

**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

1 **I. INTRODUCTION AND QUALIFICATIONS**

2

3 **Q. Please state your name, employer, and business address.**

4 A. My name is Christopher Morgan. I am the Controller at National Grid
5 Renewables (formerly known as Geronimo Energy, LLC) (“NG Renewables”),
6 located at 8400 Normandale Lake Boulevard, Suite 1200, Bloomington,
7 Minnesota.

8

9 **Q. Briefly describe your educational and professional background and duties.**

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

18

19 **Q. What is your role with respect to the Wild Springs Solar Project (the**
20 **“Project”)?**

21 A. In my capacity as Controller, I am responsible for coordinating and executing the
22 financial operations of the Project including budgeting, forecasting, and assuring
23 the Project is capitalized appropriately to meet its development objectives. Once
24 these development objectives are complete, our team will move the Project into
25 the Investment phase of its development and ultimately into Construction and
26 Operations.

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28 **II. PURPOSE OF TESTIMONY**

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30 **Q. What is the purpose of your Rebuttal Testimony?**

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

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

40
41 **Q. What exhibits are attached to your Direct Testimony?**

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

- 43 • Exhibit A10-1: Updated Decommissioning Plan
- 44 • Exhibit A10-2: Pennington County Zoning Ordinance Section 317-A-15 –
45 Solar Energy Facility Decommissioning Requirements
- 46 • Exhibit A10-3: August 24, 2020 Pennington County Planning Commission
47 Minutes
- 48 • Exhibit A10-4: Decommissioning Financial Security Cost Comparison Chart

49
50 **III. UPDATED DECOMMISSIONING PLAN**

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

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

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

61 Westwood updated the decommissioning cost estimate to reflect the
62 current design.

63 • Second, Wild Springs updated the “Decommissioning Financial
64 Assurance” section of the Decommissioning Plan to state that:

65 1. An updated decommissioning cost estimate will be provided once
66 the Project’s design is finalized, so that the estimate accurately
67 reflects the anticipated cost to decommission the Project as
68 constructed;

69 2. As required by Pennington County, Wild Springs will provide a letter
70 of credit or surety bond in the amount of the updated cost estimate
71 provided for the Project’s final design; and

72 3. Wild Springs proposes to name both Pennington County and the
73 Commission as beneficiaries in the decommissioning financial
74 assurance instrument.

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

78

79 **IV. PENNINGTON COUNTY DECOMMISSIONING REQUIREMENT**

80

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

83 A. The County’s solar energy facility decommissioning requirements are set forth in
84 Section 317-A-15 of the Pennington County Zoning Ordinance, a copy of which is
85 attached as **Exhibit A10-2**. In addition to requiring a decommissioning plan and
86 specifying decommissioning restoration requirements, Section 317-A-15 states
87 that prior to the initiation of construction, the solar facility owner shall provide to
88 the County a certificate of insurance, including either a performance or surety
89 bond, covering the total cost to decommission the Project.

90

91 **Q. Did the County address decommissioning in connection with the Project’s**
92 **conditional use permit (“CUP”) application?**

93 A. Yes. The County Planning Commission issued a CUP to Wild Springs for the
94 Project on August 24, 2020. The CUP was issued subject a number of
95 conditions, including that Wild Springs (1) provide a letter of credit or cash
96 surety/bond in the amount specified in the Decommissioning Plan, and (2)
97 update the decommissioning cost estimate after year ten of operation and, if the
98 estimate increased, to increase the amount of the financial security provided.
99 The County does not issue separate CUPs; however, its decision and the CUP
100 conditions are set forth in the August 24, 2020 Pennington County Planning
101 Commission Minutes (see Agenda Item 13, pages 16-20) attached as **Exhibit**
102 **A10-3.**
103

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

106 A. No. As a result, Condition 25 to the CUP reflected the original cost estimate of
107 \$2.323 million. Once this proceeding has concluded, and a decommissioning
108 condition has been set by the Commission, Wild Springs plans to request that
109 Condition 25 of the CUP be updated so that it requires Wild Springs to submit an
110 updated cost estimate based on the Project’s final design, and that financial
111 security be based on that updated cost estimate.
112

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

115 A. As noted above, per the County’s Zoning Ordinance, decommissioning financial
116 security covering the total cost to decommission the Project must be provided
117 prior to beginning Project construction.
118

119 **V. PROPOSED DECOMMISSIONING CONDITION**
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121 **Q. What decommissioning condition is Wild Springs proposing?**

122 A. As discussed above, the County has specific decommissioning requirements in
123 its Zoning Ordinance. Therefore, in drafting a decommissioning condition, Wild
124 Springs' goal was to ensure compliance with the County's decommissioning
125 requirements, while also ensuring that the Commission would have access to the
126 decommissioning financial security for the Project. To that end, Wild Springs
127 proposes the following decommissioning condition:

128
129 Once the Project's design is finalized, Wild Springs must prepare
130 and submit an updated decommissioning cost estimate to
131 Pennington County and the South Dakota Public Utilities
132 Commission ("Commission"). Based on the updated cost estimate,
133 Wild Springs must provide a surety bond in the total amount of the
134 updated cost estimate naming both Pennington County and the
135 Commission as beneficiaries. Further, Wild Springs must provide
136 an updated decommissioning cost estimate to Pennington County
137 and the Commission at the completion of year ten of operation and
138 every five years thereafter, and Wild Springs must adjust the
139 financial security provided to align with the updated cost estimate,
140 as needed.

141
142 **Q. You note above that a condition to the CUP states that Wild Springs could**
143 **submit either a letter of credit or a surety bond. Is Wild Springs proposing**
144 **to provide a letter of credit?**

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

147
148 **Q. Does Wild Springs plan to provide the Commission with a proposed draft**
149 **surety bond?**

150 A. Yes. Wild Springs is currently in discussions with a surety company regarding a
151 proposed draft surety bond. Once we have the draft surety bond, I plan to
152 update my testimony to include the draft as an exhibit.

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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.

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

196

197 **Q. How are annual decommissioning fund deposits inconsistent with the**
198 **specific requirements of the County's Zoning Ordinance?**

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

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206 However, as discussed above, the County's Zoning Ordinance requires Wild
207 Springs to (1) provide financial security covering the total cost of
208 decommissioning up front, and (2) to provide the financial security prior to
209 beginning Project construction. Thus, providing a portion of the
210 decommissioning cost annually over the course of 20 or 30 years starting prior to
211 commercial operation is inconsistent with the decommissioning requirements
212 specified in the County's Zoning Ordinance.

213

214 **Q. Please discuss the cost difference between a surety bond and an escrow**
215 **account.**

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

221
222 A surety bond, on the other hand, is a credit financial instrument provided by a
223 third party creditor to support a specific guarantee to a beneficiary. The costs
224 associated with a surety bond are the costs paid to the surety to provide the
225 specific guarantee.

226
227 For illustration purposes, I prepared a chart showing the cost difference between
228 a surety bond and an escrow account, either funded annually over 20 years or
229 fully funded up front, which is provided as **Exhibit A10-4**. As shown in the chart,
230 the cost of a surety bond for the full amount is estimated to be approximately
231 \$592,988, while the cost to provide an escrow would be either approximately
232 \$1,892,078 (if funded over 20 years) or \$4,150,913 (if fully funded up front).
233 Thus, the cost of an escrow account is significantly greater than the cost of a
234 surety bond.

235

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

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

241
242 First, while SDCL 49-41B-39 addresses financial security for decommissioning of
243 wind turbines, it does not address financial security for solar facilities. Thus, to
244 the extent it is unclear in South Dakota law how escrow funds provided as

245 financial security for solar facilities are to be treated in a bankruptcy proceeding,
246 SDCL 49-41B-39 does not address the question.

247
248 Second, in a bankruptcy proceeding, even if escrow funds were not considered
249 part of the debtor's estate, the debtor's estate does assume whatever rights the
250 debtor has under the escrow agreement. As a result, any dispute over the
251 parties' rights under the escrow agreement – for instance, the right to any funds
252 over and above the decommissioning costs – would be subject to the bankruptcy
253 court's jurisdiction. With a surety bond, the bond company is providing the
254 guarantee of payment to the Commission, much like an insurance policy, and the
255 bond would not be affected by a bankruptcy proceeding involving the project
256 entity.

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258 **VI. CONCLUSION**

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260 **Q. Does this conclude your Rebuttal Testimony?**

261 A. Yes.

262

263 Dated this 4th day of November, 2020.

264 

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266 _____
Christopher Morgan

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