

CHAPTER 69-09-09 WIND FACILITY DECOMMISSIONING

Section

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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 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 was issued prior to July 1, 2017, or, if no certificate of site compatibility was issued, a facility that commenced operation prior to July 1, 2020.
8. "Facility" means a commercial wind energy conversion facility, including wind turbines, towers, bases, blades, transformers, cables, lines, substations, concrete, fences, facility access roads, 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; July 1, 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, 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, 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.
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; July 1, 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 facilities.

The owner of an existing facility shall provide financial assurance upon ten years of operation sufficient to complete decommissioning.

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

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