

November 18, 2019

Daniel P. Wolf, Executive Secretary
Minnesota Public Utilities Commission
127 7th Place East, Suite 350
St. Paul, MN 55101-2147

Re: Reply Comments on Decommissioning Report and Recommendations
Decommissioning Workgroup
Docket No. E-999/M-17-123

Dear Mr. Wolf:

Attached are the **Reply Comments** of the Minnesota Department of Commerce Energy Environmental Review and Analysis (EERA) staff in the following matter:

In the Matter of Department of Commerce Working Group on Decommissioning of Solar and Wind Facilities

On March 8, 2017 the Commission issued an order authorizing a Solar and Wind Decommissioning Working Group (SWDWG or Working Group). The Working Group gathered stakeholder input on best practices for decommissioning plans for solar and wind projects, including potential compliance monitoring requirements. On August 31, 2018, EERA released the *Solar and Wind Decommissioning Working Group Report and Recommendations*.

On January 24, 2019, EERA provided its Comments and Recommendation to the Commission based on the working group findings, including the following four broad recommendations:

- Establish a schedule for review of decommissioning plans.
- Establish a timeline for establishment of a funding mechanism.
- Consider whether the Commission itself should be a beneficiary of financial sureties.
- Consider whether decommissioning plans should be required for other types of facilities not owned by regulated utilities.

The Commission then issued a notice for a comment period on EERA's report and recommendations beginning July 22, 2019. The comment period closed on October 4, 2019. Comments were provided by industry stakeholders as well as a number of state agencies.

Based on the Workgroup's report, our initial comments and recommendations, and themes in the comments submitted during the Commission's open comment period, EERA staff would like to highlight some specific recommendations relative to the first bullet above - establishing a schedule/procedure for systematic review of decommissioning plans. As described further below, EERA recommends that the Commission should:

- Direct EERA to initiate review of decommissioning plans as part (1) the permit application process, (2) the permit transfer process, (3) the permit amendment process, and (4) at five year intervals.
- For the five-year reviews, direct EERA to use standard procedures for compliance filing/compliance review.

1. Direct EERA to initiate review of decommissioning plans as part of the permit application process, permit transfer process, permit amendment process, and at five year intervals;

Consistent with Working Group’s recommendations, initial EERA recommendations, and comments provided by industry and agency stakeholders, EERA recommends periodic review and updates to decommissioning plans; Specifically EERA recommends review of decommissioning plans for all applicants and permittees, including regulated utilities, at the following times:

- **As part of the permit application:** EERA has updated its application guidance to recommend that new applications contain a draft decommissioning plan that incorporates the elements required in Minnesota Rule, 7854.0500, subpart 13. EERA staff believes that comments from members of the public, local governments, agencies, and other stakeholders are important in ensuring a full record to inform the Commission’s permit decision.
- **As part of permit transfer review:** EERA believes review at the time of transfer offers an opportunity to review and assess decommissioning obligations of the new Permittee. This puts the new Permittee on notice of their decommissioning obligation, and provides an opportunity for the new Permittee to propose adjustments to the decommissioning plan.
- **As part of permit amendment review:** EERA believes that a review of the decommissioning plan is appropriate whenever there are substantive changes to a project, such as an amendment for a repowering project. EERA review of the entire decommissioning plan would also be appropriate if a permittee asks for a change to part of the plan.
- **At five year intervals:** Recent permits issued by the Commission require decommission plans to be updated every five years as a condition of the permit. While earlier permits do not specify an update schedule, language in these permits allow the Commission to request updates. EERA believes a five year schedule is equally appropriate for these earlier permits.

2. For the five-year reviews, direct EERA to use standard procedures for compliance filing/compliance review.

The five-year decommissioning plan review in the more recent permits is required in addition to and separate from a more general permit provision allowing re-opening and review the entire permit at five year intervals. Based on the record to-date EERA does not see a clear need to re-open the entire permit and recommends that the five-year decommissioning plan review should be conducted under the decommissioning condition in these permits.

EERA recommends that five year decommissioning plan updates be treated as compliance filings following procedures typical of other compliance requirements in the permit (similar, for example to routine updates to the Avian and Bat Protection Plan). In the case of the recent permits, EERA believes the permit language would allow EERA to initiate these compliance reviews. Language in earlier permits appears to require a request from the Commission to initiate such a review.

Specifically, for the five-year compliance filing updates for existing permits, EERA recommends the following approach:

- **Initiate compliance review process:** EERA or the Commission (depending on the vintage of the permit) initiates compliance review via a written request to permittees with decommissioning plans that are due for review.
- **Work proactively with permittees and stakeholders:** EERA works with permittees to encourage engagement of relevant stakeholders (e.g. local governments) as plans are updated and to guide the permittee in updating their plan in a manner that is consistent with the recommendations of the working group (e.g. requiring detail, defensible cost estimates from qualified sources, but allowing for flexibility across projects based on project type, year of operation).
- **Permittees E-file a detailed decommissioning plan:** Permittee e-files their updated decommissioning plan detailing anticipated decommissioning tasks and costs, as well as anticipated financial assurance mechanisms, timeframe, and beneficiaries.
- **Apply a standard of review consistent with the outcomes of the workgroup process:** EERA reviews the compliance filing to ensure that it includes adequate detail, a robust assessment of costs and financial assurances, and well documented explanations of stakeholder engagement and areas where the Permittee is seeking flexibility.
- **Commission takes action on key issues:** EERA documents their review in a compliance filing review letter and flags issues (e.g. financial assurance mechanisms and timeframe) recommended for Commission review and action as needed.

EERA recommends that these compliance reviews be initiated as soon as possible beginning with a review of the oldest permitted projects that are closest to the end of the permit life. Although EERA considered other approaches, EERA believes that updating decommissioning plans in older projects that are nearing end of life is a priority and recommends addressing the plans in these older permits first.

Sincerely,

/s/ Louise I. Miltich

Louise Miltich, Supervisor
Energy Environmental Review and Analysis
(651) 539-1853 | louise.miltich@state.mn.us