



## Energy and Telecommunications Interim Committee

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### 61st Montana Legislature

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TO: Energy and Telecommunications Interim Committee  
FROM: Sonja Nowakowski, ETIC staff

During the November 2009 ETIC meeting, members discussed bonding requirements for wind energy facilities in Montana. Specifically, members asked about potential requirements governing the decommissioning of wind facilities.

### **Is bonding required for a wind facility in Montana?**

It depends on ownership of the land where a facility is constructed, but state law does not currently govern the decommissioning of commercial wind facilities or require a bond. Some county planning and zoning conditions could require developers to post a bond for reclamation or decommissioning, but this has not been widely utilized in Montana.

The granting of a lease to use state lands for a wind facility is under the Department of Natural Resources and Conservation (DNRC). The DNRC includes bonding language in its lease agreements. Within 30 days of operation, a lessee must provide a "good and sufficient" corporate surety bond, letter of credit, or other security that is satisfactory to the state. The bond must be in the amount of the annual rent due or projected to be due for five years of the rent period. The bond is adjusted through each rent period to assure payment of the lessee's annual rent obligations. If a lessee defaults on its obligations, the bond can be used to offset any liability.

The Bureau of Land Management (BLM) requires bonding when federal lands are leased for wind generation. There are also financial obligations for site testing and monitoring. A minimum bond of \$2,000 per meteorological tower is required for monitoring. The amount of the bond also may include potential reclamation and administrative costs. A minimum bond of \$10,000 per wind turbine, considering salvage values of turbines and towers, is required for wind energy projects on public lands. However, the amount of the required bond is determined during the right-of-way authorization process on the basis of site-specific and project-specific factors. All bonds are periodically reviewed (at least every 5 years) by the BLM to ensure adequacy.

Some states and an increasing number of agricultural and energy organizations provide guidelines for private landowners considering leasing land for wind energy development. Landowners are encouraged to require a developer to post a bond or escrow in an amount sufficient to cover decommissioning the site. Some guidelines recommend a surety bond valued at 1.5 times the value of the wind farm.

### **Is there a framework for bonding?**

In Montana there is a limited regulatory framework for the development of wind energy facilities. The Department of Environmental Quality (DEQ) does not administer permits specifically for wind plants as energy facilities. Certain other permits, however, may be necessary, depending on the location of the roads, turbines, and power lines. A wind facility generally needs to follow permitting requirements for storm water discharges associated with construction activity. The process does not require DEQ to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), unless a state permit is required. Construction activity impinging on streams or wetlands or occurring on floodplains also would be regulated and require permitting.

A plant may need to apply for a Major Facility Siting Act certificate if it requires a new electric transmission line. However, lines of a smaller size and capacity are exempt from the act. Other agencies may require permits for wind development. Wildlife issues may require review under the jurisdiction of U.S. Fish and Wildlife Service and zoning issues may require review under local government jurisdiction. For example, in Cascade County wind generation facilities are allowed in three county zoning districts: agricultural, requiring a \$250 permit, and a public hearing to set conditions for approval; and in both industrial districts 1 and 2, requiring payment of a \$35 fee.

House Bill No. 529, approved by the 2009 Legislature, also was directed at reducing the scope of environmental reviews related to wind development. The bill limited the scope of environmental review under the Montana Environmental Policy Act for certain energy projects on state lands. If more than 33 percent of the total land occupied by an energy development project is state land then the environmental review (an EA or EIS) includes the total land area, including federal and private land.

A review of the permitting framework is important because most bonding requirements for mineral, oil, and gas developments in Montana are administered through a permitting or regulatory regime. If a state program requiring bonding for wind is developed it is unclear under what framework it would be administered.

### **Is bonding being discussed in other states?**

The 2009 Wyoming Legislature created a Wind Energy Task Force to, among many things, discuss a process for decommissioning wind facilities. The task force was given \$12,500 to complete its work. In November 2009, the Wind Energy Task Force, which included several legislators, recommended the Legislature approve state-wide minimum standards for local governments to follow when regulating the siting of wind energy facilities. The task force recommended that the Wyoming Industrial Siting Council (which permits larger wind facilities in Wyoming) be granted statutory authority to promulgate rules and regulations establishing decommissioning standards and financial assurance requirements for all wind farms, whether under local or state-wide regulatory jurisdiction. In October 2009 Wyoming Governor Dave

Freudenthal said he hopes the Wyoming Legislature imposes on wind production the same requirements for bonding and reclamation, construction and maintenance of roads and possibly contributions to schools that coal, oil and gas producers must adhere to. The session convenes in February 2010.

In 2007 the North Dakota Legislature approved legislation allowing the Public Service Commission to adopt rules governing the decommissioning of commercial wind facilities. Based on the PSC rules, the owner or operator of a facility is responsible for decommissioning a facility and for all related costs. After the tenth year of operation, the PSC can order the owner or operator to secure a bond or other form of financial assurance to cover the anticipated costs of decommissioning a facility. The 2009 North Dakota Legislature required a legislative study of the siting and decommissioning of wind energy conversion facilities related to "future natural resource development." The study is largely the result of the coal industry expressing concerns about underground cement, left from wind development, impairing their ability to develop minerals.

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