

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**

June 4, 2020

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;

The class of person who may be impacted by the proposed rule are wind developers, and there may be secondary impacts to customers receiving energy produced.

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

The probable impact may be a cost to provide financial assurances to ensure decommissioning.

- 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 estimate costs related to this proceeding. It will vary depending on the project. Many projects have been allowed to guarantee the decommissioning as a financial assurance, thereby avoiding the cost of bonding.

- c. 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.

These rules are largely a continuation and clarification of existing rules. However, in the event that one does not view the rules outside of the continuity of the decommissioning program, it may be construed as having an impact on the regulated community by an amount in excess of fifty thousand dollars. As a result, the Commission has provided a regulatory analysis above.

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.