

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

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**IN THE MATTER OF THE  
APPLICATION BY WILD SPRINGS  
SOLAR, LLC FOR A PERMIT OF A  
SOLAR ENERGY FACILITY IN  
PENNINGTON COUNTY, SOUTH  
DAKOTA**

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**STAFF’S RESPONSE TO  
APPLICANT’S MOTION TO HAVE  
WITNESSES, REPRESENTATIVES,  
AND COUNSEL APPEAR VIA VIDEO  
CONFERENCE OR  
TELEPHONICALLY AND MOTION  
FOR APPROVAL OF  
DECOMMISSIONING CONDITION**

**EL20-018**

COMES NOW the Public Utilities Commission Staff (Staff) and hereby files this Response to Applicant’s Motion to Have Witnesses, Representatives, and Counsel Appear via Video Conference or Telephonically and Motion for Approval of Decommissioning Condition.

Background

On May 15, 2020, the Commission received an Application for a Facility Permit (Application) from Wild Springs Solar, LLC (Wild Springs or Applicant), a wholly owned subsidiary of Geronimo Energy, LLC. Wild Springs proposes to construct a solar energy facility to be located in Pennington County, South Dakota (Project). The Project would be situated within approximately 1,499 acres and located approximately ½ mile south of New Underwood, South Dakota. The total installed capacity of the Project would not exceed 128 megawatts (MW) of nameplate capacity. The Project is expected to be completed in 2022.

On July 14, 2020, the Commission received an application for party status for the Bundorf Family Trust and on July 28, 2020, the Commission issued an Order Granting Party Status to the Bundorf Family Trust. On August 6, 2020, the Commission issued an Order Adopting Procedural Schedule. On October 30, 2020, the parties filed a Joint Motion for Approval of Settlement Stipulation resolving all issues between the parties, except for the appropriate decommissioning financial assurance. On November 4, 2020, Wild Springs filed a Motion to Have Witnesses, Representatives, and Counsel Appear via Video Conference or Telephonically and a Motion for Approval of Decommissioning Condition. On November 5, 2020, staff filed a memorandum in support of the Settlement Stipulation. On November 6, 2020, Bundorf Family Trust filed a Letter Regarding Settlement Stipulation and Evidentiary Hearing.

Argument

- 1) Applicant’s Motion to Have Witnesses, Representatives, and Counsel Appear via Video Conference or Telephonically.

Staff does not oppose Applicant's Motion to Have Witnesses, Representatives, and Counsel Appear via Video Conference or Telephonically. Staff understands there are concerns with traveling at this time due to the COVID-19 pandemic, and considering, if the Commission Approves the Settlement Stipulation, a hearing on this matter will only encompass one issue with a small number of witnesses, Staff believes remote participation will be sufficient. However, the hearing is planned to be held in a meeting room in the Capitol where videoconferencing capabilities may not be available to the commission. Telephonic testimony can likely be accomplished much like is done for regular commission meetings so Staff prefers telephonic testimony over video-conferencing.

2) Applicant's Motion for Approval of Decommissioning Condition.

On October 16, 2020, Staff filed Prefiled Direct Testimony of Jon Thurber outlining Staff's concerns with Wild Springs' decommissioning proposal included in the Application. Specifically, Staff had concerns with 1) deferring to the county's requirements without considering the merits of the financial assurance, 2) the lack of information the Applicant provided regarding its proposed forms of decommissioning surety, and 3) the Commission's strong history of requiring escrow accounts as a decommissioning financial assurance for wind energy facilities.

In its Rebuttal Testimony and Motion, Wild Springs revised its initial proposal and requested the Commission defer to the county's financial assurance requirement for a decommissioning surety bond. Of particular note, Wild Spring's proposal seemingly implies that the Commission must defer to the County's decommissioning financial assurance requirements since the County's requirements are set in ordinance whereas the Commission has flexibility. Despite Wild Springs' revised decommissioning proposal, Staff has lingering concerns with the proposal and Wild Springs' arguments.

SDCL 49-41B-25 allows the Commission to place conditions on a permit to ensure the project meets these requirements and SDCL 49-41B-35(3) specifically contemplates the Commission requiring "bonds, guarantees, insurance, or other requirements to provide funding for the decommissioning and removal of a solar or wind energy facility." While recent changes to statute do provide some amount of deference to determinations of local governing bodies, the Commission retains the authority to review the application and establish conditions, including financial assurance for decommissioning. Ensuring there are sufficient funds available to decommission the project if Wild Springs fails to meet its obligation is extremely important and the Commission should make an independent determination, based on the evidence presented, whether the bond proposed by the Applicant is sufficient.

Staff is also unconvinced that Wild Springs provided sufficient testimony or evidence as to how a bond will adequately ensure that funds are available to decommission the project if Wild Springs does not fulfil its decommissioning obligation. The Motion and Testimony of Christopher Morgen (Testimony) relies heavily on the argument that an escrow account is not in line with the county requirements and that an escrow account is not specifically protected from a bankruptcy proceeding. However, the Testimony lacks detailed evidence of how a bond company is regulated, whether a bond could be revoked or cancelled, and what would happen if there was a sale or bankruptcy at the bond company level.

While it would certainly be more convenient and less costly for Wild Springs if the Commission defers to the County requirements in this case, there is no requirement that the Commission give full deference to a county's requirement for financial assurance for decommissioning if the requirement does not adequately provide for the decommissioning of the project. Additionally, Staff still has concerns about the sufficiency of a decommissioning bond versus an escrow account and with deferring to the County's requirements without the Commission retaining adequate oversight and control over a bond.

Conclusion

At this juncture, Staff respectfully requests the Commission Grant Applicant's to Have Witnesses, Representatives, and Counsel Appear Telephonically and Deny Applicant's Motion for Approval of Decommissioning Condition.

Dated this 10<sup>th</sup> day of November 2020.



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