BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF WILD SPRINGS SOLAR, LLC FOR AN
ENERGY FACILITY PERMIT FOR THE WILD SPRINGS SOLAR PROJECT

SD PUC DOCKET EL 20-018

REBUTTAL TESTIMONY OF CHRISTOPHER MORGAN
ON BEHALF OF WILD SPRINGS SOLAR, LLC

November 4, 2020
I. INTRODUCTION AND QUALIFICATIONS

Q. Please state your name, employer, and business address.
A. My name is Christopher Morgan. I am the Controller at National Grid Renewables (formerly known as Geronimo Energy, LLC) ("NG Renewables"), located at 8400 Normandale Lake Boulevard, Suite 1200, Bloomington, Minnesota.

Q. Briefly describe your educational and professional background and duties.
A. I have held the position as Controller since 2017. Additionally, I have worked as a controller and accountant in the Financial Services, Public Accounting and Banking industries over the past 15 years. I am a graduate of Augustana College in Sioux Falls, South Dakota. At NG Renewables, I oversee the day to day financial operations of the Development Company, Construction, and Operating Assets, as well as manage our Treasury, Accounts Payable and Receivable Functions, and external audits and tax compliance. I also work closely with our Project Finance function and Investor Relations teams.

Q. What is your role with respect to the Wild Springs Solar Project (the "Project")?
A. In my capacity as Controller, I am responsible for coordinating and executing the financial operations of the Project including budgeting, forecasting, and assuring the Project is capitalized appropriately to meet its development objectives. Once these development objectives are complete, our team will move the Project into the Investment phase of its development and ultimately into Construction and Operations.

II. PURPOSE OF TESTIMONY

Q. What is the purpose of your Rebuttal Testimony?
A. The purpose of my testimony is to respond to the Direct Testimony of Jon Thurber filed by South Dakota Public Utilities Commission (“Commission”) Staff regarding decommissioning financial assurance. In particular, I will address the following:

- The Project’s updated Decommissioning Plan;
- Pennington County’s (“County”) decommissioning requirements; and
- Wild Springs Solar, LLC’s (“Wild Springs”) updated proposed decommissioning condition, including the reasons for proposing a surety bond rather than an escrow account.

Q. What exhibits are attached to your Direct Testimony?

A. The following exhibits are attached to my Direct Testimony:

- Exhibit A10-1: Updated Decommissioning Plan
- Exhibit A10-3: August 24, 2020 Pennington County Planning Commission Minutes
- Exhibit A10-4: Decommissioning Financial Security Cost Comparison Chart

III. UPDATED DECOMMISSIONING PLAN

Q. Please discuss the updates to the Project’s Decommissioning Plan.

A. Wild Springs provided a Decommissioning Plan for the Project with the Facility Permit Application (“Application”) (see Appendix D), which included a decommissioning cost estimate. That plan was recently updated to address the following:

- First, in responding to a data request from Commission Staff concerning the original Decommissioning Plan, Westwood Engineering ("Westwood") determined that its decommissioning cost estimate was based on a prior design, and not the current design included in the Application. As a result,
Westwood updated the decommissioning cost estimate to reflect the current design.

- Second, Wild Springs updated the “Decommissioning Financial Assurance” section of the Decommissioning Plan to state that:
  1. An updated decommissioning cost estimate will be provided once the Project’s design is finalized, so that the estimate accurately reflects the anticipated cost to decommission the Project as constructed;
  2. As required by Pennington County, Wild Springs will provide a letter of credit or surety bond in the amount of the updated cost estimate provided for the Project’s final design; and
  3. Wild Springs proposes to name both Pennington County and the Commission as beneficiaries in the decommissioning financial assurance instrument.

The updated Decommissioning Plan, including the updated cost estimate, is provided as Exhibit A10-1. Wild Springs has also provided the updated Decommissioning Plan to Pennington County.

IV. PENNINGTON COUNTY DECOMMISSIONING REQUIREMENT

Q. Please discuss the County’s decommissioning requirements for the Project.

A. The County’s solar energy facility decommissioning requirements are set forth in Section 317-A-15 of the Pennington County Zoning Ordinance, a copy of which is attached as Exhibit A10-2. In addition to requiring a decommissioning plan and specifying decommissioning restoration requirements, Section 317-A-15 states that prior to the initiation of construction, the solar facility owner shall provide to the County a certificate of insurance, including either a performance or surety bond, covering the total cost to decommission the Project.
Q. Did the County address decommissioning in connection with the Project’s conditional use permit (“CUP”) application?

A. Yes. The County Planning Commission issued a CUP to Wild Springs for the Project on August 24, 2020. The CUP was issued subject a number of conditions, including that Wild Springs (1) provide a letter of credit or cash surety/bond in the amount specified in the Decommissioning Plan, and (2) update the decommissioning cost estimate after year ten of operation and, if the estimate increased, to increase the amount of the financial security provided. The County does not issue separate CUPs; however, its decision and the CUP conditions are set forth in the August 24, 2020 Pennington County Planning Commission Minutes (see Agenda Item 13, pages 16-20) attached as Exhibit A10-3.

Q. Did Pennington County have the updated Decommissioning Plan at the time it issued the CUP?

A. No. As a result, Condition 25 to the CUP reflected the original cost estimate of $2.323 million. Once this proceeding has concluded, and a decommissioning condition has been set by the Commission, Wild Springs plans to request that Condition 25 of the CUP be updated so that it requires Wild Springs to submit an updated cost estimate based on the Project’s final design, and that financial security be based on that updated cost estimate.

Q. When does the County require decommissioning financial assurance to be provided?

A. As noted above, per the County’s Zoning Ordinance, decommissioning financial security covering the total cost to decommission the Project must be provided prior to beginning Project construction.

V. PROPOSED DECOMMISSIONING CONDITION

Q. What decommissioning condition is Wild Springs proposing?
A. As discussed above, the County has specific decommissioning requirements in its Zoning Ordinance. Therefore, in drafting a decommissioning condition, Wild Springs' goal was to ensure compliance with the County’s decommissioning requirements, while also ensuring that the Commission would have access to the decommissioning financial security for the Project. To that end, Wild Springs proposes the following decommissioning condition:

Once the Project’s design is finalized, Wild Springs must prepare and submit an updated decommissioning cost estimate to Pennington County and the South Dakota Public Utilities Commission (“Commission”). Based on the updated cost estimate, Wild Springs must provide a surety bond in the total amount of the updated cost estimate naming both Pennington County and the Commission as beneficiaries. Further, Wild Springs must provide an updated decommissioning cost estimate to Pennington County and the Commission at the completion of year ten of operation and every five years thereafter, and Wild Springs must adjust the financial security provided to align with the updated cost estimate, as needed.

Q. You note above that a condition to the CUP states that Wild Springs could submit either a letter of credit or a surety bond. Is Wild Springs proposing to provide a letter of credit?

A. No. Wild Springs proposes to provide a surety bond to align with the County’s Zoning Ordinance requirement.

Q. Does Wild Springs plan to provide the Commission with a proposed draft surety bond?

A. Yes. Wild Springs is currently in discussions with a surety company regarding a proposed draft surety bond. Once we have the draft surety bond, I plan to update my testimony to include the draft as an exhibit.
Q. In his testimony, Mr. Thurber notes that the Commission has required an escrow account for prior wind projects, and provides Commission Staff’s funding recommendation if an escrow account were required in the Wild Springs docket ($224,000 per year for 20 years). Could you discuss the difference between an escrow account and a surety bond?

A. Yes. An escrow account is a cash deposit account held by a financial institution as additional security for expected costs of decommissioning. Typically, funds are deposited, held, and disbursed as set forth in a three party escrow agreement. Unused cash in the escrow account following completion of decommissioning would be released to the project company.

A surety bond is a financial guaranty issued by a surety to provide security and cover the expected costs of decommissioning if the project company does not perform. Sureties are often subsidiaries or divisions of insurance companies and are subject to oversight, regulation, and capital requirements.

Q. Why is Wild Springs proposing a surety bond rather than an escrow account funded as discussed in Mr. Thurber’s testimony?

A. There are a few reasons a surety bond is being proposed rather than a funded-over-time escrow account:

- Establishing an escrow account is inconsistent with the specific requirements of the County’s Zoning Ordinance;
- Dividing the decommissioning financial cost into annual deposits is inconsistent with the specific requirements of the County’s Zoning Ordinance; and
- The cost of an escrow account is significantly greater than the cost of a surety bond.

Q. Please explain how establishing an escrow account is inconsistent with the County’s Zoning Ordinance.
A. As discussed above, Section 317-A-15(f) of the County’s Zoning Ordinance specifically requires Wild Springs to provide “a certificate of insurance, including either a performance or surety bond, which covers the total cost to decommission the facility” prior to beginning Project construction. While the County has specified a form of financial security in its Zoning Ordinance, the Commission has discretion over the form of financial security required and is authorized to accept a bond. See SDCL 49-41B-35(3) (authorizing the Commission to promulgate rules “[t]o require bonds, guarantees, insurance, or other requirements to provide funding for the decommissioning and removal of a solar or wind energy facility”). Thus, unlike an escrow account, providing a surety bond is consistent with both the County’s Zoning Ordinance and applicable state law.

Q. How are annual decommissioning fund deposits inconsistent with the specific requirements of the County’s Zoning Ordinance?

A. In prior wind dockets, permittees have been required to annually deposit 1/30th of the decommissioning cost amount into an escrow fund starting prior to commercial operation and continuing for the anticipated life of the project (30 years total). Similarly, in direct testimony, Mr. Thurber proposes that if an escrow account is required, that 1/20th of the decommissioning cost be deposited annually over 20 years.

However, as discussed above, the County’s Zoning Ordinance requires Wild Springs to (1) provide financial security covering the total cost of decommissioning up front, and (2) to provide the financial security prior to beginning Project construction. Thus, providing a portion of the decommissioning cost annually over the course of 20 or 30 years starting prior to commercial operation is inconsistent with the decommissioning requirements specified in the County’s Zoning Ordinance.
Q. Please discuss the cost difference between a surety bond and an escrow account.

A. As discussed above, an escrow account is a cash outlay from a demand deposit or similar bank account of the Project entity that is subject to a deposit control agreement. The costs associated with an escrow account include the cash outlay, lost investment opportunity costs for the cash provided, and the escrow account maintenance costs.

A surety bond, on the other hand, is a credit financial instrument provided by a third party creditor to support a specific guarantee to a beneficiary. The costs associated with a surety bond are the costs paid to the surety to provide the specific guarantee.

For illustration purposes, I prepared a chart showing the cost difference between a surety bond and an escrow account, either funded annually over 20 years or fully funded up front, which is provided as Exhibit A10-4. As shown in the chart, the cost of a surety bond for the full amount is estimated to be approximately $592,988, while the cost to provide an escrow would be either approximately $1,892,078 (if funded over 20 years) or $4,150,913 (if fully funded up front). Thus, the cost of an escrow account is significantly greater than the cost of a surety bond.

Q. Are there any potential benefits of a surety bond as opposed to an escrow account/agreement in the bankruptcy context?

A. This topic can be addressed further by Wild Springs’ counsel, but my understanding is that there is a litigation risk in the escrow context that doesn’t exist for a surety bond.

First, while SDCL 49-41B-39 addresses financial security for decommissioning of wind turbines, it does not address financial security for solar facilities. Thus, to the extent it is unclear in South Dakota law how escrow funds provided as
financial security for solar facilities are to be treated in a bankruptcy proceeding, SDCL 49-41B-39 does not address the question.

Second, in a bankruptcy proceeding, even if escrow funds were not considered part of the debtor's estate, the debtor's estate does assume whatever rights the debtor has under the escrow agreement. As a result, any dispute over the parties' rights under the escrow agreement – for instance, the right to any funds over and above the decommissioning costs – would be subject to the bankruptcy court's jurisdiction. With a surety bond, the bond company is providing the guarantee of payment to the Commission, much like an insurance policy, and the bond would not be affected by a bankruptcy proceeding involving the project entity.

VI. CONCLUSION

Q. Does this conclude your Rebuttal Testimony?
A. Yes.

Dated this 4th day of November, 2020.

Christopher Morgan