

## Staff Briefing Papers

Meeting Date June 17, 2021

Agenda Item 3\*

Company All Electric

Docket No. **E999/M-17-123**

**In the Matter of the Department of Commerce Workgroup on Wind and Solar Facilities**

Issues How should the Commission proceed in the matter of decommissioning plans?

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651-201-2251



### Relevant Documents

### Date

#### New

PUC – Staff Briefing Papers November 12, 2020

PUC – Decision Options Clarification November 17, 2020

Commissioner Tuma – Decision Options Amendment November 18, 2020

DOC EERA - Comments on Commission Decision Options November 18, 2020

#### From Nov. 12, 2020 Briefing Paper

Commission Order March 8, 2017

DOC EERA – Report - Solar Wind Decommissioning Working Group Report (2 parts) August 31, 2018

Commission - Notice of comment period on the Department of Commerce Decommissioning Report and Recommendations July 22, 2019

DNR – Comments Sept. 25, 2019

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

**Relevant Documents****Date**

MPCA – Comments	Sept. 25, 2019
Xcel Energy – Comments	Oct. 4, 2019
Clean Grid Alliance - Comments	Oct. 4, 2019
Minnesota Department of Agriculture – Comments	Oct. 4, 2019
DOC EERA – Reply Comments	Nov. 18, 2019
Xcel Energy – Reply Comments	Nov. 18, 2019
DOC EERA – Comments – Recommendations on review of solar and wind decommissioning plans	March 16, 2020
Commission – Notice of Comment Period	April 10, 2020
Minnesota Department of Natural Resources – Comments and Attachment (2 parts)	May 8, 2020
Minnesota Power - Comments	May 8, 2020
Avangrid Renewables – Comments	May 8, 2020
Xcel Energy – Comments	May 8, 2020
Jane Youngkrantz – Public Comment	May 12, 2020
MPCA – Public Comment	May 12, 2020
DOC EERA – Reply Comments	May 22, 2020

## **I. Statement of the Issues**

How should the Commission proceed in the matter of decommissioning plans?

## **II. Background**

The Decommissioning docket was scheduled to be before the Commission on November 19, 2020, however due to further considerations and the filing of revised decisions options (and associated comments), the item was pulled from Agenda Meeting schedule to allow staff to further consider the alternative decision options and comments.

On November 12, 2020 Commission staff submitted briefing papers.

On November 17, 2020 Commission staff submitted decision option clarifications.

On November 18, 2020 Commissioner Tuma submitted amended decision options.

On November 18, 2020 Department of Commerce Energy Environmental Review and Analysis (DOC EERA) submitted comments on the Commission's decision options.

### **A. Statutes and Rules**

Minn. Stat. 216F.05, subd. 5

This section outlines rules that the commission shall adopt governing the consideration of an application for a site permit for a LWECS. This includes the specification that the rules contain a requirement to restore, to the extent possible, the area affected by construction of the LWECS to the natural conditions that existed immediately before construction of the LWECS.

Minn. R. 7854.0500 subp. 13

This section of the rules outlines the Large Wind Energy Conversion System (LWECS) application content requirements. The requirements include information regarding the decommissioning of a project and restoring a site, for example:

- the anticipated life of the project;
- the estimated decommissioning costs in current dollars;
- the method and schedule for updating the costs of decommissioning and restoration;
- the method of ensuring funds will be available for decommissioning and restoration;
- and the anticipated manner in which the project will be decommissioned and the site restored.

## **B. Comments**

In Commission Staff's November 12, 2020 briefing paper, the Comments received throughout the docket's process were summarized by major themes rather than by the individual party or person. The issues in the decision options of this paper are based on the themes developed in comments.

The DOC EERA submitted comments on November 18, 2020 regarding Commission staff's decision options. The item was pulled from the November 19, 2020 Agenda to allow staff time to consider the comments provided.

## **C. DOC EERA**

In its November 18, 2020 comments, DOC EERA recommended that some of the related issues would be better addressed in guidance materials for permit applicants compared to adding elements to the site permit templates as presented in staff's briefing papers.

DOC EERA noted that it regularly develops and issues guidance documents to provide a framework for interested parties to understand how application content and permit compliance filings are reviewed and considered.

Under Minn. R. 7854.0800, the Commission is responsible for preparing a draft site permit that is specific to a wind project. For solar projects, staff's practice has been to introduce a draft site permit into the record at the permit application acceptance stage. The DOC EERA guidance materials are helpful in that process, but are not dispositive of the permit terms.<sup>1</sup>

DOC EERA also noted that there were three issues among the many set out in the briefing papers, that it seeks further input or guidance from the Commission:

- 1) How review older permits should be initiated;
- 2) Requesting any changes to the proposed review schedule; and
- 3) Whether rate regulated utilities need to file decommissioning plans in site permit dockets.

In addition, DOC EERA requested Commission guidance on how to address salvage value in cost and surety calculations. DOC EERA reiterated its recommendation that decommissioning plans include both gross (total cost of decommissioning) and net estimates (minus the cost of scrap or salvage value).

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<sup>1</sup> See MN DOC EERA – Application Guidance for Site Permitting of Large Wind Energy Conversion Systems in Minnesota: <https://mn.gov/eera/web/doc/13655/>

Finally, DOC EERA provided a table for a summary comparison of Commission staff's decision option recommendations and DOC EERA's recommendation. DOC EERA also provided potential sample site permit language for items in which it agreed with Commission staff.

#### **D. Staff Analysis**

Commission Staff appreciates DOC EERA's input regarding the decision option recommendations in the November 12, 2020 briefing papers.

#### **Creation of DOC EERA Decommissioning Plan Guidance**

Staff agrees that many of the modifications DOC EERA proposed are best addressed in potential DOC EERA guidance materials in order that they may explain more complex issues related to decommissioning plans. The review of decommissioning plans should remain flexible as we learn more from developers and stakeholders on these matters. Specifically, a decommissioning plan guidance document would provide a more detailed framework for applicants to understand what elements are expected to be part of a decommission plan, would still allow for unique circumstances that may arise. Additionally, a guidance document would better explain DOC EERA's decommissioning plan review process, as they noted.<sup>2</sup>

Commission staff generally agrees with DOC EERA's recommendations on the following, and there seems to be agreement amongst the stakeholders on many issues - however, Commission staff defers to the DOC EERA in the creation of their guidance materials on the following:

- 1) eFiling of decommissioning plans at the point of application acceptance pursuant to the requirement in Minn. Rule 7854.0500, subp. 13.<sup>3</sup>
- 2) Decommissioning plans eFiling recommendations (as standalone documents and public filing status)
- 3) The level of detailed content provided in decommissioning plans at initial application
- 4) Financial surety instruments and funding timeline
- 5) Financial surety for projects without long PPAs
- 6) Decommission cost estimates provided by a knowledgeable third party
- 7) Disclosure of the surety beneficiary and procedures for notice of a change in surety beneficiary
- 8) Recycling and reclamation plan content
- 9) Agency coordination considerations and roles
- 10) Post-decommissioning completion reports by permittees

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<sup>2</sup> DOC EERA Comments on Decision Options. Submitted November 18, 2020. Document ID: [202011-168418-01](#)

<sup>3</sup> Staff interprets Minn. Rule 7854.0500, subp 13 to require a decommissioning plan to be filed in an application to the Commission (at the time of the application filing) and expects this to occur moving forward. Staff is aware that permit language regarding post-permit-issuance filing of a decommission plan has been used, and this should be revisited in future dockets in light of this rule.

Relatedly, there were several suggestions made by other stakeholders in the development of this record to have the DOC EERA include specific requirements in their guidance materials related to the use of reclaimable and recyclable materials for projects, facility design, enforcement, or maps denoting disturbed areas, and monitors. Staff recommends that the Commission not be overly prescriptive in its request for DOC EERA to create guidance materials, other than to ask that DOC EERA further collaborate in their development with other state agencies and stakeholders on the guidance creation (as they do as a matter of course).

**Recommendation: Request that DOC EERA develop guidance materials or best practices to address issues discussed throughout this docket.**

### **Financial Instrument Contractual Language**

One area that may need additional exploration or consideration by the Commission, or by the DOC EERA in any guidance documents is the specific language and contractual terms either required or used for the financial instruments. The specific language and contractual terms may need to vary based on whether a local unit of government, other third party, or the Commission is the beneficiary.

Staff believes further research and analysis is needed into the terms and conditions of the Financial Instrument language, comparison of language to other Minnesota agencies (including for example, Minn. Rules 7035.2805 and 7035.2705 to 7035.2751), and other states.

Commission staff could see clear benefit to additional Commission oversight, input, and/or approval of final financial instrument language in each decommissioning plan.

Staff recommends two Commission actions at this time. First, request that DOC EERA create guidance materials on the terms of financial instruments; and second, incorporate into wind and solar permit decommissioning provisions a requirement, at an appropriate time during the life of the permit, for Commission review and approval of the financial instrument securing the decommissioning obligation.

### **Potential Decision Options: Request EERA compile a memo on financial instrument language?**

Last, there were other issues raised throughout comments regarding several topics: scrap/salvage values to be included in surety calculations; requirements for rate regulated utilities; the process to initiate decommissioning reviews; decommissioning plan review triggering milestones and rolling review schedules. Staff discusses each in turn.

### **Scrap/Salvage Values**

Staff acknowledges that ensuring there is enough funding to decommission a facility when that time comes is vitally important; and that the cost of decommissioning a facility should be fully paid for by the permittee, not the local community. DOC EERA noted in its November 18, 2020 comments that providing best practices in guidance materials have the advantage of allowing

best practice development over time as more experience is gained through decommissioning of solar and wind generation assets. Decommissioning best practices are in the early stages as few projects have submitted detailed decommission plans and few projects have been decommissioned. Staff would urge developers and DOC EERA to take a cautious approach early in this process and in any guidance documents; it is easier to establish less onerous conditions in subsequent review periods than it would be to establish more stringent conditions later, if necessary.

Generally, due to the considerations noted in the record, staff supports the DOC EERA's position that both net and gross decommissioning cost values should be provided within a decommission plan<sup>2</sup>, however, staff does not provide a decision option on this matter at this time. The Commission will need to make determinations on the appropriate amount of financial surety and whether it is appropriate to include scrap/salvage value based on each individual project and the considerations and facts associated with each decommissioning plan, likely at the time of permit issuance.

For projects that already have permits in hand, the DOC EERA may need to bring decommissioning plans to the Commission for review if disagreements arise with the developer; at that point the Commission would need to make determinations on the appropriate values to be used based on each individual project and the individual considerations and facts associated with each individual decommissioning plan, at that time.

Staff does not believe Commission action on this is required at this time.

### **Requirements for Rate Regulated Utilities**

Staff acknowledges that a rate regulated utility like Xcel Energy does meet many of decommissioning plan goals and requirements through general rate regulation and the required decommissioning study it submits every 5 years in docket no. D-77-1086A, including information on the financial requirements proposed to be required.

Staff is supportive of requiring rate regulated utilities to file individual decommissioning plans with their applications (as required by Minn. Rule 7854.0500). However, staff appreciates that it is likely reasonable in lieu of a financial surety to use the information included in the Five-Year Depreciation Study, but the information contained in the individual decommissioning plan should be specific to the individual facility. Providing this context in each decommissioning plan will help ensure the public and state and local governmental units are able to understand how decommissioning will be funded.

Also rate regulated utilities often will take ownership of a facility after it is permitted. The Commission will likely want to determine what level of decommission plan is reasonable at the time of transfer. The Commission has seen multiple different forms of build and ownership arrangements: developer-build-own, utility-build-own, and developer-build-to-transfer – it is likely there may be more unique situations in the future. Staff recommends that at the time of

application acceptance either the standard decommissioning plan is filed (as required by rule) or plans for transfer (including sufficient legal assurance of the transfer) be provided to support any rule deviation from submittal of a decommissioning plan at the time of application submittal. Additionally, at the time of permit transfer, the Commission will want to thoroughly review the decommissioning plan to ensure any new permittee can comply with decommissioning obligations<sup>4</sup>.

Staff does not believe Commission action on this is required at this time.

### **How Review of Older Permits Should be Initiated**

Current issued Large Wind Energy Conversion System (LWECS) (section 11.1) and Solar Energy Generating Systems (section 9.1) site permits contain language stating (in reference to decommissioning plans): "... provide updates to the plan every five years thereafter." *Older LWECS permits issued by the Commission do not contain this provision.*

DOC EERA recommended that five-year decommissioning plan updates be treated as compliance filings and follow typical procedures of compliance requirements in the permit.<sup>4</sup> DOC EERA did not see a need to re-open the entire permit and recommended that the five-year review of decommissioning plans be conducted under a condition in their permits.<sup>4</sup> For older permits without the five-year review language, DOC EERA suggested that a request from the Commission may be needed to receive an update on how the Permittee is fulfilling its decommissioning obligation.<sup>4,5</sup> While the Memorandum of Understanding between the Commission and Department delegates the initial review of required compliance filings to the Department, DOC EERA asked for clarification on which agency should initiate the compliance review of decommissioning plans for facilities in operation whose permits do not clearly require periodic review.<sup>5</sup>

Staff agrees with the DOC EERA that there may be some ambiguity between the older permits and the Memorandum of Understanding in who, PUC staff or DOC EERA staff, should initiate decommissioning plan review. Staff believes this kind of decommissioning plan compliance review would be considered a part of the delegated compliance (or permit compliance review) review responsibilities to be completed by the DOC EERA at Section E of the Interagency MOU. This interpretation of the delegated responsibilities would allow for DOC EERA to initiate all decommissioning plan reviews, including older and more recently issued site permits, and add administrative efficiency and consistency to the decommissioning plan review procedures. If DOC EERA were to flag any compliance issues with a given decommissioning plan, it could be brought before the full Commission for further review.

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<sup>4</sup> DOC EERA Reply Comments. Submitted November 18, 2019. Document ID: [201911-157639-01](#)

<sup>5</sup> DOC EERA, EERA Decommissioning Status Update. Submitted October 29, 2020. Document ID: [202010-167762-01](#)



**Staff recommends that the Commission request, via Order, the DOC EERA to initiate all decommission plan reviews.**

**Additional Milestones for Decommissioning Plan Review**

Staff agrees with DOC EERA’s comments that review at 1) initial application, 2) upon notification of ownership changes, 3) permit amendment requests, including repowering serve as useful times to review the decommissioning plans in addition to the five-year review required in recently issued wind and solar site permits.<sup>6, 7</sup> During repowering, for instance, individual components or more may need to be decommissioned, and the Commission should know what the plans for decommissioning are at that time. Further, the Commission may want to allow staff the discretion of which of these review points are an appropriate time for a review of a project’s decommissioning plan based on the impact of the changes being requested.

Staff does not believe Commission action on this is required at this time.

**Rolling Review Schedule<sup>8</sup>**

Staff agrees with the schedule for the 5-year rolling review as proposed and modified by commenters reflected in the table below.

<b>Review Year</b>	<b>Count</b>	<b>Projects</b>
2020	10	Big Blue Wind, Blazing Star I Wind, Community Wind North,* Fenton Wind, Jeffers Wind*, Lake Benton I Wind, Lake Benton II Wind, Mower County Wind, Nobles 2 Wind, Trimont Wind
2021	23	Blazing Star I Wind,* Buffalo Ridge Wind, Chanarambie Wind, Community Wind North Wind,* Elm Creek Wind I, Elm Creek Wind II, Freeborn Wind, Grand Meadow/Wapsipinicon Wind, Grant County Wind, Jeffers Wind*, MinnDakota Wind, Lakota Ridge Wind, Moraine Wind I, Moraine Wind II, Nobles Wind, Pleasant Valley Wind, Plum Creek Wind, Prairie Rose Wind, Prairie Star Wind, Ridgewood Wind, Shaokatan Hills Wind, Taconite Ridge Wind, Walleye Wind
2022	3	Bent Tree Wind, Lakefield Wind, Lakeswind
2023	4	Community Wind South, Oak Glen Wind, Palmer’s Creek Wind, Red Pine Wind
2024	8	Aurora Solar, Black Oak Wind, Blazing Star II Wind, Getty Wind, Marshall Solar, North Star Solar, Odell Wind, Stoneray Wind

<sup>6</sup> DOC EERA Report - Solar and Wind Decommissioning Working Group Report and Recommendations. Submitted August 31, 2018. Document ID: [20188-146145-02](#)

<sup>7</sup> DOC EERA’s Solar and Wind Decommissioning Working Group Findings and EERA Recommendations. Submitted January 24, 2019. Document ID [20191-149545-01](#)

<sup>8</sup> DOC EERA, EERA Decommissioning Status Update. Submitted October 29, 2020. Document ID: [202010-167762-01](#)

2025	6	Big Blue Wind, Mower County Wind, Lake Benton Wind, Mower Wind, Nobles 2 Wind, Trimont Wind
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**Staff recommends that the Commission request the DOC EERA follow the decommission plan review order as established by this record; if any modifications are necessary, that DOC EERA submit a letter into this record informing the Commission of any adjustments to the timing or project list (or other pertinent information).**

Lastly, with respect to applying decommissioning requirements to different sized projects (CBED) or different types of energy facilities staff supports DOC EERA’s recommendation that the Commission take no action. However, if the Commission is inclined to act on these items, staff suggests opening a new docket or otherwise gathering more information on specific issues in question in order to assist the Commission in making a more informed decision on how to proceed.

Staff does not believe Commission action on this is required at this time.

**III. Decision Options**

**Request DOC EERA Develop Guidance Addressing Topics**

1. Request that DOC EERA develop guidance materials or best practices to address issues discussed throughout this docket, including but not limited to the:
  - eFiling of decommissioning plans at the point of application acceptance pursuant to the requirement in Minn. Rule 7854.0500, subp. 13<sup>3</sup>;
  - Decommissioning plans eFiling recommendations (as standalone documents and public filing status);
  - The level of detailed content provided in decommissioning plans at initial application;
  - Financial surety instruments and funding timeline;
  - Financial surety for projects without long PPAs;
  - Decommission cost estimates provided by a knowledgeable third party;
  - Disclosure of the surety beneficiary and procedures for notice of a change in surety beneficiary;
  - Recycling and reclamation plan content;
  - Agency coordination considerations and roles; and
  - Post-decommissioning completion reports from permittees.
2. Take no action.
3. Take some other action deemed appropriate.

**Permit Review Procedures and Schedule - Periodic Five-Year Reviews**

4. Request the DOC EERA follow the decommission plan review order as established by this record; if any modifications are necessary, that DOC EERA submit a letter into this record informing the Commission of any adjustments to the timing or project list (or other pertinent information).
5. Include in draft permits terms addressing preparation of financial instruments and submission to the Commission for review and approval at an appropriate time.
6. Take no action.
7. Take some other action deemed appropriate.

**DOC EERA to Initiate all Decommissioning Plan Reviews.**

8. Request, via order, that DOC EERA initiate all decommission plan reviews.
9. Take no action.
10. Take some other action deemed appropriate.

**DOC EERA to file Annual Summary Decommissioning Report**

11. Request, via order, DOC EERA to file a summary of the status of wind and solar decommissioning plan activities and developments in decommissioning best practices in Docket No. E999/M-17-123.
12. Take no action.
13. Take some other action deemed appropriate.

**Staff Recommendations:** 1 and 4 and 5 and 8 and 11