 2020.

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 an intercontinental ballistic missile (ICBM) launch facility and a missile alert or launch control facilities to avoid microwave interference. This restriction only applies to above-ground structures, not to surface features, such as roads, or below-ground infrastructure.

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 _____, 2020.

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 an intercontinental ballistic missile (ICBM) launch facility and a missile alert or launch control facilities to avoid microwave interference. This restriction only applies to aboveground structures, not to surface features, such as roads, or belowground infrastructure.

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; _____, 2020.

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
2020.

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

69-09-09-05. Decommissioning requirements.

1. Decommissioning the facility includes:
 - a. Dismantling and removal of all towers, turbine generators, transformers, fencing, and overhead cables, inverters, transformers, substations and other equipment;
 - b. Removal of underground cables to a depth of twenty-four inches [60.96 centimeters];
 - c. Removal of foundations, buildings, and ancillary equipment to a depth of:
 - (1) Three feet [91.44 centimeters] for facilities constructed before July 1, 2017; and
 - (2) Four feet [121.92 centimeters] for facilities constructed on or after July 1, 2017;
 - d. 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
 - e. Grading and restoring topsoil of areas disturbed by the facility, and reseeding according to natural resource conservation service recommendations.
2. The Commission may waive a decommissioning requirement upon receipt of a request signed by the applicable landowner and finding good cause that the requirement be waived.

History: Effective October 1, 2008; amended effective July 1, 2017, amended effective _____, 2020.

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

Law Implemented: NDCC 49-02-27

69-09-09-06. 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 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
, 2020.

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

Law Implemented: NDCC 49-02-27

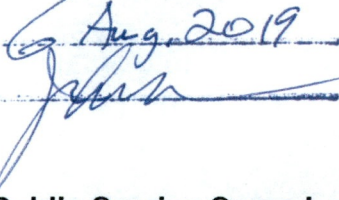
69-09-09-08. Financial assurance.

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-guaranteeguarantee, 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

APPROVED

DATE: 6 Aug 2019



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

MOTION

August 6, 2019

I move the Commission propose to adopt and amend the North Dakota Administrative Code as attached, issue a Notice of Intent to Amend Administrative Rules and Notice of Public Hearing, and issue an abbreviated Notice of Intent to Amend Administrative Rules and Notice of Public Hearing for publication in each official county newspaper throughout the state as required by law, in 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, and Public Service Commission, Wind Decommissioning, Rulemaking, Case No. PU-19-291.

New Chapter 69-09-10 Solar Facility Decommissioning

1 PU-19-291 Filed 08/06/2019 Pages: 2
Commission Motion to propose revisions to ND Admin. Code and issue Notices
Public Service Commission

1 PU-19-290 Filed 08/06/2019 Pages: 2
Commission Motion to propose revisions to ND Admin. Code and issue Notices
Public Service Commission

2 GS-19-217 Filed 08/06/2019 Pages: 2
Commission Motion to propose revisions to ND Admin. Code and issue Notices
Public Service Commission

1 PU-19-122 Filed 08/06/2019 Pages: 2
Commission Motion to propose revisions to ND Admin. Code and issue Notices
Public Service Commission

Section 69-09-03-02

Adoption of Regulations

Section 69-06-08-01

Energy Conversion Facility Siting Criteria

Chapter 69-09-09

Wind Facility Decommissioning

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Solar Decommissioning
Rulemaking

PU-19-122

CHAPTER 69-09-10
SOLAR FACILITY DECOMMISSIONING

Section

<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

69-09-09-05. Decommissioning requirements.

Decommissioning the facility includes:

1. Dismantling and removal of all towers, turbine generators, transformers, and overhead cables;
2. Removal of underground cables to a depth of twenty-four inches [60.96 centimeters];
3. Removal of foundations, buildings, and ancillary equipment to a depth of:
 - a. Three feet [91.44 centimeters] for facilities constructed before July 1, 2017; and
 - b. Four feet [121.92 centimeters] for facilities constructed on or after July 1, 2017;
4. 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
5. Grading and restoring topsoil of areas disturbed by the facility, and reseeding 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 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

69-09-09-06. 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 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

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

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 12th 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, 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 under "Formal Actions/Case Search".

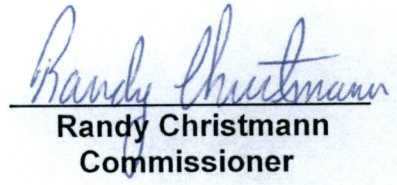
Interested persons may attend and submit comments at the hearing. Oral or written comments on the proposed rules may be submitted to the above address, email and phone numbers. Oral and written comments received by the close of business on September 30, 2019 will be fully considered.

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

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

**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 proposed changes to North Dakota Administrative Code to proposed new 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 public 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.** Written comments may be submitted to the Public Service Commission until the close of business on September 30, 2019.

A copy of the proposed rules, analyses, and statements may be obtained at or by writing the Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, 701-328-2400, toll free 1-877-245-6685, Relay North Dakota TTY: 1-800-366-6888, or ndpsc@nd.gov. This information is also available to view on the Public Service Commission's web site at www.psc.nd.gov under "Formal Actions/Case Search".

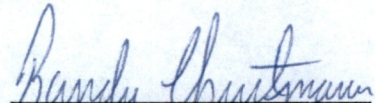
If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the agency at the above telephone number or address at least 24 hours prior to the public hearing.

- 4 PU-19-291 Filed 08/06/2019 Pages: 2
Abbreviated Notice of Intent to Adopt and Amend Admin. Rules and Notice of Public Hearing
- 4 PU-19-290 Filed 08/06/2019 Pages: 2
Abbreviated Notice of Intent to Adopt and Amend Admin. Rules and Notice of Public Hearing
- 4 GS-19-217 Filed 08/06/2019 Pages: 2
Abbreviated Notice of Intent to Adopt and Amend Admin. Rules and Notice of Public Hearing
- 4 PU-19-122 Filed 08/06/2019 Pages: 2
Abbreviated Notice of Intent to Adopt and Amend Admin. Rules and Notice of Public Hearing

PUBLIC SERVICE COMMISSION


Julie Fedorchak
Commissioner


Brian Kroshus
Chairman


Randy Christmann
Commissioner



Affidavit of Publication

Colleen Park, being duly sworn, states as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.
2. The newspapers listed on the exhibits published the advertisement of: **Public Service Commission – Administrative Rules relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning; 1 time(s)** as required by law or ordinance.
3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

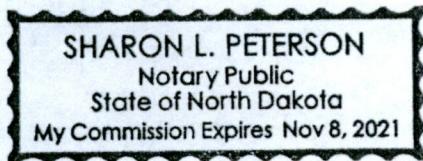
Signed: Colleen Park

State of North Dakota

County of Burleigh

Subscribed and sworn to before me this 27 day of Aug, 20 19.

Sharon L. Peterson





safety, fun and community

67-23, Special Education.

**Peace Garden Room
State Capitol
600 E. Boulevard Ave.
Bismarck, ND 58505
Wed., Sept. 11, 2019
1:30 p.m.**

Changes to 67-13, School District Cooperative Agreements are necessary to align with changes made in HB 1125 by the 66th Legislative Assembly to North Dakota Century Code (NDCC) 15.1-27-16. Changes to 67-21, School Food Programs, and 67-08, Homeless Children Education, are necessary in order to align to updated federal statutes. Changes to the certificate of completion for paraprofessionals, 67-11 are being proposed to require paraprofessionals paid with Title I funds to be certified immediately upon hire. Repeals of the various credentials in 67-11 are intended to reflect that these items are no longer issued by NDDPI. Addition of Title I credential to 67-11 is necessary to implement changes made in SB 2265 by the 66th Legislative Assembly to North Dakota Century Code (NDCC) 15.1-02. Changes to the definition of children with disabilities in 67-23 change the age cutoff date from September to August to align with school ages in NDCC 15.1-06-01.

The proposed rules may be reviewed at the NDDPI Office of School Approval and Opportunity, ND State Capitol, 600 E. Boulevard Avenue, Bismarck, ND 58505-0440. A copy of the proposed rules may be requested in writing to the above address, to the attention of Jim Upgren, emailing jimupgren@nd.gov, or calling 701-328-2244. Written and oral comments may be sent to the above address or telephone number until 4:00 p.m. on Monday, September 23, 2019.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the NDDPI at the above telephone number or address at least five days prior to the public hearing.

Dated this 1st day of August 2019.
Jim Upgren, Assistant Director
Office of School Approval
and Opportunity
North Dakota Department
of Public Instruction

**ABBREVIATED NOTICE OF
INTENT
TO AMEND
ADMINISTRATIVE RULES
RELATING TO N.D.A.C.
CHAPTER 75-03-23
PROVISION OF HOME AND
COMMUNITY-BASED SERVICES
UNDER THE
SERVICE PAYMENTS FOR
ELDERLY AND DISABLED
PROGRAM AND THE MEDICAID
WAIVER FOR THE AGED AND
DISABLED PROGRAM**

**North Dakota
Department
of Human Services**

will hold a public hearing to address proposed changes to the N.D. Admin. Code.

**AV Room 210
Second Floor
Judicial Wing
State Capitol
Bismarck, ND
Wed., Sept. 11, 2019
10:30 a.m.**

Copies of the proposed rules are available for review at county social services offices and at human service centers. Copies of the proposed rules and the regulatory analysis relating to these rules may be requested by telephoning (701) 328-2311. Written or oral data, views, or arguments may be entered at the hearing or sent to: Rules Administrator, North Dakota Department of Human Services, State Capitol - Judicial Wing, 600 E. Boulevard Ave., Dept. 325, Bismarck, ND 58505-0250. Written data, views, or arguments must be received no later than 5:00 p.m. on Monday, September 23, 2019. **ATTENTION PERSONS WITH DISABILITIES:** If you plan to attend the hearing and will need special facilities or assistance relating to a disability, please contact the Department of Human Services at the above telephone number or address at least two weeks prior to the hearing.

Dated this 6th day of August, 2019.

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

Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning.

**North Dakota
Public Service
Commission**

will hold a public hearing to address proposed changes to North Dakota Administrative Code to proposed new 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.

**Commission Hearing Rm.
12th Floor of State Capitol
600 E. Boulevard Ave.
Dept. 408
Bismarck, ND
Thurs., Sept. 19, 2019
1:30 p.m. CT**

A copy of the proposed rules, analyses, and statements may be obtained at or by writing the Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, 701-328-2400, toll free 1-877-245-6885, Relay North Dakota TTY: 1-800-366-6888, or ndpsc@nd.gov. Written comments may be submitted to the Public Service Commission until the close of business on September 30, 2019. This information is also available to view on the Public Service Commission's web site at www.psc.nd.gov under "Formal Actions/Case Search". If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the agency 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

8/14 Crosby

North Dakota Newspaper Association

1435 Interstate Loop
 Bismarck, North Dakota 58503
 Phone: 1-701-223-6397 Fax: 1-701-223-8185



INVOICE August 26, 2019

Order: 19084PP0 Invoice# 9190

Attn: Jonathan Alm	
Public Service Commission	
600 E. Blvd Ave. Dept 408	
Bismarck, North Dakota 58505	
Voice: 1-701-328-4076	Fax:

Advertiser: **Public Service Commission**

Brand:

Campaign:

Client Order Number:

Amount Due: \$2,745.05

Please detach and return this portion with your payment

Public Service Commission Invoice# 9190 P.O.#: Client Order Number:

Run Date	Ad Size	Rate Type	Rate	Color Rate	Total	Discount	(%)	Amount after Discount	Page
Ashley Tribune (Ashley, North Dakota)									
08/14/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Beach, Golden Valley News (Beach, North Dakota)									
08/15/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Beulah Beacon (Beulah, North Dakota)									
08/15/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Bismarck Tribune (Bismarck, North Dakota)									
08/15/2019	7.00	Notice Display	\$13.69		\$95.83	\$0.00	(0.00%)	\$95.83	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$13.69	\$0.00	\$95.83	\$0.00		\$95.83	
Bottineau Courant (Bottineau, North Dakota)									
08/20/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Bowbells, Burke County Tribune (Bowbells, North Dakota)									
08/14/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Bowman County Pioneer (Bowman, North Dakota)									
08/16/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									

- | | | | | | | | |
|---|------------------------------------|------------------|----------|---|------------------------------------|------------------|----------|
| 9 | PU-19-291 | Filed 08/28/2019 | Pages: 6 | 9 | GS-19-217 | Filed 08/28/2019 | Pages: 6 |
| | Invoice #9190 | \$2,745.05 | | | Invoice #9190 | \$2,745.05 | |
| | North Dakota Newspaper Association | | | | North Dakota Newspaper Association | | |
| 9 | PU-19-290 | Filed 08/28/2019 | Pages: 6 | 9 | PU-19-122 | Filed 08/28/2019 | Pages: 6 |
| | Invoice #9190 | \$2,745.05 | | | Invoice #9190 | \$2,745.05 | |
| | North Dakota Newspaper Association | | | | North Dakota Newspaper Association | | |

Run Date	Ad Size	Rate Type	Rate	Color Rate	Total	Discount	(%)	Amount after Discount	Page
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Cando, Towner County Record Herald (Cando, North Dakota)									
08/17/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Carrington, Foster County Independent (Carrington, North Dakota)									
08/19/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Carson Press (Elgin, North Dakota)									
08/14/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Cavaller Chronicle (Cavaller, North Dakota)									
08/14/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Center Republican (Hazen, North Dakota)									
08/15/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Cooperstown, Griggs County Courler (Cooperstown, North Dakota)									
08/16/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Crosby, The Journal (Crosby, North Dakota)									
08/14/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Devils Lake Journal (Devils Lake, North Dakota)									
08/15/2019	7.00	Notice Display	\$9.30		\$65.10	\$0.00	(0.00%)	\$65.10	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$9.30	\$0.00	\$65.10	\$0.00		\$65.10	
Dickinson Press (Dickinson, North Dakota)									
08/15/2019	7.00	Notice Display	\$9.30		\$65.10	\$0.00	(0.00%)	\$65.10	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$9.30	\$0.00	\$65.10	\$0.00		\$65.10	
Elgin, Grant County News (Elgin, North Dakota)									
08/14/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Ellendale, Dickey County Leader (Ellendale, North Dakota)									
08/15/2019	7.00	Notice Display	\$6.48		\$45.36	\$0.00	(0.00%)	\$45.36	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									

Run Date	Ad Size	Rate Type	Rate	Color Rate	Total	Discount	(%)	Amount after Discount	Page
Subtotal:		7.00	\$6.48	\$0.00	\$45.36	\$0.00		\$45.36	
Fargo, The Forum (Fargo, North Dakota)									
08/19/2019	7.00	Notice Display	\$13.69		\$95.83	\$0.00	(0.00%)	\$95.83	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:		7.00	\$13.69	\$0.00	\$95.83	\$0.00		\$95.83	
Finley, Steele County Press (Finley, North Dakota)									
08/16/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:		7.00	\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Garrison, McLean County Independent (Garrison, North Dakota)									
08/15/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:		7.00	\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Grafton, Walsh County Record (Grafton, North Dakota)									
08/14/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:		7.00	\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Grand Forks Herald (Grand Forks, North Dakota)									
08/15/2019	7.00	Notice Display	\$13.69		\$95.83	\$0.00	(0.00%)	\$95.83	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:		7.00	\$13.69	\$0.00	\$95.83	\$0.00		\$95.83	
Harvey, The Herald-Press (Harvey, North Dakota)									
08/17/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:		7.00	\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Hettinger, Adams County Record (Hettinger, North Dakota)									
08/16/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:		7.00	\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Jamestown Sun (Jamestown, North Dakota)									
08/15/2019	7.00	Notice Display	\$9.30		\$65.10	\$0.00	(0.00%)	\$65.10	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:		7.00	\$9.30	\$0.00	\$65.10	\$0.00		\$65.10	
Killdeer, Dunn County Herald (Killdeer, North Dakota)									
08/16/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:		7.00	\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
LaMoure Chronicle (LaMoure, North Dakota)									
08/14/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:		7.00	\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Lakota American (Lakota, North Dakota)									
08/15/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									

Run Date	Ad Size	Rate Type	Rate	Color Rate	Total	Discount	(%)	Amount after Discount	Page
Subtotal:		7.00	\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Langdon, Cavalier County Republican (Langdon, North Dakota)									
08/19/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:		7.00	\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Linton, Emmons County Record (Linton, North Dakota)									
08/15/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:		7.00	\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Lisbon, Ransom County Gazette (Lisbon, North Dakota)									
08/19/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:		7.00	\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Mandan News (Mandan, North Dakota)									
08/16/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:		7.00	\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Mayville, Traill Co Tribune (Mayville, North Dakota)									
08/17/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:		7.00	\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
McClusky Gazette (McClusky, North Dakota)									
08/15/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:		7.00	\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Medora, Billings County Pioneer (Beach, North Dakota)									
08/15/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:		7.00	\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Milnor The Sargent County Teller (Milnor, North Dakota)									
08/16/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:		7.00	\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Minnewaukan Benson County Farmers Press (Minnewaukan, North Dakota)									
08/15/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:		7.00	\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Minot Daily News (Minot, North Dakota)									
08/15/2019	7.00	Notice Display	\$13.69		\$95.83	\$0.00	(0.00%)	\$95.83	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:		7.00	\$13.69	\$0.00	\$95.83	\$0.00		\$95.83	
Mohall Renville County Farmer (Mohall, North Dakota)									
08/14/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									

Public Service Commission Invoice# 9190 P.O.#: Client Order Number:

Run Date	Ad Size	Rate Type	Rate	Color Rate	Total	Discount	(%)	Amount after Discount	Page
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Napoleon Homestead (Napoleon, North Dakota)									
08/14/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
New England Herald (New England, North Dakota)									
08/16/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
New Rockford Transcript (New Rockford, North Dakota)									
08/19/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Rolla Turtle Mountain Star (Rolla, North Dakota)									
08/19/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Rugby Pierce County Tribune (Rugby, North Dakota)									
08/17/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Stanley Mountrail County Promoter (Stanley, North Dakota)									
08/14/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Steele Ozone & Kidder County Press (Steele, North Dakota)									
08/14/2019	7.00	Notice Display	\$0.00		DID NOT RUN	\$0.00	(0.00%)	\$0.00	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
08/21/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	14.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Towner Mouse River Journal (Towner, North Dakota)									
08/14/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Valley City Times-Record (Valley City, North Dakota)									
08/15/2019	7.00	Notice Display	\$9.30		\$65.10	\$0.00	(0.00%)	\$65.10	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$9.30	\$0.00	\$65.10	\$0.00		\$65.10	
Wahpeton, Daily News Media (Wahpeton, North Dakota)									
08/15/2019	7.00	Notice Display	\$9.30		\$65.10	\$0.00	(0.00%)	\$65.10	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$9.30	\$0.00	\$65.10	\$0.00		\$65.10	
Watford City, McKenzie County Farmer (Watford City, North Dakota)									

Public Service Commission Invoice# 9190 P.O.#: Client Order Number:

Run Date	Ad Size	Rate Type	Rate	Color Rate	Total	Discount	(%)	Amount after Discount	Page
08/14/2019	7.00	Notice Display	\$6.71		\$46.97	\$0.00	(0.00%)	\$46.97	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$6.71	\$0.00	\$46.97	\$0.00		\$46.97	
Williston Herald (Williston, North Dakota)									
08/15/2019	7.00	Notice Display	\$9.30		\$65.10	\$0.00	(0.00%)	\$65.10	
Caption: Relating to Solar Decommissioning, Pipeline Safety, Energy Conversion Facility Siting Criteria, and Wind Decommissioning									
Subtotal:	7.00		\$9.30	\$0.00	\$65.10	\$0.00		\$65.10	

Gross Advertising	\$2,745.05	Total Misc	\$0.00	Amount Paid	\$0.00
Agency Discount	\$0.00	Tax	\$0.00	Adjustments	\$0.00
Other Discount	\$0.00	Total Billed	\$2,745.05	Payment Date	
Service Charge	\$0.00	Unbilled	\$0.00	Balance Due	\$2,745.05

We accept checks, Visa/MasterCard, and ACH. Contact Rhonda at rhondaw@ndna.com or 701-595-7311 for ACH information or to pay with a credit card. A 3% FEE WILL BE ADDED TO ALL CREDIT CARD TRANSACTIONS.



Public Service Commission State of North Dakota

COMMISSIONERS

Brian Kroshus
Julie Fedorchak
Randy Christmann

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

7 August 2019

Vonette Richter
Code Reviser
North Dakota Legislative Council
State Capitol
600 East Boulevard, 2nd Floor
Bismarck, ND 58505-0360

Re: Notice of Intent to Amend Administrative Rules
PSC Case Numbers PU-19-122, GS-19-217, PU-19-290, and PU-19-291

Dear Ms. Richter:

The Public Service Commission recently passed a motion to propose changes to its administrative rules and issue notices. Consequently, enclosed please find copies of:

- Commission Motion to Propose Revisions to the North Dakota Administrative Code and Issue Notices;
- Proposed rule changes that were the subject of the Motion; and
 - New Chapter 69-09-10 Solar Facility Decommissioning
 - Section 69-09-03-02 Adoption of Regulations
 - Section 69-06-08-01 Energy Conversion Facility Siting Criteria
 - Chapter 69-09-09 Wind Facility Decommissioning
- Notice of Intent to Amend Administrative Rules and Notice of Public Hearing.

If you have any questions please do not hesitate to call.

Best Regards,

John Schuh
General Counsel

enclosures

Received by the office of the Legislative Council this 7 day of
August 2019

By: ES

- 6 PU-19-291 Filed 08/07/2019 Pages: 31
Letter to Leg. Counsel enclosing Commission Motion, proposed Rules, and full Notice
- 6 PU-19-290 Filed 08/07/2019 Pages: 31
Letter to Leg. Counsel enclosing Commission Motion, proposed Rules, and full Notice
- 6 GS-19-217 Filed 08/07/2019 Pages: 31
Letter to Leg. Counsel enclosing Commission Motion, proposed Rules, and full Notice
- 6 PU-19-122 Filed 08/07/2019 Pages: 31
Letter to Leg. Counsel enclosing Commission Motion, proposed Rules, and full Notice

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Solar Decommissioning
Rulemaking**

Case No. PU-19-122

**Statements on Regulatory Analysis, Small Entity Analysis,
and Takings Assessment**

August 9, 2019

The Commission is proposing new Chapter 69-09-10 regarding Solar Facility Decommissioning after SB 2100 was enacted during the most recent legislative session. The proposed rule is not pursuant to emergency rulemaking.

Regulatory Analysis

N.D.C.C. § 28-32-08 requires an agency to prepare a regulatory analysis if the rule is expected to have an impact on the regulated community in excess of fifty thousand dollars, or if one is requested as provided in the law. The law provides, in part:

1. The regulatory analysis must contain:
 - a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

The persons impacted will be the solar power developers, and there may be secondary impacts to the customers receiving the energy produced.

- b. A description of the probable impact, including economic impact, of the proposed rule;

The probable impact will likely be the cost to provide financial assurances to ensure decommissioning. There may be no costs from financial assurances or very large costs, depending on the type of financial assurance provided and the size of the project.

- c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and

We are unable to anticipate the costs related to this new chapter. It will vary on the need for proceedings.

- d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.

The Commission considered no decommissioning plans and financial assurances, however, due to recently passed SB 2100, the Commission chose to propose rules that mirror wind decommissioning for easier interpretation by the regulated community and commission administration.

Takings Assessment

N.D.C.C. § 28-32-09 requires an entity to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. It is very unlikely that the proposed rule will result in a taking or a regulatory taking. The purpose of the rule is to ensure proper decommissioning and remediation at the end of the solar generation facility's useful life in accordance with SB 2100 from the 2019 legislative session. The proposed rules are necessary to advance the purpose because there currently are no solar decommissioning rules. The rules are expected to reduce the impact of energy development on private landowners once the facilities are no longer operational. The proposed rules are not anticipated to result in a taking or regulatory taking, so no cost, source of payment, or cost/benefit analysis is provided.

Small Entity Regulatory Analysis

N.D.C.C. § 28-32-08.1 requires that before adoption of any proposed rule, the adopting agency prepare a regulatory analysis in which the agency considers options to minimize adverse impact on small entities. The law provides, in part:

2. . . . The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:
 - a. Establishment of less stringent compliance or reporting requirements for small entities;
 - b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
 - c. Consolidation or simplification of compliance or reporting requirements for small entities;
 - d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and

- e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

Small Entity Regulatory Analysis

No adverse impact on small entities is anticipated. The rule will allow the decommissioning rules to be less stringent on landowners and small entities.

Small Entity Economic Impact Statement

The proposed new chapter is not expected to affect small entities or have an economic impact on them

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Pipeline Safety
Rulemaking

Case No. GS-19-217

**Statements on Regulatory Analysis, Small Entity Analysis,
and Takings Assessment**

August 9, 2019

The purpose of this rulemaking is to adopt, by reference in state administrative rule, 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. A summary/explanation of the specific changes to be adopted by reference for pipeline safety is attached.

Regulatory Analysis

N.D.C.C. § 28-32-08 requires an agency to prepare a regulatory analysis if the rule is expected to have an impact on the regulated community in excess of fifty thousand dollars, or if one is requested as provided in the law. The law provides, in part:

2. The regulatory analysis must contain:
 - a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
 - b. A description of the probable impact, including economic impact, of the proposed rule;
 - c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
 - d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.

North Dakota system operators subject to Commission jurisdiction who may be affected by the federal regulations proposed to be adopted by reference for the state pipeline safety program include intrastate liquefied natural gas facility operators, intrastate natural gas distribution system operators, natural gas and hazardous liquid transmission pipeline operators, and certain natural gas and hazardous liquid gathering system operators.

The Commission acts as agent for the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), in the enforcement of the minimum gas pipeline safety standards on all gas distribution and intrastate transmission facilities and enforcement of safety standards on all liquefied natural gas facilities within the state. This is accomplished by entering into a 601055(a) Title 49 agreement with the United States Department of Transportation that requires North Dakota to adopt all of the federal gas safety standards, along with any future amendments to those standards. This rulemaking is a part of that ongoing agreement.

The intrastate natural gas and hazardous liquid transmission pipeline operators, intrastate natural gas distribution system operators, and liquefied natural gas facility operators must comply with the federal amendments and therefore were impacted financially as a result of PHMSA's adoption of the amendments. Adoption of these amendments for the state pipeline safety program will have no additional impact on the regulated community.

A regulatory analysis has not been requested, and the proposal is not expected to impact the regulated community by an amount in excess of fifty thousand dollars (\$50,000.00). Consequently, no regulatory analysis is required.

Small Entity Regulatory Analysis

N.D.C.C. § 28-32-08.1 requires that before adoption of any proposed rule, the adopting agency prepare a regulatory analysis in which the agency considers options to minimize adverse impact on small entities. The law provides, in part:

2. . . . The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:
 - a. Establishment of less stringent compliance or reporting requirements for small entities;
 - b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
 - c. Consolidation or simplification of compliance or reporting requirements for small entities;

- d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
- e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

A small entity regulatory analysis is not required because the proposed amendments to the existing rule for both the natural gas and hazardous liquids pipeline systems are mandated by federal law.

Small Entity Economic Impact Analysis

A small entity economic impact statement is not required because the proposed amendments to the existing rule for both the natural gas and hazardous liquids pipeline systems are mandated by federal law.

Takings Assessment

N.D.C.C. § 28-32-09 requires an entity to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The law provides, in part:

The proposed rules should not limit the use of private property so a takings assessment is not required.

PHMSA latest rulemakings effective date after December 31, 2017
 Summary as of 7/31/2019

Part affected	Amendment No.	Federal Register	Description	Effective date after December 31, 2017
190	20	83 FR 60744	Revisions to Civil Penalty Amounts	11/27/2018
192	124	83 FR 58694	Plastic Pipe Rule	1/22/2019
199	28	84 FR 16770	Conforming Amendments and Technical Corrections to Department Rules Implementing the Transportation Industry Drug Testing Program	4/23/19
40	32	82 FR 52229	Addition of Certain Schedule II Drugs to the Department of Transportation's Drug-Testing Panel and Certain Minor Amendments	1/1/18
40	33	84 FR 16770	Conforming Amendments and Technical Corrections to Department Rules Implementing the Transportation Industry Drug Testing Program	4/23/19

Part 190, Amendment #20, 83 FR 60744: REVISIONS TO CIVIL PENALTY AMOUNTS

In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, this final rule provides the 2018 inflation adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations. Maximum civil not to exceed \$213,268 for each violation of a provision of 49 U.S.C. 60101 for each day the violation continues, with a maximum civil penalty not to exceed \$2,132,679 for any related series of violations.

Part 192, Amendment #124, 83 FR 58694: PLASTIC PIPE RULE

An amendment of the Federal Pipeline Safety Regulations that govern the use of plastic piping systems in the transportation of natural and other gas. These amendments enhance pipeline safety, adopt innovative technologies and best practices, and respond to petitions from stakeholders. The changes include increasing the design factor of polyethylene pipe; increasing the maximum pressure and diameter for Polyamide-11 pipe and components; allowing the use of Polyamide-12 pipe and components; new standards for risers, more stringent standards for plastic fittings and joints; stronger mechanical fitting requirements; the incorporation by reference of certain new or

updated consensus standards for pipe, fittings, and other components; the qualification of procedures and personnel for joining plastic pipe; the installation of plastic pipe; and a number of general provisions.

Part 199, Amendment #28, 84 FR 16770: Conforming Amendments and Technical Corrections to Department Rules Implementing the Transportation Industry Drug Testing Program

This final rule makes minor technical corrections to the OST, FAA, FTA, and PHMSA regulations governing drug testing for safety-sensitive employees to ensure consistency with the recent amendments made to the Department of Transportation's regulation, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," which added requirements to test for oxycodone, oxymorphone, hydrocodone, and hydromorphone to DOT-regulated drug testing programs. The changes to the Department's regulation make it necessary to refer to these substances, as well as the previously covered drugs morphine, 6-acetylmorphine, and codeine, by the more inclusive term "opioids," rather than "opiates." This rule amends the term in the FAA, FTA, and PHMSA regulations to ensure that all DOT drug testing rules are consistent with one another and with the Mandatory Guidelines for Federal Workplace Drug Testing Programs. In addition, this rule makes a conforming amendment to include the term "opioids" in the wording of the Department's annual information collection requirement and clarifications to section 40.26 and Appendix H regarding the requirement for employers to follow the Department's instructions for the annual information collection.

Part 40, Amendment #32, 82 FR 52229: Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Addition of Certain Schedule II Drugs to the Department of Transportation's Drug-Testing Panel and Certain Minor Amendments
The Department of Transportation is amending its drug-testing program regulation to add hydrocodone, hydromorphone, oxymorphone, and oxycodone to its drug-testing panel; add methylenedioxyamphetamine as an initial test analyte; and remove methylenedioxyethylamphetamine as a confirmatory test analyte. The revision of the drug-testing panel harmonizes DOT regulations with the revised HHS Mandatory Guidelines established by the U.S. Department of Health and Human Services for Federal drug-testing programs for urine testing. This final rule clarifies certain existing drug-testing program provisions and definitions, makes technical amendments, and removes the requirement for employers and Consortium/Third Party Administrators to submit blind specimens.

Part 40, Amendment #33, 84 FR 16770: Conforming Amendments and Technical Corrections to Department Rules Implementing the Transportation Industry Drug Testing Program

This final rule makes minor technical corrections to the OST, FAA, FTA, and PHMSA regulations governing drug testing for safety-sensitive employees to ensure consistency with the recent amendments made to the Department of Transportation's regulation, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," which added requirements to test for oxycodone, oxymorphone,

hydrocodone, and hydromorphone to DOT-regulated drug testing programs. The changes to the Department's regulation make it necessary to refer to these substances, as well as the previously covered drugs morphine, 6- acetylmorphine, and codeine, by the more inclusive term "opioids," rather than "opiates." This rule amends the term in the FAA, FTA, and PHMSA regulations to ensure that all DOT drug testing rules are consistent with one another and with the Mandatory Guidelines for Federal Workplace Drug Testing Programs. In addition, this rule makes a conforming amendment to include the term "opioids" in the wording of the Department's annual information collection requirement and clarifications to section 40.26 and Appendix H regarding the requirement for employers to follow the Department's instructions for the annual information collection.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No. PU-19-290

**Statements on Regulatory Analysis, Small Entity Analysis,
and Takings Assessment**

August 9, 2019

The Commission is proposing amendments to Section 69-06-08-01 regarding Energy Conversion Facility Siting Criteria, exclusion and avoidance areas, that are used to guide the siting process.

The proposed rule is not result of new legislation and is not pursuant to emergency rulemaking.

Regulatory Analysis

N.D.C.C. § 28-32-08 requires an agency to prepare a regulatory analysis if the rule is expected to have an impact on the regulated community in excess of fifty thousand dollars, or if one is requested as provided in the law. The law provides, in part:

The regulatory analysis must contain:

- a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
- b. A description of the probable impact, including economic impact, of the proposed rule;
- c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
- d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.

A regulatory analysis has not been requested, and the proposal is not expected to impact the regulated community by an amount in excess of fifty thousand dollars (\$50,000.00). Consequently, no regulatory analysis has been prepared.

Takings Assessment

N.D.C.C. § 28-32-09 requires an entity to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. It is unlikely that the proposed rule will result in a taking or regulatory taking. The purpose of the proposed rule is to accommodate concerns of siting infrastructure near ICBM missile sites and that may conflict with military flight operations. It also is intended to reduce effects of sound from wind farms from landowners that are not participating in the development of the project. This proposed rule is necessary to advance this purpose by providing exclusion areas for development and avoidance areas to require justification for placement at that location during the siting process. The Commission feels that this is the most efficient way to achieve this task and allows alternatives for placement of the sites through the siting process. The proposed rules are not anticipated to have implications, so no cost estimate, source of payment, or cost/benefit analysis is provided.

Small Entity Regulatory Analysis

N.D.C.C. § 28-32-08.1 requires that before adoption of any proposed rule, the adopting agency prepare a regulatory analysis in which the agency considers options to minimize adverse impact on small entities. The law provides, in part:

2. . . . The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:
 - a. Establishment of less stringent compliance or reporting requirements for small entities;
 - b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
 - c. Consolidation or simplification of compliance or reporting requirements for small entities;
 - d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
 - e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

Small Entity Regulatory Analysis

No adverse impact on small entities is anticipated.

Small Entity Economic Impact Statement

No adverse economic impacts are anticipated for small entities.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Wind Decommissioning
Rulemaking**

Case No. PU-19-291

**Statements on Regulatory Analysis, Small Entity Analysis,
and Takings Assessment**

August 9, 2019

The Commission is proposing amendments to Chapter 69-09-09 regarding Wind Facility Decommissioning.

The proposed rule is not result of new legislation and is not pursuant to emergency rulemaking.

Regulatory Analysis

N.D.C.C. § 28-32-08 requires an agency to prepare a regulatory analysis if the rule is expected to have an impact on the regulated community in excess of fifty thousand dollars, or if one is requested as provided in the law. The law provides, in part:

2. The regulatory analysis must contain:
 - a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
 - b. A description of the probable impact, including economic impact, of the proposed rule;
 - c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
 - d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.

A regulatory analysis has not been requested, and the proposal is not expected to impact the regulated community by an amount in excess of fifty thousand dollars (\$50,000.00). Consequently, no regulatory analysis has been prepared.

Takings Assessment

N.D.C.C. § 28-32-09 requires an entity to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. There is foreseeable likelihood that the changes from the present rules will result in a taking or regulatory taking. The proposed rule amendments are to clarify and simplify the current wind decommissioning rules. The rule is necessary to clarify the proposed rules and this is not expected to have an impact on private property owners. There is no anticipated taking or regulatory taking so there is no potential cost, source of payment, or cost/benefit analysis that is done.

Small Entity Regulatory Analysis

N.D.C.C. § 28-32-08.1 requires that before adoption of any proposed rule, the adopting agency prepare a regulatory analysis in which the agency considers options to minimize adverse impact on small entities. The law provides, in part:

2. . . . The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:
 - a. Establishment of less stringent compliance or reporting requirements for small entities;
 - b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
 - c. Consolidation or simplification of compliance or reporting requirements for small entities;
 - d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
 - e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

Small Entity Regulatory Analysis

No adverse impact on small entities is anticipated.

Small Entity Economic Impact Statement

No small entity economic impact is expected.



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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”)¹ and provides a waiver from the proposed

¹ 69-09-10-01 (3) 12 PU-19-291 Filed 09/18/2019 Pages: 4
 Comments regarding proposed Rules

11 PU-19-290 Filed 09/18/2019 Pages: 4 11 PU-19-122 Filed 09/18/2019 Pages: 4
 Comments regarding proposed Rules
 Apex Clean Energy
 Chris Kunkle

1

decommissioning requirements for a solar plant with a nameplate capacity of no more than 5 MW.²

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.³ 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

² 69-09-10-10

³ 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.⁴ 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.

⁴ 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.

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Solar Decommissioning
Rulemaking**

Case No. PU-19-122

PUBLIC SERVICE COMMISSION STAFF TESTIMONY

September 19, 2019

My name is Jerry Lein. I am a Public Utility Analyst in the Public Utilities Division of the Public Service Commission. The purpose of my testimony is to describe the proposed ND Admin. Code Chapter 69-09-10 administrative rules pertaining to solar decommissioning.

The Commission has previously adopted rules for wind turbine decommissioning and these proposed rules for solar are similar. In summary, the rules would require commercial scale generating facilities to be removed when they reach the end of their useful life and the site to be restored to its original condition or as near as practicable. In order to accomplish this purpose, proposed section 69-09-10-01 provides definitions of several terms used in proposed Chapter 69-09-10.

Decommissioning:

Section 69-09-10-02 of the proposed rules provides that the owner of solar facilities with 500 kW or more of generating capability has a decommissioning responsibility.

Section 69-09-10-03 defines abandonment and useful life. After construction begins there is a rebuttable presumption of abandonment if there

is a period of twenty four consecutive months with no significant construction. After construction there is a rebuttable presumption the facility is at the end of its useful life if its annual capacity factor falls below ten percent for two consecutive years. The owner is required to certify operations annually.

Section 69-09-10-04 provides a decommissioning period. After useful life or abandonment the owner shall begin decommissioning within twelve months and complete decommissioning within twenty-four months unless the Commission approves a plan to return the facility to operation.

Section 69-09-10-05 provides decommissioning requirements for restoration and reclamation of the site, including the removal of underground cables to a depth of twenty-four inches and complete removal of structure foundations.

Decommissioning Plan:

Section 69-09-10-06 provides that the owner must have a Commission-approved decommissioning plan and cost estimate prior to operation. After determining a plan is complete, the Commission has 60 days to act on the plan. The Commission can require an updated plan at any time, but the plan must be updated every five years beginning ten years after the initial approval.

Financial Assurance:

Section 69-09-10-07 provides that owners of existing facilities shall provide financial assurance upon ten years of operation sufficient to complete decommissioning.

Section 69-09-10-08 provides that new facilities must provide construction financial assurance equal to five percent of project cost prior to starting construction. This temporary assurance is returned after construction when a more permanent assurance acceptable to the Commission and sufficient to ensure decommissioning is received. The Commission may accept several forms of financial assurance, including a corporate or parent guarantee if certain conditions are met.

Failure to Decommission:

Section 69-09-10-09 provides that if an owner does not decommission the Commission may take action to do so, including action to require forfeiture of a bond.

Small Facilities Waiver:

Section 69-09-10-10 provides the Commission may grant a waiver of any of these decommissioning requirements for small facilities with no more than five MW of generating capability.

This concludes my testimony.

Thank you.



Lightspring, LLC
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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Solar Decommissioning Rulemaking
RE: PU-19-122

COMMENTS OF LIGHTSPRING, LLC

The North Dakota Public Service Commission (“PSC”) has proposed rule makings in regard to solar decommissioning. Lightspring, LLC, (“Lightspring”) commends the Commission on its forward thinking stance toward solar development rule making and respectfully submits these comments in response to those proposed rules as well as previously submitted public testimony.

Lightspring is a local technology company and solar developer based in Bismarck, North Dakota. Lightspring has several residential, commercial, and utility projects in motion within the state.

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

Size Threshold

Lightspring believes consistency among various governmental rule making bodies creates certainty upon which individuals and business may rely upon as they go about their business. As such, we support limiting the proposed rule to solar projects of 50 MW or higher, so as to maintain consistency with North Dakota Century Code, Chapter 49-22.

Definition of Project Abandonment

The proposed definition of project abandonment states that “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”. According to the proposed rule in Chapter 69-09-10, 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.”

Lightspring believes this language is imprecise and that the standard is unrealistic. Current solar technology using fixed mountings and monofacial panels in North Dakota has a net capacity value between 20-25%. In practice, this means that the solar farm will only reach or exceed its nameplate generating capacity under ideal sunlight conditions for approximately four (4) to six (6) hours a day for about five (5) to six (6) months of the year. On average, today’s solar panels typically lose 0.5% efficiency per year, so the capacity factor will degrade over time. If a solar installation started with a 20% capacity factor, that installation could theoretically be considered “abandoned” by the proposed rules in as little as 22 years, even though it may be capable of producing electricity for an additional 20 years.

In their written testimony, Apex Clean Energy suggested tying the definition of abandonment to lease payments. This is also problematic. Solar farm lease arrangements make the most financial sense in states that incentivize solar energy production through net metering rates at or near the local retail electricity rate. In states like North Dakota, whose net metering legislation does not apply to most of the state’s electric utilities, the calculation is quite different. For smaller community scale solar installations between 1 to 10 MW in rural North Dakota, the calculation revolves around using distributed energy resources like solar to offset local, onsite electrical demand. In these scenarios, the entity attempting to use solar to offset their electricity consumption is likely to own the land on which the solar is situated, and use most of the electricity onsite to meet their consumption profile.

In fact, for smaller solar farms, there are several innovative ways for small business and farming operations to use solar to diversify their portfolio. For example, in Minnesota, solar developers and landowners have created a business arrangement that is known colloquially as the “Minnesota flip”. In this financing structure, landowners with low tax appetite and high electricity demands are paired with financial partners with larger tax appetites in a 99% to 1% ownership structure. In this scenario, the financing entity with tax appetite will assume 99% of the ownership of the solar farm for as long as they can harvest federal and local tax incentives and use accelerated depreciation tax accounting to maximize the short term profitability of their investments. After these incentives are harvested, ownership will “flip” and the landowner will assume majority ownership in the farm and electricity.

Given these and other factors, Lightspring supports alteration of the current definition of “abandonment” to the following: “A facility is presumed to be at the end of its useful life if its annual capacity factor is less than ten percent *of its original capacity factor* for two consecutive years”.

Alternative Agricultural Uses for Land Beneath Solar Farms

Lightspring disagrees with the oral and written testimony of Apex Clean Energy that “there are no alternative agricultural uses for land beneath a solar plant.” This is not correct. In addition to the grazing of sheep and the planting of pollinator plants and siting of bee colonies in and around solar farms, there are several ways to incorporate solar farm design into sustainable land management practices.

Bulldozing or land leveling is sometimes used to facilitate the construction of solar farms on agricultural land. Lightspring believes the benefits from this sort of industrial activity do not outweigh the impact on the watershed and ecosystem in the short term. Water management is likely to be the defining public policy issue of the 21st century and it would behoove the Commission to stay in front of all water-related management issues from a rule-making perspective.

Newer panel technology on the market today also gives landowners more opportunity to find alternative agricultural uses for land beneath solar farms. For example, bifacial solar panels are panels that produce solar power from both sides of the panel. In snowy climates like North Dakota, bifacial panels are uniquely suited to use snow’s reflectivity as a way to increase solar energy yield in the winter. Additionally, bifacial panel arrays can be used in the summer to create agrivoltaic farming practices where shade crops are co-located beneath solar panels in a mutually beneficial manner. Some studies indicate that bifacial solar panels and agrivoltaic farming can increase land use efficiency by 60%. Shaded growing areas under solar panels reduce evaporation, lessen soil erosion caused by wind, and thus require less irrigation or water management intervention.

Piling

During oral testimony, questions arose about pilings and industry standards. According to Lightspring’s research and industry experience, there are three main pilings: wood, metal, and helical. These pilings are inserted into the ground ten (10) to twenty (20) feet depending on soil composition, water table, and frost line. Wood and metal pilings are driven into the ground with a pile driver at a depth approximately five (5) to ten (10) feet beyond the frost line. Helical pilings are like giant screws, and are screwed into the earth, typically with less overall depth than driven pilings.

Industry standards are not uniform at the moment, but all three piling methods are very difficult to fully remove from the earth after the life of a typical solar farm. Some industry experts from Canada believe helical piles are the most resilient against the northern climate’s frost and thaw cycles. They also believe helical piles can be “unscrewed” after solar farm decommission. Other industry experts believe exposure to the elements over twenty five (25) to forty (40) years will

create so much structural degradation and loss of integrity that helical piles will be just as immovable as wooden or metal pilings. Wooden and metal piles are likewise susceptible to exposure to the elements and will likely need to be excavated to be fully removed.

Ballasted racking or cement foundations are also used throughout the industry depending on the project. These solutions do not require penetrating the earth to a depth of ten (10) to twenty (20) feet. Large cement foundations present different land reclamation challenges and potential water table imbalances. Ballasted racks are often more expensive and labor intensive to install, but are sometimes the best option for certain soils, topography, and geographic areas.

Given the lack of clarity, Lightspring urges the Commission to allow for the industry to continue to determine best practices over the next 3 years and then implement piling removal guidelines at a later date with more comprehensive data.

Thank you for the opportunity to provide comment.

September 30, 2019



Via Email Only

North Dakota Public Service Commission
600 East Boulevard Ave, Dept. 408
Bismarck, North Dakota 58505
ndpsc@nd.gov

*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



MONTANA-DAKOTA
UTILITIES CO.

A Subsidiary of MDU Resources Group, Inc.

400 North Fourth Street
Bismarck, ND 58501
(701) 222-7900

September 30, 2019

Executive Secretary
North Dakota Public Service Commission
State Capitol Building
Bismarck, ND 58505-0480

Re: Public Service Commission Rulemaking
Case No. PU-19-122 Solar Decommissioning
Case No. PU-19-290 Energy Conversion Facility Siting Criteria
Case No. PU-19-291 Wind Decommissioning

Montana-Dakota Utilities Co. (Montana-Dakota), herewith submits comments regarding the Commission's proposed rulemakings in the above referenced cases.

Case No. PU-19-122 Solar Decommissioning

69-09-10-01. Definitions 8. Facility:

Montana-Dakota suggests that inverters be added to the definition of "Facility".

69-09-10-03. Abandonment and useful life – Certificate of operation 2.

A 5 percent capacity factor should be considered in determining useful life given that solar in North Dakota only has an 18% annual capacity factor as compared to wind facilities with a much higher annual capacity factor and a 10% threshold.

69-09-10-05. Decommissioning Requirements 1.

Montana-Dakota suggests adding inverters to the list and providing the depth applicable to foundations that must be removed. Montana-Dakota also suggests adding transformers and substations to the list describing the facility, but list this equipment as optional, as it could be used for other uses after the decommissioning of the facility.

69-09-10-05. Decommissioning Requirements 3.

Montana-Dakota proposes that an exception be added to address landowner preference or lease arrangements rather than specifying the restoration and reclamation must be to the approximate original topography only.

69-09-10-05. Decommissioning Plan 3.a.

Montana-Dakota proposes that a qualified contractor with experience in Facility decommissioning be added as an option for providing a cost estimate for decommissioning the Facility.

69-09-10-08. Financial Assurance. 1.

The reference to 69-09-09-08(2) appears should be changed to 69-09-10-08(2).

Case No. PU-19-290 Energy Conversion Facility Siting Criteria

69-06-08-01. 4. Additional avoidance areas for wind energy conversion facilities. Montana-Dakota requests the Commission reconsider lowering the maximum sound level present within one hundred feet of an inhabited residence or a community building down to forty-five dBA. An alternative would be to lower the threshold to forty-five dBA for non-participating landowners and retaining the fifty dBA maximum level for participating landowners as discussed at the September 19, 2019 rules hearing.

Case No. PU-19-291 Wind Decommissioning

Montana-Dakota provides the following comments regarding sections of the Rules that were not changed by the Commission in this Rulemaking for consideration now or as part of a future rulemaking as deemed appropriate.

69-09-09-05. Decommissioning requirements 1.

Include substations in the list describing the facility, but list the transformers and substations as optional, as this equipment could be used for other uses after the decommissioning of the facility.

69-09-09-05. Decommissioning Requirements 4.

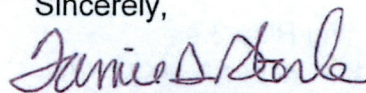
Montana-Dakota proposes that an exception be added to address landowner preference or lease arrangements rather than specifying the restoration and reclamation to the approximate original topography only.

69-09-09-06. Decommissioning Plan 3.a.

Montana-Dakota proposes that a qualified contractor with experience in Facility decommissioning be added as an option for providing a cost estimate for decommissioning the Facility.

Montana-Dakota appreciates the opportunity to provide comments for the Commission's consideration. Please contact me at (701) 222-7856 or at Tamie.Aberle@mdu.com with any questions regarding the above comments.

Sincerely,



Tamie A. Aberle
Director of Regulatory Affairs

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Pipeline Safety
Rulemaking**

Case No. GS-19-217

PUBLIC SERVICE COMMISSION STAFF TESTIMONY

September 19, 2019

My name is Jerry Lein. I am a Public Utility Analyst in the Public Utilities Division of the Public Service Commission. I have been asked to read the following testimony of Patrick Fahn for this proceeding. He is the Director of the Public Utilities Division of the Public Service Commission.

The purpose of this testimony is to describe the proposed administrative rule changes pertaining to pipeline safety. Under North Dakota Administrative Code chapter 69-09-03, the Commission adopts 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 proposed rule change adopts, by reference, amendments to safety regulations that have been adopted by PHMSA since December 31, 2017, current to July 31, 2019, for gas pipeline safety, liquefied natural gas facility safety and hazardous liquids pipeline safety.

A description of PHMSA rule amendments since December 31, 2017, current to July 31, 2019 is attached.

This concludes my testimony.

<http://www.phmsa.dot.gov/pipeline/regs/rulemaking>

PHMSA latest rulemakings effective date after December 31, 2017

Summary as of 7/31/2019

Part affected	Amendment No.	Federal Register	Description	Effective date after December 31, 2017
190	20	83 FR 60744	Revisions to Civil Penalty Amounts	11/27/2018
192	124	83 FR 58694	Plastic Pipe Rule	1/22/2019
199	28	84 FR 16770	Conforming Amendments and Technical Corrections to Department Rules Implementing the Transportation Industry Drug Testing Program	4/23/19
40	32	82 FR 52229	Addition of Certain Schedule II Drugs to the Department of Transportation's Drug-Testing Panel and Certain Minor Amendments	1/1/18
40	33	84 FR 16770	Conforming Amendments and Technical Corrections to Department Rules Implementing the Transportation Industry Drug Testing Program	4/23/19

Part 190, Amendment #20, 83 FR 60744: REVISIONS TO CIVIL PENALTY AMOUNTS

In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, this final rule provides the 2018 inflation adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations.

Maximum civil not to exceed \$213,268 for each violation of a provision of 49 U.S.C. 60101 for each day the violation continues, with a maximum civil penalty not to exceed \$2,132,679 for any related series of violations.

Part 192, Amendment #124, 83 FR 58694: PLASTIC PIPE RULE

An amendment of the Federal Pipeline Safety Regulations that govern the use of plastic piping systems in the transportation of natural and other gas. These amendments enhance pipeline safety, adopt innovative technologies and best practices, and respond to petitions from stakeholders. The changes include increasing the design factor of polyethylene pipe; increasing the maximum pressure and diameter for Polyamide-11 pipe and components; allowing the use of Polyamide-12 pipe and components; new standards for risers, more stringent standards for plastic fittings and joints; stronger mechanical fitting requirements; the incorporation by reference of certain new or updated consensus standards for pipe, fittings, and other components; the qualification of procedures and personnel for joining plastic pipe; the installation of plastic pipe; and a number of general provisions.

Part 199, Amendment #28, 84 FR 16770: Conforming Amendments and Technical Corrections to Department Rules Implementing the Transportation Industry Drug Testing Program

This final rule makes minor technical corrections to the OST, FAA, FTA, and PHMSA regulations governing drug testing for safety-sensitive employees to ensure consistency with the recent amendments made to the Department of Transportation's regulation, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," which added requirements to test for oxycodone, oxymorphone, hydrocodone, and hydromorphone to DOT-regulated drug testing programs. The changes

to the Department's regulation make it necessary to refer to these substances, as well as the previously covered drugs morphine, 6- acetylmorphine, and codeine, by the more inclusive term "opioids," rather than "opiates." This rule amends the term in the FAA, FTA, and PHMSA regulations to ensure that all DOT drug testing rules are consistent with one another and with the Mandatory Guidelines for Federal Workplace Drug Testing Programs. In addition, this rule makes a conforming amendment to include the term "opioids" in the wording of the Department's annual information collection requirement and clarifications to section 40.26 and Appendix H regarding the requirement for employers to follow the Department's instructions for the annual information collection.

Part 40, Amendment #32, 82 FR 52229: Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Addition of Certain Schedule II Drugs to the Department of Transportation's Drug-Testing Panel and Certain Minor Amendments

The Department of Transportation is amending its drug-testing program regulation to add hydrocodone, hydromorphone, oxycodone, and oxycodone to its drug-testing panel; add methylenedioxyamphetamine as an initial test analyte; and remove methylenedioxyethylamphetamine as a confirmatory test analyte. The revision of the drug-testing panel harmonizes DOT regulations with the revised HHS Mandatory Guidelines established by the U.S. Department of Health and Human Services for Federal drug-testing programs for urine testing. This final rule clarifies certain existing drug-testing program provisions and definitions, makes technical amendments, and removes the requirement for employers and Consortium/Third Party Administrators to submit blind specimens.

Part 40, Amendment #33, 84 FR 16770: Conforming Amendments and Technical Corrections to Department Rules Implementing the Transportation Industry Drug Testing Program

This final rule makes minor technical corrections to the OST, FAA, FTA, and PHMSA regulations governing drug testing for safety-sensitive employees to ensure consistency with the recent amendments made to the Department of Transportation's regulation, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," which added requirements to test for oxycodone, oxycodone, hydrocodone, and hydromorphone to DOT-regulated drug testing programs. The changes to the Department's regulation make it necessary to refer to these substances, as well as the previously covered drugs morphine, 6- acetylmorphine, and codeine, by the more inclusive term "opioids," rather than "opiates." This rule amends the term in the FAA, FTA, and PHMSA regulations to ensure that all DOT drug testing rules are consistent with one another and with the Mandatory Guidelines for Federal Workplace Drug Testing Programs. In addition, this rule makes a conforming amendment to include the term "opioids" in the wording of the Department's annual information collection requirement and clarifications to section 40.26 and Appendix H regarding the requirement for employers to follow the Department's instructions for the annual information collection.



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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”)¹ and provides a waiver from the proposed

¹ 69-09-10-01 (3) 12 PU-19-291 Filed 09/18/2019 Pages: 4
 Comments regarding proposed Rules

decommissioning requirements for a solar plant with a nameplate capacity of no more than 5 MW.²

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.³ 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

² 69-09-10-10

³ 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.⁴ 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.

⁴ 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.

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

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

Case No. PU-19-290

PUBLIC SERVICE COMMISSION STAFF TESTIMONY

September 19, 2019

My name is Jerry Lein. I am a Public Utility Analyst in the Public Utilities Division of the Public Service Commission. The purpose of my testimony is to describe proposed changes to ND Admin. Code Chapter 69-06-08 administrative rules pertaining to Siting Criteria.

The Commission has been tasked with providing avoidance and exclusion areas to guide the siting suitability and designation process. One of the proposed changes reduces wind turbine impacts on local residences by lowering the acceptable turbine noise level from 50 dBA to 45 dBA at a distance of 100 feet from an occupied residence under subsection 69-06-08-01(4) for new projects.

The Commission is proposing this rule change due to the concerns that landowners and expert testimony that have presented to the Commission regarding noise. This change will help protect a nonparticipating landowner's enjoyment of his or her residence from noise produced by a wind facility from which they are receiving no economic benefit.

In the past few wind siting cases, the Commission has received expert testimony that has expressed concerns that although the facilities will meet the

regulatory noise requirements, a project designed consistent with community welfare and acceptance of the project should have a lower dba, particularly for non-participants. Some of the siting facilities had non-participating landowners being subject to the upper end of the regulatory sound level (e.g. 47 to 49.3 dBA in Russo Wind Project).¹ By providing this in rules, the Company can accommodate these changes earlier in the design and modeling process and also reduces the possibility of complaints and community disturbance.

In some of the expert testimony, it was noted that studies and field surveys suggest that the “acceptable noise from a project and what is unacceptable is a project sound level that falls in a gray area ranging from about 35 to 45 dBA.”² Below that level the project is so quiet that there is likely to be no reaction. Some studies have found that it is advisable to maintain a mean sound study of 40 dBA, but that a mean level of up to 45 dBA may be acceptable as long as the number of homes subject to this noise is relatively small. It may be worth noting that a project sound level at even 40 dBA does not mean that the project would be inaudible, just not likely to be objectionable by the vast majority of neighbors.

The Commission believes that the 45 dBA is an appropriate level to protect consumers from exposure to a noise nuisance while not standing in the way of economic development of projects. This sound level has also been used

¹ PU-19-23, Exhibit 43.

² PU-18-351, Late-File Exhibit 33.

in projects that have been developed in South Dakota as well.³ In one case, the level was set at 40 dBa for non-participating landowners, and 45 for participating unless they signed a waiver.⁴ It is also worth noting that the owner of the occupied residence or the community building may still waive the sound level avoidance area criteria. In many projects, landowners that are participating in or receiving compensation from the project are willing to provide a waiver of the noise avoidance criteria.

Additionally, at the request of Minot Air Force Base, a new subsection 69-06-08-01(1)(g) is being proposed to define a new exclusion area as areas within thirty feet of a direct line between ICBM launch or launch control facilities to avoid microwave interference. Note the word "or" proposed above needs to be changed to "and" to clarify the line is between launch *and* launch control facilities.

That concludes my Testimony.

Thank you

³ Crocker Wind Farm, LLC, Final Decision and Order Granting Permit to Construct Facilities and Notice of Entry. Dakota Range I, LLC and Dakota Range II, LLC, Final Decision and Order Granting Permit To Construct Wind Energy Facility; Notice of Entry.

⁴ Prevailing Wind Park, LLC, Final Decision and Order Granting Permit to Construct Facilities and Notice of Entry.



DEPARTMENT OF DEFENSE
REGIONAL ENVIRONMENTAL COORDINATOR, REGION VIII REGIONAL
ENVIRONMENTAL AND ENERGY OFFICE- WESTERN US CUSTOM HOUSE
72119TH STREET, ROOM 427
DENVER, CO 80202

27 September 2019

Steve Kahl
Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Department 408
Bismarck, North Dakota 58505-0480
ndpsc@nd.gov

Subject: Comment Letter PU-19-290 Section 69-06-08-01 - Energy Conversion Facility Siting Criteria

As the Department of Defense (DOD) Regional Environmental Coordinator (REC) in the area that includes North Dakota, I am responsible for ensuring our State partners are informed of any impacts to military operations that might result from proposed state legislation or regulation. I appreciate the opportunity to share our feedback on the subject rule. Specifically, I am writing to request that safety concerns at Minot Air Force Base (AFB) be considered as you develop revisions to your facility siting criteria. Air Force representatives attended the September 19, 2019 hearing outlining concerns related to the proposed rule. Additional detailed concerns follow:

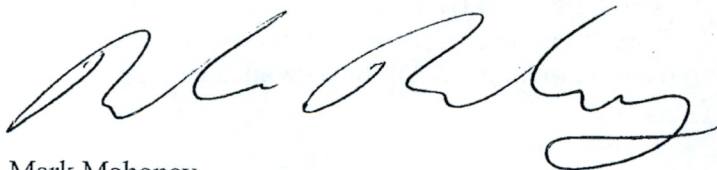
As discussed at the September 19 hearing, the Air Force requests that the final version of the regulation (1) increase the setback from 1,200 feet for wind turbines to a two nautical mile radius from the center of the launch facility and/or launch control facility to the proposed wind tower; (2) provide that proponents of wind tower projects proposed within existing missile fields contact Minot AFB as early in the permitting process as possible in order to identify and remedy any potential adverse impact to missile field operations; (3) provide that all towers erected within missile fields are equipped with collision avoidance lighting that is compatible with the night vision goggles used by AF helicopter pilots (Minot AFB is available to consult on the type of lighting that is compatible with their night vision goggles); and (4) provide that proposed wind towers be staffed for informal review through the Military Aviation and Installation Assurance Siting Clearinghouse to ensure all potentially impacted military missions are identified.

The area within two nautical miles of the ICBM launch facilities and launch control facilities is regularly used by our helicopters to provide overhead security in sensitive locations. Restricting helicopter approach avenues limits the aircraft's turn radius, impacting the ability to provide air-to-ground security response integration and creating hazards for responding forces.

The need to consult directly with Minot AFB remains critical given the sensitive nature of the mission, the emerging technologies and equipment used at our military installations and the hazards posed by the growth of the wind industry. Minot AFB is committed to consulting with the developers as they go through the process of siting and installing these structures.

The State of North Dakota and the Public Service Commission have always supported the mission at Minot AFB and worked closely with the base to accommodate the unique land use and air space concerns that come with maintaining and securing our missile facilities. The DOD remains committed to partnering with the North Dakota Public Service Commission to ensure the safety and security of our missile fields and integrity of our mission. We appreciate the opportunity to provide our concerns in writing and participate in your public hearing. If you have questions or need additional information, please contact Kevin Ward at kevin.m.ward@usace.army.mil or at 303.844.0955.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Mahoney', written in a cursive style.

Mark Mahoney
Department of Defense
Regional Environmental Coordinator,
Region 8

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

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

9/21/19

Dear Public Service Commissioners,

I am unclear if it is necessary to separate comments to the above into distinct responses; but if so, I will gladly revise, even though they are integrally connected (please advise if editing is required). In regards to the above requests for input, I am offering the following comments:

I'll preface my remarks by noting my financial and administrative (board membership) involvement with both Rolette Power Development and M-Power wind development projects. I'll also make explicit my belief in the science of climate change and our duty as responsible stewards of the environment to control the release of greenhouse gases.

"All of the above." is theoretically the position of North Dakota's regulatory climate in respect to energy development. Unfortunately, my strong impression is that the actual regulation of the various energy sectors is not balanced and strongly disfavors renewable sources, while in many cases taking a minimalist approach to the fossil fuel industry. I realize that the Public Service Commission (PSC) has a much more tangential role in regulation of the fossil fuel sector and this is part of a more over-arching problem for North Dakota, in my opinion. Never the less, there are important areas of overlap and I believe my comments will be of use to the PSC in considering their regulation of the renewable energy sector, so please bear with me.

Let me start with a concrete example that bears directly on one of the presently considered changes in wind energy siting. The proposed change would limit noise from turbines to less than 45db at 100 feet from the nearest residence. At the moment I can step outside of my house, 14 miles southeast of Watford City, ND and 500 yards from 2 currently producing oil wells and measure the sound level from the diesel generator and natural gas flare averaging 59db (peaks at 66db) and his runs 24/7. When the next 5 wells are drilled on this pad, my wife and I can expect the flaring to produce much more noise than this, since we already experienced that when the current wells were at their peak. They were literally like a not-so-distant jet engine, reflecting off the shop wall and into our bedroom. The question is, who in North Dakota is regulating this aspect of the fossil fuel industry? My understanding is that this well pad could be as close as 550', not 500 yards from our house and I would be delighted to know that the siting agency for oil pads had a regulation on noise; but I'm guessing not.

So my recommendation – to be fair - would be to delete the lower noise standard for wind generation facilities – or apply equivalent regulations to oil & gas.

Considering another issue that the PSC has taken a position on (which I advised against at the time), and that is the requirement to mitigate the annoyance some feel about tower lighting. Besides the questions I raised previously about the inherent compromise of safety with the new automated systems, I note the apparent lack of any similar consideration of the light

pollution generated by the hundreds of natural gas flares in our area. Whereas I enjoyed the brilliant stars and northern lights as I went out to do night time chores in our former home at Rolette, these views are nearly gone now in our current home. Even worse, when I come around a bend in the road, the blinding light of either a flare or the flood lights from the local gas plant make it difficult to drive. If I failed to dim my headlights for the highway patrol, I'd get a ticket; but these are much brighter than that. So what North Dakota department do I go to about this?

I am not familiar enough with the nuances of financing to know how the decommissioning (and bonding) regulations compare between renewable and fossil fuel sectors; but hoping that the state of North Dakota has learned some lessons from the abandoned strip mines that still dot the state. I realize that (mostly thanks to Federal legislation and funding), extensive reclamation is now required; but if the state is apparently so committed to leaving things in a pristine condition after development (as occasionally professed), then one would think there would be great enthusiasm among our leaders to actually spend some of the billions derived from fossil fuels to reclaim those old mines.

So I'm in favor of decommissioning regulations that are reasonable (as these appear to be), as long as they are similar in impact with fossil fuel facility regulations to return the hundreds of oil pads, gas plants, coal fired generators and mines to their former conditions.

Lastly, I note that North Dakota seems perfectly content to accept Federal regulations as our standard (as I believe seen in the current request for comment on pipelines, GS-19-217); but when considering renewable sources, there appears to be considerable enthusiasm to go well beyond the Federal regulations. For example, what is the Federal regulation on noise limits to wind turbines? What is the Federal regulation on turbine lighting? When North Dakota was in the spotlight for a much higher mortality rate amongst our oil workers, our leaders declined to consider any standards in excess of what OSHA demanded, even though other oil producing states had stricter standards. In Watford City recently, we were entertained by the explosion of a salt water disposal site. The fireball was hundreds of feet in the air, massive tanks were tossed to similar heights, and of course, there was a mushroom cloud of BLACK smoke that gradually abated over days. This was within the 550 foot limit for residences and evacuations were necessary. When I enquired with the Department of Mineral Resources (DMR), I was told that the site was properly permitted; but that the city zoning had mistakenly allowed residential construction to encroach. So yes, this was a local failure; but my point is that fossil fuel facilities are inherently much more dangerous than wind, but wind is much more restricted in siting limits. Another example of the lack of balance in North Dakota's approach to energy development.

So I can accept the set-back siting limitations; but feel they are overly cautious in light of the extremely infrequent failure of wind turbines, and especially in light of the imbalance compared with regulations regarding fossil fuel operations. I'm sure the PSC will gladly point me to the ND DMR and suggest I take up my complaints there; but the PSC commissioners are also influential leaders outside their role with the PSC and I would hope they see fit to point out some of these imbalances as well.

I appreciate the opportunity to express my opinion and thank you for your time.

Sincerely,

Lyle Best, MD



SUSTAINMENT

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
3500 DEFENSE PENTAGON
WASHINGTON, DC 20301-3500

September 27, 2019

Mr. Steve Kahl
Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Department 408
Bismarck, North Dakota 58505-0480
ndpsc@nd.gov

Subject: Comment Letter PU-19-290 Section 69-06-08-01, "Energy Conversion Facility Siting Criteria"

Dear Mr. Kahl:

The Military Aviation and Installation Assurance Siting Clearinghouse is responsible for reviewing all energy projects filed with the Federal Aviation Administration for potential adverse impact on Department of Defense missions. North Dakota is home to many missions vital to the national security of the United States. Many of those missions can be severely degraded or impaired by incompatible energy project development.

As your commission reviews PU-19-290 Section 69-06-08-01, "Energy Conversion Facility Siting Criteria," I request that you consider measures to protect military missions in North Dakota, including impacts to ballistic missile silos and launch facilities, low level military airspace, weather radars and air traffic control radar, that may be significantly impaired or degraded by wind farms in close proximity to those facilities.

There are many ways that North Dakota can support national security and enhance protections for military missions in North Dakota, complementary to the reviews conducted by my office. As one example, I recommend that your commission include the following as a new set of selection criteria under subsection 5 in the existing rule:

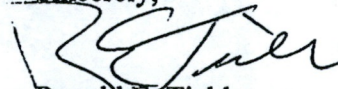
"5. Selection criteria. . . .

e. The impact upon military operations and readiness in relation to United States Department of Defense installations, facilities, and activities within North Dakota and adjacent states, including but not limited to notices, objections, or concerns expressed by the Department of Defense Military Aviation and Installation Assurance Siting Clearinghouse during or after a formal or informal review pursuant to its Mission Compatibility Evaluation Process.

(1) For any proposed facility that requires review by the Federal Aviation Administration pursuant to its Obstruction Evaluation / Airport Airspace Analysis program, the applicant must submit a Determination of No Hazard from the Federal Aviation Administration, and documentation from the Military Aviation and Installation Assurance Siting Clearinghouse that resolves any potential adverse impact on military operations and readiness as identified by the Clearinghouse pursuant to the Mission Compatibility Evaluation Process and any mitigation measures agreed to by the applicant.

I would welcome the opportunity to discuss approaches with you at your convenience. Thank you for the opportunity to provide my concerns and to participate in your public process. I can be reached at (703) 693-6707 or ronald.e.tickle4.civ@mail.mil.

Sincerely,



Ronald E. Tickle
Executive Director
Military Aviation and Installation Assurance
Siting Clearinghouse

Copy to:
SAF IE
DASA (Energy)
DoD REC Region 8
NDARNG

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

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

9/21/19

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I appreciate the opportunity to express my opinion and thank you for your time.

Sincerely,

Lyle Best, MD

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Energy Conversion Facility Siting Criteria
Rulemaking

Case No. PU-19-290

COMMENTS OF RUSO WIND PARTNERS, LLC
AND SOUTHERN POWER COMPANY

I. Introduction.

The North Dakota Public Service Commission (“Commission”) has proposed changes to N.D.A.C. § 69-06-08-01 Energy Conversion Facility Siting Criteria. Ruso Wind Partners, LLC and Southern Power Company respectfully provide the following comments regarding the proposed rule changes.

II. Background Regarding Ruso Wind Partners, LLC and Southern Power Company.

Ruso Wind Partners, LLC, is developing the proposed up to 205 megawatt (“MW”) Ruso Wind Project in Ward County, North Dakota (*see* Case No. PU-19-28). Ruso Wind Partners, LLC, is a wholly-owned subsidiary of Southern Power Company, a leading U.S. wholesale energy provider and subsidiary of Southern Company. Southern Power and its subsidiaries own 49 facilities operating or under construction in 11 states with more than 11,300 MW of generating capacity in Alabama, California, Georgia, Kansas, Maine, Minnesota, Nevada, New Mexico, North Carolina, Oklahoma and Texas. These facilities help meet the electricity needs of municipalities, electric cooperatives, investor-owned utilities and commercial and industrial customers. Southern Power's portfolio now includes over 3,200 MW of renewable generation.

III. Comments Regarding Proposed N.D.A.C. § 69-06-08-01(1)(g).

The proposed revisions to N.D.A.C. § 69-06-08-01 include adding the following Exclusion Area as N.D.A.C. § 69-06-08-01(1)(g): “Areas within thirty feet on either side of a direct line between intercontinental ballistic missile (ICBM) launch [and] launch control facilities to avoid microwave interference.”

Based on testimony from U.S. Air Force officials at the September 19, 2019 public hearing on the proposed rule change, we understand that the purpose of proposed N.D.A.C. § 69-06-08-01(1)(g) is to prevent an energy conversion facility from impeding line-of-sight between an ICBM launch facility and a Missile Alert Facility/Launch Control Center (to use the nomenclature from the handout provided by the U.S. Air Force). Given this stated purpose, we recommend revising the proposed rule as follows:

“Areas within thirty feet on either side of a direct line between an intercontinental ballistic missile (ICBM) launch facility [and] a

missile alert facility or launch control center launch control facilities to avoid microwave interference. This does not apply between individual launch facilities, and only applies to above-ground structures, not to surface features (such as roads) or below-ground infrastructure (such as collection systems and communication lines)."

The proposed revisions clarify the specific facilities between which line-of-sight is to be maintained. Additionally, the proposed revisions limit the rule's application to above-ground structures, which were the concern identified by the U.S. Air Force for line-of-sight interference.

IV. Conclusion.

Ruso Wind Partners, LLC and Southern Power Company respectfully request that the Commission incorporate the revisions to proposed N.D.A.C. § 69-06-08-01(1)(g) set forth above.

September 30, 2019



Via Email Only

North Dakota Public Service Commission
600 East Boulevard Ave, Dept. 408
Bismarck, North Dakota 58505
ndpsc@nd.gov

*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

Wade C. Mann
100 West Broadway, Suite 250
P.O. Box 2798
Bismarck, ND 58502-2798
701.223.6585
wmann@crowleyfleck.com

September 30, 2019

Via Hand Delivery and Electronic Mail

Mr. Steve Kahl
Executive Director
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480
ndpsc@nd.gov


In re: NextEra Energy Resources, LLC
Comments on Proposed Rulemaking
Case No. PU-19-290

Dear Mr. Kahl:

Enclosed for filing please find eleven copies of NextEra Energy Resources, LLC's Comments on Proposed Rulemaking in the captioned case.

Please feel free to contact me if you have any questions. Thank you.

Sincerely,



Wade C. Mann

WCM/lh

Enc.

cc: Tracy Davis (via email)
Casey Furey (via email)

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

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

PU-19-290

Rulemaking Comments of NextEra Energy Resources, LLC

NextEra Energy Resources, LLC (“NextEra Energy Resources”) appreciates the opportunity to provide comments on the North Dakota Public Service Commission’s (“Commission”) proposed rulemaking regarding energy conversion facility siting criteria in Case No. PU-19-290.

I. Introduction and Background

NextEra Energy Resources is a clean energy leader and is one of the largest wholesale generators of electric power in the United States, with approximately 21,000 megawatts (“MW”) of net generating capacity, primarily in 36 U.S. states and Canada as of year-end 2018. Through its subsidiaries, NextEra Energy Resources owns and operates 14 existing wind projects in North Dakota, for a total of approximately 1,250 MW of currently installed capacity, and is currently constructing a 15th wind project, which it expects will be in service before the end of 2019. Its first project was built in 2003.

In this rulemaking proceeding, the Commission proposes to modify its avoidance areas related to sound levels for wind energy conversion facilities in N.D. Admin. Code § 69-06-08-01(4), reducing the sound level from 50 dBA to 45 dBA within 100 feet of an inhabited residence or community building. The Commission has retained the language that the sound level criteria may be waived in writing by the owner of the occupied residence or community building.

II. A Reduction in the Commission’s Sound Criteria Below the Currently Applicable 50 dBA Is Not Necessary

NextEra Energy Resources does not believe that there is a need to reduce the Commission’s current sound criteria contained in § 69-06-08-01(4). Despite its long operating history and significant number of projects installed in diverse areas across the state, NextEra Energy Resources is not aware that there have been a material number of landowner complaints about sound from operating wind turbines. Specifically, NextEra Energy Resources is aware of only two landowner sound complaints related to its projects in its 16-year operating history. In these limited instances, NextEra Energy Resources dealt directly with particular landowners and proposed mitigation measures directly to these landowners. NextEra Energy Resources takes its duty to its neighbors seriously, whether they are participating or not, and will work directly with affected landowners that may have noise concerns. However, there do not appear to be significant or wide-spread

concerns about sound levels from landowners that neighbor operating wind projects. Accordingly, NextEra Energy Resources does not believe that there is a need to modify the existing sound limitation of 50 dBA to 45 dBA.

III. Further Reductions to the Commission's Sound Criteria Below 45 dBA Is Not Supported by Evidence or the Practice in Other States

If the Commission does decrease the sound level in its avoidance criteria, NextEra Energy Resources does not recommend that it be lowered below 45 dBA. There have been over 100 peer-reviewed scientific articles published in the field of wind turbine sound and proper siting to avoid health effects and undue community annoyance/complaints for those living in proximity to projects. The weight of this research concludes that there are no health or welfare issues associated with non-participants experiencing sound at or below 45 dBA at the exterior of their residences.

Health Canada undertook the largest wind turbine noise, health and annoyance population epidemiological study conducted around the world and has since published its findings in ten scientific peer-reviewed journal articles. This study was initiated in 2012 and was a partnership between Health Canada and Statistics Canada to understand the potential impacts of wind turbine noise on health and well-being of communities in Southern Ontario and Prince Edward Island. A total of 1238 households participated in the study, with an almost 80% response rate of all households within 6 miles of projects investigated, making it the largest and most comprehensive study ever undertaken around the world. Households were located between 820 feet and 6 miles from operational wind turbines. The A-weighted dBA sound levels (audible sound/noise) were grouped into 5 dBA increments with the loudest level in the Health Canada study at the exterior of a home being 46 dBA Leq (highest nighttime level). The study found:

Beyond annoyance, results do not support an association between exposure to [wind turbine noise] up to 46 dBA and the evaluated health-related endpoints.

The results of the Health Canada work also supported the fact that annoyance was driven largely by the visual cue (whether you can see the turbines) and attitude towards the wind project, *i.e.*, that the sound level experienced by landowners was not the driving force towards annoyance. Further, they determined that annoyance from wind turbine noise does not directly translate to a number of complaints. Table IV from their work, reproduced below, identifies the number of formal complaints (with % in brackets) by sound grouping. It also provides the annoyance levels at each sound level. Table IV shows that a greater percentage of people reported annoyance with visual aspect of the projects over that of the actual sound levels. Also, the percentage of complaints between 40-46 dBA (2.6%) was consistent with those living up to 6 miles from wind turbines where the sound level would be completely inaudible at the <25 dBA (2.4%). This data suggests regardless of the sound level there will be a small percentage of complaints regardless of the sound level from the wind turbines.

TABLE IV. Perception of community noise and related variables.

Variable	Wind Turbine Noise (dB)					Overall	CMH <i>p</i> -value ^d
	<25	[25–30]	[30–35]	[35–40]	[40–46]		
Formal complaint ^f	2 (2.4)	2 (2.1)	3 (1.0)	22 (4.2)	6 (2.6)	35 (2.8)	0.2578
Reporting a high (very or extreme) level of annoyance to wind turbine features, <i>n</i> (%)							
Noise	0 (0.0)	2 (2.1)	3 (1.0)	52 (10.0)	32 (13.7)	89 (7.2)	<0.0001
Visual	2 (2.4)	15 (16.0)	17 (5.6)	81 (15.5)	44 (18.9)	159 (12.9)	

Hubner *et al.* (2019) recently published the first U.S. based study on wind turbines and annoyance, “Monitoring annoyance and stress effects of wind turbines on nearby residents: A comparison of U.S. and European samples.” The U.S. sample included 1441 residents living near 231 wind farms, across 24 states. People living between 262 feet and up to three miles from a turbine were included in the research. Sound levels in the study ranged from <30 dBA to >50 dBA. The study concluded:

Average annoyance levels of residents near wind farms in Europe and the U.S. were low, with the levels for noise similar across both samples, with European levels slightly higher for shadow-flicker, lighting and landscape change. In all cases the annoyance levels were comparable to the levels associated with traffic noise.

The past decade of scientific research has also demonstrated that participating landowners, who typically live a lot closer to wind turbines and experience higher sound levels do not report health effects or indeed any annoyance with the wind turbines. From the Health Canada study:

Aggregate annoyance was effectively 0 (i.e., least squares mean – 0.11) among the 110 participants who reported to receive personal benefit from having wind turbines in the area, compared to an average of 1.93 among those who did not report such benefits.

NextEra Energy Resources believes that this research is compelling and clearly indicates that there would be no additional benefit to North Dakotans to lower the sound level criterion below 45 dBA for non-participating residences. It also indicates that there would be no need to lower the sound level criterion for participating residents from the existing 50 dBA.

At the hearing held by the Commission on September 19, 2019, there was discussion regarding the sound requirements implemented by the South Dakota Public Utilities Commission (“SD PUC”) for non-participating landowners. NextEra Energy Resources provides the following comments to clarify the record regarding current sound levels required by the SD PUC. NextEra Energy Resources subsidiaries currently own and operate three wind projects in South Dakota (or approximately 190 MW), and thus, NextEra Energy Resources is familiar with the SD PUC’s approach to permitting wind projects in the state. Unlike North Dakota, South Dakota has not implemented state-wide sound limitations for wind projects. Rather, the SD PUC has taken a case-by-case approach in adopting sound levels for wind projects, which levels often are tied to specific

county sound limitations and supported by the evidentiary record that is developed in a particular proceeding. In 2019, the SD PUC has granted approval for at least four different wind projects using the standards of 50 dBA for participating landowners and 45 dBA for non-participating landowners,¹ and one wind project using a standard of 45 dBA for all landowners,² in decisions that were supported by the expert testimony of noted sound experts and medical professionals. In fact, to NextEra Energy Resources' knowledge, the SD PUC has approved sound levels of 45 dBA for participating landowners and 40 dBA for non-participating landowners on only one occasion,³ in an order issued in November 2018, and that was based upon the specific modeled sound levels presented by the applicant for that particular project.⁴ Thus, the SD PUC decides sound on a case-by-case basis, and, therefore, has not imposed an overarching standard requiring sound levels below 45 dBA for non-participating residences.

NextEra Energy Resources recommends that if the Commission reduces the existing sound level, the reduction not extend below 45 dBA and that it be limited to non-participating landowners. Although the rule provides for a waiver of the sound limit, the proposed rule's applicability to both non-participating and participating landowners would require an applicant to obtain waivers from participating landowners for "exceedances" beyond 45 dBA that are unlikely to be objectionable based upon the history of existing facilities' operations.

NextEra Energy Resources also believes that adopting a limitation below 45 dBA at non-participating residences would be too restrictive and could significantly limit areas available in North Dakota for wind energy development, and as shown above would not provide additional health or community benefit. It is important to note that the sound models used to support a

¹ *In the Matter of the Application of Dakota Range III, LLC for a Permit of a Wind Energy Facility and a 345-kV Transmission Line in Grant and Roberts Counties*, Docket No. EL18-046, Permit Condition No. 27 (Feb. 6, 2019), available at: <https://puc.sd.gov/commission/dockets/electric/2018/el18-046/settlement2.pdf>; *In the Matter of Deuel Harvest Wind Energy LLC for a Permit of a Wind Energy Facility and a 345-kV Transmission Line in Deuel County*, Docket No. EL18-053, Finding of Fact No. 103 and Permit Condition No. 27 (May 30, 2019), available at: <https://puc.sd.gov/commission/orders/electric/2019/el18-053final.pdf>; *In the Matter of Crowned Ridge Wind, LLC for a Permit of a Wind Energy Facility in Grant and Codington Counties*, Docket No. EL19-003, Finding of Fact No. 45 and Permit Condition No. 26 (July 26, 2019), available at: <https://puc.sd.gov/commission/orders/electric/2019/el19-003final.pdf>; *In the Matter of the Application of Sweetland Wind Farm, LLC for Permits of a Wind Energy Facility and a 230-kV Transmission Facility in Hand County, South Dakota*, Docket No. EL19-012, Conditions of Stipulation No. 28 (July 31, 2019), order approving stipulation available at: <https://puc.sd.gov/commission/orders/electric/2019/el19-012settlement.pdf>.

² *In the Matter of the Application of Triple H Wind Project, LLC for a Permit of a Wind Energy Facility in Hyde County, South Dakota*, Docket No. EL19-007, Permit Condition No. 26 (July 24, 2019), available at: <https://puc.sd.gov/commission/orders/electric/2019/el19-007final.pdf>.

³ *In the Matter of the Application by Prevailing Wind Park, LLC for a Permit of a Wind Energy Facility in Bon Homme County, Charles Mix County and Hutchinson County, South Dakota, for the Prevailing Wind Park Project*, Docket No. EL18-026 at Finding of Fact No. 65 and Permit Condition No. 27 (Nov. 28, 2018), available at: <https://puc.sd.gov/commission/orders/electric/2018/el18-026final.pdf>.

⁴ *Id.* ("The record demonstrates that 40 dBA at non-participating residences is an appropriate and reasonable sound limit to protect the welfare of non-participants.").

certificate application often take a conservative approach, *i.e.*, they overestimate sound levels at modeled receptors. For example, most sound models make conservative assumptions, such as: utilizing sound levels at the wind turbines' peak operations, rather than at levels closer to actual operating levels; modeling all proposed turbine and alternate turbine locations; and adding a 1-2 dBA buffer onto modeled sound results. All of these assumptions tend to increase a project's modeled sound results. In addition, implementing sound level limitations below 45 dBA for non-participating landowners could have the effect of increasing a project's overall footprint (*i.e.*, by requiring developers to space turbines further apart in order to meet lower sound thresholds).

In addition, it does not appear that reducing the sound level limitations below 45 dBA for non-participating landowners is necessary to address landowner noise complaints. As noted above, in its 16-year operating history in North Dakota, NextEra Energy Resources is only aware of two noise complaints to the Commission related to its projects. However, NextEra Energy Resources' subsidiaries' operating history does not suggest that a significant problem exists or that it needs to be addressed by implementing an across-the-board threshold below 45 dBA.

For these reasons, NextEra Energy Resources respectfully submits that if the Commission determines to change the sound level criteria in N.D. Admin. Code § 69-06-08-01.4, that it consider adopting the following:

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 dBA **for project participants and forty-five dBA for non-participants**. The sound level avoidance area criteria may be waived in writing by the owner of the occupied residence or the community building.

IV. Conclusion

NextEra Energy Resources respectfully requests the Commission not to reduce the Commission's current sound criteria contained in § 69-06-08-01(4). If the Commission does make any reductions to the existing sound criteria, NextEra Energy Resources believes that there is not support to reduce the sound criteria below 45 dBA.

September 30, 2019

VIA E-MAIL (ndpsc@nd.gov)

North Dakota Public Service Commission
c/o Mr. Steven Kahl
Executive Director
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

**RE: Public Service Commission
Energy Conversion Facility Siting Criteria
Rulemaking
Case No. PU-19-290**

Comments of Geronimo Energy, LLC

Dear Commissioners:

Enclosed for filing are the comments of Geronimo Energy, LLC regarding the rule changes proposed in the above-referenced docket.

If you have any questions, please let me know.

Sincerely,


MOLLIE M. SMITH

MMS/68188711
Enclosure

cc: Melissa Schmit (w/ enclosure)

Attorneys & Advisors / Fredrikson & Byron, P.A.
main 612.492.7000 / 200 South Sixth Street, Suite 4000
fax 612.492.7077 / Minneapolis, Minnesota
fredlaw.com / 55402-1425



September 30, 2019

VIA E-MAIL (ndpsc@nd.gov)

North Dakota Public Service Commission
c/o Mr. Steven Kahl, Executive Secretary
600 East Boulevard Avenue, Department 408
Bismarck, ND 58505-0480

**RE: Public Service Commission
Energy Conversion Facility Siting Criteria
Rulemaking
Case No. PU-19-290**

Dear Commissioners:

Geronimo Energy, LLC (“Geronimo”), a National Grid Company, provides the following comments regarding the siting criteria changes proposed by the North Dakota Public Service Commission (“Commission”) in the above-referenced rulemaking docket.

A. Comments Regarding the Proposed Addition of N.D.A.C. § 69-06-08-01(1)(g).

The Commission is proposing to add a new Exclusion Area for energy conversion facilities as N.D.A.C. § 69-06-08-01(1)(g): “Areas within thirty feet on either side of a direct line between intercontinental ballistic missile (ICBM) launch [and] launch control facilities to avoid microwave interference.” In Geronimo’s experience, GIS data, official maps, or other documentation showing the location of its launch or launch control facilities have not been made available by the U.S. Air Force. Rather, consultation occurs by providing proposed project facilities to the U.S. Air Force to review, and then the U.S. Air Force would identify any potential issues in relation to military assets. In other words, based on Geronimo’s past experience, developers do not have access to official maps or data showing the location of ICBM launch and launch control facilities, so would not be able to identify whether the proposed Exclusion Area was present at a potential site until well into project development.

Therefore, if the Commission adds N.D.A.C. § 69-06-08-01(1)(g) as an Exclusion Area, Geronimo respectfully requests that the Commission ask the U.S. Air Force to make readily available to developers maps and other information regarding the location of ICBM launch and launch control facilities so that the location of Exclusion Areas can be identified early in project siting. If such information cannot be made available, then Geronimo requests that the Commission not add N.D.A.C. § 69-06-08-01(1)(g) as an Exclusion Area for energy conversion facilities.

B. Comments Regarding Proposed Changes to N.D.A.C. § 69-06-08-01(4).

The Commission is proposing changing the sound level limit in N.D.A.C. § 69-06-08-01(4) from 50 dBA within 100 feet of an inhabited residence or community building to 45 dBA within 100 feet of an inhabited residence or community building. Geronimo asked RSG, a highly qualified firm that conducts pre- and post-construction wind energy facility noise assessments and acoustical research, to review and provide comments regarding proposed N.D.A.C. § 69-06-08-01(4). A Memorandum prepared by RSG with its

comments and recommendations is provided as **Attachment 1**. Geronimo requests that the Commission consider revising proposed N.D.A.C. § 69-06-08-01(4) as recommended by RSG on page 4 of the Memorandum.

Additionally, during the September 19, 2019 public hearing on the proposed change to N.D.A.C. § 69-06-08-01(4), testimony was provided and statements were made indicating that 40 dBA – rather than 45 dBA – may be a more appropriate sound limit for non-participating residences. Geronimo also asked RSG to comment on that testimony. In response, RSG notes on pages 3 and 4 of its Memorandum that noise complaints are tied to personal perception, and recent studies¹ indicate that the actual sound level is only one (and not even the strongest) factor leading to complaints. In fact, Mr. Hessler, himself, has testified that people may complain about turbine noise even when the emitted sound level could not be heard above the existing background noise.² In other words, complaints are often based on a number of subjective factors not tied to turbine sound. Thus, while the negative impact on wind development of establishing a sound level below 45 dBA would be significant, doing so would not necessarily result in a significant reduction in complaints.

Additionally, during the September 19, 2019 public hearing, references were made to 40 dBA being set as a sound limit for non-participating residences by the South Dakota Public Utilities Commission.³ Notably, 40 dBA was set as the sound limit for non-participating residences in only one docket with unique circumstances.⁴ In other South Dakota Public Utilities Commission siting dockets, the sound limit was either 50 dBA at participating residences and 45 dBA at non-participating residences, or 45 dBA at both.⁵

1 Please see **Attachment 2**, which provides copies of the documents cited in the Memorandum.

2 *In the Matter of the Application of Deuel Harvest Wind Energy LLC for a Permit of a Wind Energy Facility and a 345 kV Transmission Line in Deuel County*, Docket EL18-053, Evid. Hrg. (Hessler Testimony) (April 18, 2019).

3 The Crocker Wind Farm located in Clark County, South Dakota is a Geronimo project and was permitted on June 12, 2018.

4 *See In the Matter of the Application by Prevailing Wind Park, LLC for a Permit of a Wind Energy Facility in Bon Homme County, Charles Mix County and Hutchinson County, South Dakota, for the Prevailing Wind Park Project*, Docket EL18-026, Final Decision and Order Granting Permit to Construct Facilities and Notice of Entry with Attached Permit Conditions at 21-22 (November 28, 2018).

5 *See In the Matter of the Application by Crocker Wind Farm, LLC for a Permit of a Wind Energy Facility and a 345 kV Transmission Line in Clark County, South Dakota, for Crocker Wind Farm*, Docket EL17-055, Final Decision and Order Granting Permit to Construct Facilities and Notice of Entry at Condition 29 (June 12, 2018) (50 dBA at participating residences and 45 dBA at non-participating residences); *In the Matter of the Application by Dakota Range I, LLC and Dakota Range II, LLC for a Permit of a Wind Energy Facility in Grant County and Codington County, South Dakota, for the Dakota Range Wind Project*, Docket EL18-003, Final Decision and Order Granting Permit to Construct Wind Energy Facility; Notice of Entry with Attachment A at Condition 27 (July 23, 2018) (50 dBA at participating residences and 45 dBA at non-participating residences); *In the Matter of the Application of Dakota Range III, LLC for a Permit of a Wind Energy Facility and a 345-kV Transmission Line in Grant and Roberts Counties*, Docket EL18-046, Order

Additionally, in all but the one case, Mr. Hessler agreed with a sound level limit of 45 dBA at non-participating residences, even when intervenors advocated for a lower limit.⁶

For the reasons set forth above, Geronimo requests that the Commission establish a sound level limit that is supported by sound reasoning and analysis, and not to address a concern regarding potential complaints that, more likely than not, are not tied to sound at all. Specifically, Geronimo requests that the limit be no lower than 45 dBA, and that RSG's recommendations be incorporated into any changes made to N.D.A.C. § 69-06-08-01(4).

Granting Joint Motion for Approval of Settlement Stipulation and Granting Permits to Construct Facilities (February 22, 2018) and Approved Settlement Stipulation at Condition 27 (50 dBA within 25 feet of participating residences and 45 dBA within 25 feet of non-participating residences); *In the Matter of the Application of Deuel Harvest Wind Energy LLC for a Permit of a Wind Energy Facility and a 345-kV Transmission Line in Deuel County*, Docket EL18-053, Final Decision and Order Granting Permit to Construct Facilities; Notice of Entry at Condition 26 (May 30, 2019) (50 dBA within 25 feet of participating residences and 45 dBA within 25 feet of non-participating residences); *In the Matter of the Application by Sweetland Wind Farm, LLC for Facility Permits for a Wind Energy Facility and a 230-kV Transmission Facility in Hand County, South Dakota for the Sweetland Wind Farm Project*, Docket EL19-012, Order Granting Joint Motion for Approval of Settlement Stipulation; Order Granting Permit to Construct Facility; Notice of Entry (July 31, 2019) and Approved Settlement Stipulation at Condition 28 (50 dBA at participating residences and 45 dBA at non-participating residences); *In the Matter of the Application by Triple H Wind Project, LLC for a Permit of a Wind Energy Facility in Hyde County, South Dakota*, Docket EL19-007, Final Decision and order Granting Permit to Construct Facility; Notice of Entry With Permit Conditions at Condition 26 (July 24, 2019) (45 dBA within 25 feet of any residence).


⁶ See, e.g., *In the Matter of the Application by Crocker Wind Farm, LLC for a Permit of a Wind Energy Facility and a 345 kV Transmission Line in Clark County, South Dakota, for Crocker Wind Farm*, Docket EL17-055, Evid. Hrg. (Hessler Testimony) (May 10, 2018); *In the Matter of the Application by Dakota Range I, LLC and Dakota Range II, LLC for a Permit of a Wind Energy Facility in Grant County and Codington County, South Dakota, for the Dakota Range Wind Project*, Docket EL18-003, Evid. Hrg. (Hessler Testimony) (June 13, 2018); *In the Matter of the Application of Deuel Harvest Wind Energy LLC for a Permit of a Wind Energy Facility and a 345-kV Transmission Line in Deuel County*, Docket EL18-053, Evid. Hrg. (Hessler Testimony) (April 18, 2019).

North Dakota Public Service Commission
Page 4
September 30, 2019

C. **Conclusion.**

Geronimo respectfully requests that the Commission consider the recommendations set forth above. If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa Schmit". The signature is written in a cursive style with a large initial "M".

Melissa Schmit,
Permitting Manager

Enclosures

September 30, 2019

Executive Secretary
North Dakota Public Service Commission
State Capitol Building
Bismarck, ND 58505-0480

Re: Public Service Commission Rulemaking
Case No. PU-19-122 Solar Decommissioning
Case No. PU-19-290 Energy Conversion Facility Siting Criteria
Case No. PU-19-291 Wind Decommissioning

Montana-Dakota Utilities Co. (Montana-Dakota), herewith submits comments regarding the Commission's proposed rulemakings in the above referenced cases.

Case No. PU-19-122 Solar Decommissioning

69-09-10-01. Definitions 8. Facility:
Montana-Dakota suggests that inverters be added to the definition of "Facility".

69-09-10-03. Abandonment and useful life – Certificate of operation 2.
A 5 percent capacity factor should be considered in determining useful life given that solar in North Dakota only has an 18% annual capacity factor as compared to wind facilities with a much higher annual capacity factor and a 10% threshold.

69-09-10-05. Decommissioning Requirements 1.
Montana-Dakota suggests adding inverters to the list and providing the depth applicable to foundations that must be removed. Montana-Dakota also suggests adding transformers and substations to the list describing the facility, but list this equipment as optional, as it could be used for other uses after the decommissioning of the facility.

69-09-10-05. Decommissioning Requirements 3.
Montana-Dakota proposes that an exception be added to address landowner preference or lease arrangements rather than specifying the restoration and reclamation must be to the approximate original topography only.

69-09-10-05. Decommissioning Plan 3.a.
Montana-Dakota proposes that a qualified contractor with experience in Facility decommissioning be added as an option for providing a cost estimate for decommissioning the Facility.

69-09-10-08. Financial Assurance. 1.

The reference to 69-09-09-08(2) appears should be changed to 69-09-10-08(2).

Case No. PU-19-290 Energy Conversion Facility Siting Criteria

69-06-08-01. 4. Additional avoidance areas for wind energy conversion facilities. Montana-Dakota requests the Commission reconsider lowering the maximum sound level present within one hundred feet of an inhabited residence or a community building down to forty-five dBA. An alternative would be to lower the threshold to forty-five dBA for non-participating landowners and retaining the fifty dBA maximum level for participating landowners as discussed at the September 19, 2019 rules hearing.

Case No. PU-19-291 Wind Decommissioning

Montana-Dakota provides the following comments regarding sections of the Rules that were not changed by the Commission in this Rulemaking for consideration now or as part of a future rulemaking as deemed appropriate.

69-09-09-05. Decommissioning requirements 1.

Include substations in the list describing the facility, but list the transformers and substations as optional, as this equipment could be used for other uses after the decommissioning of the facility.

69-09-09-05. Decommissioning Requirements 4.

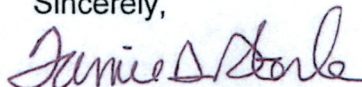
Montana-Dakota proposes that an exception be added to address landowner preference or lease arrangements rather than specifying the restoration and reclamation to the approximate original topography only.

69-09-09-06. Decommissioning Plan 3.a.

Montana-Dakota proposes that a qualified contractor with experience in Facility decommissioning be added as an option for providing a cost estimate for decommissioning the Facility.

Montana-Dakota appreciates the opportunity to provide comments for the Commission's consideration. Please contact me at (701) 222-7856 or at Tamie.Aberle@mdu.com with any questions regarding the above comments.

Sincerely,



Tamie A. Aberle
Director of Regulatory Affairs

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Wind Decommissioning
Rulemaking**

Case No. PU-19-291

PUBLIC SERVICE COMMISSION STAFF TESTIMONY

September 19, 2019

My name is Jerry Lein. I am a Public Utility Analyst in the Public Utilities Division of the Public Service Commission. The purpose of my testimony is to describe proposed changes to ND Admin. Code Chapter 69-09-09 administrative rules pertaining to wind farm decommissioning.

While the proposed changes include some minor language tweaks to improve clarity, the primary purpose of these changes is to clarify that decommissioning Chapter 69-09-09 applies to wind projects that were not required to obtain a site certificate from the Commission. Present law requires a site certificate for wind projects with 500 kW or more of generating capability, but there were previous time periods when that threshold was 50 MW and 99 MW . As a result, some projects constructed during those times were not sited.

Section 69-09-09-01(7) defines "Existing facility" and is being expanded to include existing wind projects for which a site certificate was not issued.

Section 69-09-09-01(9) defines owner and is being expanded to include owners of facilities for which no site certificate was issued.

There is one other substantive change being proposed to eliminate Section 69-09-09-08(5)(b)(2), which was determined unnecessary because the requirements in subsection 69-09-09-08(5)(b)(1) are sufficient

That concludes my Testimony.

Thank you

Wade C. Mann
100 West Broadway, Suite 250
P.O. Box 2798
Bismarck, ND 58502-2798
701.223.6585
wmann@crowleyfleck.com

September 27, 2019

Via Hand Delivery and Electronic Mail

Mr. Steve Kahl
Executive Director
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480
ndpsc@nd.gov

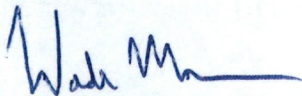
In re: Acciona Wind Energy USA LLC
Comments on Proposed Rulemaking
Case No. PU-19-291

Dear Mr. Kahl:

Enclosed for filing please find eleven copies of Acciona Wind Energy USA LLC's Comments on Proposed Rulemaking in the captioned case.

Please feel free to contact me if you have any questions. Thank you.

Sincerely,



Wade C. Mann

WCM/lh
Enc.

cc: Emilie Beavers (via email)
Casey Furey (via email)

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Wind Decommissioning
Rulemaking

PU-19-291

Acciona Wind Energy USA LLC's Comments on Proposed Rulemaking

Acciona Wind Energy USA LLC ("Acciona") submits the following comments in response to the North Dakota Public Service Commission's ("ND PSC") proposed rulemaking in Case No. PU-19-291.

Acciona is a renewable energy company with projects across the United States. Currently, two of Acciona's wholly-owned subsidiaries, Tatanka Wind Power, LLC ("Tatanka") and Velva Windfarm, LLC ("Velva"), own and operate wind energy facilities in North Dakota. Tatanka owns and operates a 180-megawatt ("MW") wind energy facility that extends between North and South Dakota. Tatanka's North Dakota operations are located in Dickey and McIntosh Counties and are comprised of sixty-one 1.5 MW turbines. Velva operates an 11.88 MW wind energy facility in McHenry County comprised of 18 0.66 MW turbines. At the time the Tatanka and Velva facilities were constructed, both facilities fell below the Commission's jurisdictional siting thresholds.

The proposed rulemaking would extend the Commission's decommissioning rules to nonpermitted facilities including, Tatanka and Velva. Acciona does not object to the extension of the Commission's decommissioning rules to nonpermitted facilities, and in fact, has complied with the existing provisions as if they apply to nonpermitted facilities. However, Acciona objects to the Commission's proposal to remove existing Section 69-09-09-08(5)(b)(2) from Chapter 69-09-09 of the North Dakota Administrative Code which would eliminate the financial criteria an entity may qualify under in order to provide the Commission with a parent guarantee for decommissioning. Currently, Section 69-09-09-08(5)(b) states that the Commission may accept a parent guarantee if:

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;

- (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.

Acciona is neither a credit-rated entity nor is it a public utility; however, Acciona does meet the financial criteria in Section 69-09-09-08(5)(b)(2). According to the testimony of ND PSC staff member Jerry Lein, the sole reason Section 69-09-09-08(5)(b)(2) is proposed to be eliminated is because the requirements in Section 69-09-09-08(5)(b)(1), which govern credit ratings, have been deemed sufficient. *See* PU-19-291, Docket No. 15. This statement does not hold true for Acciona. Acciona is not rated by a credit agency. Companies pay to have credit agencies do an analysis and provide a credit rating, but that process is quite costly, which cost is ongoing for the continued maintenance of a credit rating. Many companies choose to forego a credit rating and will instead rely upon parent guarantees, which are evaluated based upon the balance sheets and financials of the applicable guarantor to demonstrate financial stability. As previously stated, if § 69-09-09-08(5)(b)(2) is removed as proposed, Acciona (and presumably many other companies) would not be able tender a parent guarantee to the Commission, but Acciona (and again, presumably many other companies) have a balance sheet that would more than support a parent guarantee. No additional testimony or evidence has been submitted by the Commission that creates a rational basis for removing Section 69-09-09-08(5)(b)(2). For the reasons discussed herein, Acciona respectfully objects to the proposed elimination of Section 69-09-09-08(5)(b)(2).

September 30, 2019

VIA E-MAIL (ndpsc@nd.gov)

North Dakota Public Service Commission
c/o Mr. Steven Kahl
Executive Director
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

**RE: Public Service Commission
Wind Decommissioning
Rulemaking
Case No. PU-19-291**

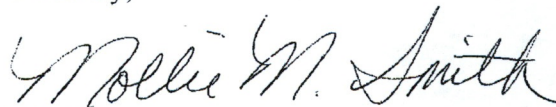
Comments of Meadowlark Wind I LLC and Capital Power Corporation

Dear Commissioners:

Enclosed for filing are the comments of Meadowlark Wind I LLC and Capital Power Corporation regarding the rule changes proposed in the above-referenced docket.

If you have any questions, please let me know.

Sincerely,



MOLLIE M. SMITH

MMS/68186722
Enclosure

cc: Paul Wendelgass (w/ enclosure)
Grant Berry (w/ enclosure)
Colleen Smith (w/ enclosure)

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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.

September 30, 2019

VIA E-MAIL (ndpsc@nd.gov)

North Dakota Public Service Commission
c/o Mr. Steven Kahl
Executive Director
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

**RE: Public Service Commission
Wind Decommissioning
Rulemaking
Case No. PU-19-291**

Comments of Sunflower Wind Project, LLC and Novatus Energy

Dear Commissioners:

Enclosed for filing are the comments of Sunflower Wind Project, LLC and Novatus Energy regarding the rule changes proposed in the above-referenced docket.

If you have any questions, please let me know.

Sincerely,



MOLLIE M. SMITH

MMS/68190108
Enclosures

cc: Raul Garcia (w/ enclosure)
Bruce Kerr (w/ enclosure)

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Comments on proposed Rulemaking
Sunflower Wind Project, LLC and Novatus Energy
Mollie Smith, Fredrikson&Byron, P.A.

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.

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.

**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

FISCAL NOTE

March 18, 2020

Adoption of the proposed rules in the captioned two cases are not expected to have any impact on State expenditures or revenues.

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Fiscal Note
Public Service Commission

28 PU-19-290 Filed 03/18/2020 Pages: 1
Fiscal Note
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16 GS-19-217 Filed 03/18/2020 Pages: 1
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Public Service Commission

22 PU-19-122 Filed 03/18/2020 Pages: 1
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Public Service Commission