

**BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

**DOCKET EL20-018**

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

**DIRECT TESTIMONY OF JON THURBER  
ON BEHALF OF THE COMMISSION STAFF  
OCTOBER 16, 2020**

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## **EXHIBITS**

Exhibit\_JT-1 Wild Spring Solar, LLC's Responses to Discovery Regarding Decommissioning

1 I. INTRODUCTION AND QUALIFICATIONS

2  
3 **Q. Please state your name and business address.**

4 A. Jon Thurber, Public Utilities Commission, State Capitol Building, 500 East Capitol  
5 Avenue, Pierre, South Dakota, 57501.  
6

7 **Q. By whom are you employed and in what capacity?**

8 A. I am a utility analyst for the South Dakota Public Utilities Commission (“Commission”). I  
9 am responsible for analyzing and presenting recommendations on utility dockets filed  
10 with the Commission.  
11

12 **Q. Please describe your educational and business background.**

13 A. I graduated summa cum laude from the University of Wisconsin – Stevens Point in  
14 December of 2006, with a Bachelors of Science Degree in Managerial Accounting,  
15 Computer Information Systems, Business Administration, and Mathematics. My  
16 regulated utility work experience began in 2008 as a utility analyst for the Commission.  
17 At the Commission, my responsibilities included analyzing and testifying on ratemaking  
18 matters arising in rate proceedings involving electric and natural gas utilities. In 2013, I  
19 joined Black Hills Corporation as Manager of Rates. During my time at Black Hills  
20 Corporation, I held various regulatory management roles and was responsible for the  
21 oversight of electric and natural gas filings in Wyoming, Montana, and South Dakota. In  
22 July of 2016, I returned to the Commission as a utility analyst. In addition to cost of  
23 service dockets, I work on transmission siting, energy conversion facility siting, wind  
24 energy facility siting, solar energy facility siting, and Southwest Power Pool transmission  
25 cost allocation issues.  
26

27 In my twelve years of regulatory experience, I have either reviewed or prepared over 175  
28 regulatory filings. These filings include eleven wind energy facility dockets, three  
29 transmission facility siting dockets, and one solar energy facility docket. I have provided  
30 written and oral testimony on the following topics: the appropriate test year, rate base,  
31 revenues, expenses, taxes, cost allocation, rate design, power cost adjustments, capital  
32 investment trackers, PURPA standards, avoided costs, electric generation resource  
33 decisions, and wind energy facility siting dockets.

1 **Q. Are you familiar with Wild Springs Solar, LLC’s (“Wild Springs” or “Company” or**  
2 **“Applicant”) application for a permit of a solar energy facility (“Project”), Docket**  
3 **EL20-018?**

4 A. Yes. I have reviewed the Company’s prefiled testimony, Application, appendixes,  
5 figures, and responses to data requests produced by Wild Springs as it pertains to the  
6 issues that I am addressing.

7

8

**II. PURPOSE OF TESTIMONY**

9

10 **Q. What is the purpose of your direct testimony?**

11 A. Commission Staff, Wild Springs, and the Bundorf Family Trust (jointly the “parties”) are  
12 actively engaged in settlement discussions, and Commission Staff is hopeful that the  
13 parties will reach an agreement that resolves all issues except for the appropriate  
14 decommissioning financial assurance for the Project. The parties intend to file a  
15 Settlement Stipulation for the Commission to consider at a future commission meeting  
16 before the evidentiary hearing. If the parties are unable to resolve their differences,  
17 Commission Staff will file supplemental testimony to address any outstanding issues not  
18 covered in this testimony.

19

20 **Q. Did Commission Staff consult with experts from other State Agencies to assist in**  
21 **the review of the Application and development of permit conditions?**

22 A. Yes. Hilary Morey, Senior Wildlife Biologist at the Game, Fish and Parks, reviewed the  
23 potential impacts to wildlife and associated habitats. Jenna Carlson Dietmeier, PhD,  
24 Review and Compliance Coordinator at the State Historic Preservation Office, reviewed  
25 the Project to ensure historic properties are taken into consideration. Ms. Morey or Ms.  
26 Carlson Dietmeier may submit rebuttal testimony and participate in the evidentiary  
27 hearing if the parties do not resolve their differences on issues relevant to these two  
28 subject matter experts.

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1 *provide decommissioning financial security prior to construction in the form of a*  
2 *letter of credit or a surety bond in the amount of \$2.323 million. (emphasis*  
3 *added)*  
4

5 **Q. Has Pennington County authorized a decommissioning financial assurance**  
6 **instrument not listed in the ordinance?**

7 A. Yes. Section 317-A-15-f of the Pennington County Zoning Ordinance appears to limit  
8 the decommissioning financial assurance instrument to “either a performance or surety  
9 bond.” However, Pennington County determined that a letter of credit is also a proper  
10 form of financial assurance even though it is not specified in the ordinance. I am unsure  
11 of the Pennington County Planning Commission’s authority to approve a letter of credit,  
12 but it seems like Pennington County has some flexibility to consider other financial  
13 instruments beyond the bonds identified in the ordinance.  
14

15 **Q. Wild Springs requested that the Commission defer to Pennington County on the**  
16 **financial assurance instrument since Pennington County already had a**  
17 **decommissioning assurance requirement in its ordinance. Has the Commission**  
18 **deferred to a county’s decommissioning financial assurance requirement in past**  
19 **facility siting dockets?**

20 A. I am unaware of any recent Commission decisions in energy conversion facility or wind  
21 energy facility siting dockets where the Commission deferred to county regulations for  
22 the decommissioning financial assurance instrument. Generally, the Commission has  
23 taken an active role in facility siting dockets to ensure the appropriate decommissioning  
24 financial assurance instrument is secured to protect South Dakota citizens.  
25

26 **Q. Is decommissioning financial assurance required by most South Dakota counties**  
27 **for energy conversion facilities, wind energy facilities, and solar energy facilities?**

28 A. Yes. Most South Dakota counties require decommissioning financial assurance as part  
29 of a conditional use permit, or similar county permit, required to construct an energy  
30 generation facility. Historically, to the best of my knowledge, the decommissioning  
31 financial assurance instrument ordered by the Commission has been accepted by the  
32 county to fulfill their financial assurance requirement.  
33

1 **Q. Did the Applicant discuss the individual merits of the two financial instruments,**  
2 **letter of credit or surety bond, in their decommissioning financial assurance**  
3 **proposal?**

4 A. No. The primary support provided by the Applicant for its proposal is fulfilling  
5 Pennington County's condition in the conditional use permit.  
6

7 **Q. Has Pennington County filed any testimony or documentation in this proceeding**  
8 **requesting that the Commission defer to their decommissioning financial**  
9 **assurance regulations?**

10 A. No, Pennington County has not made that request. Commission Staff has no objection  
11 to Pennington County's participation in this proceeding.  
12

13 **Q. Has the Commission recently considered a letter of credit or surety bond as a**  
14 **decommissioning financial assurance instrument?**

15 A. Yes. In two recent wind energy facility filings, Dockets EL19-007 and EL19-026, the  
16 Commission considered a letter of credit or bond as the financial instrument options for  
17 decommissioning financial assurance. After questioning of the petitioner's witnesses  
18 and deliberations, the Commission ultimately required an escrow account as the  
19 financial assurance for decommissioning wind facilities.  
20

21 **Q. Has the Applicant addressed any of the concerns raised by the Commissioners in**  
22 **Dockets EL19-007 and EL19-026 regarding either a letter of credit or surety bond?**

23 A. No. The Applicant should address the Commission's concerns raised during the  
24 evidentiary hearings in Dockets EL19-007 and EL19-026 regarding a letter of credit or  
25 surety bond in rebuttal testimony.  
26

27 **Q. Please provide a brief description of the decommissioning escrow account.**

28 A. The decommissioning escrow account is a mechanism through which an applicant can  
29 gradually accumulate decommissioning funds over time. The applicant regularly sets  
30 money aside in a separate custodial account, segregated from the applicant's assets  
31 and outside the applicant's control for the exclusive purpose of the payment of costs to  
32 fulfill its decommissioning obligation.  
33

1 **Q. Has the Commission established an escrow account as its preferred**  
2 **decommissioning financial assurance instrument?**

3 A. For a wind energy facility, yes. An escrow account has been ordered by the  
4 Commission as the financial assurance for the funding for the decommissioning of every  
5 wind energy facility that is not owned by a rate-regulated public utility since 2018.  
6 However, for a solar energy facility, the Commission has not established a precedent on  
7 its preferred decommissioning financial assurance.

8  
9 **Q. What type of decommissioning financial assurance instrument has the**  
10 **Commission required in past solar energy permits?**

11 A. The Commission has only granted one solar energy facility permit. In Docket EL18-059,  
12 Lookout Solar Park was sited on individually-owned Indian trust land on the Pine Ridge  
13 Indian Reservation. The U.S. Bureau of Indian Affairs (“BIA”) has jurisdiction over Indian  
14 trust land, and the lease between Lookout Solar Park, LLC and the landowner was  
15 approved by the BIA. Pursuant to the lease, BIA is responsible for approving the  
16 removal of the facility and restoration of the land. Given the federal BIA regulations in  
17 place, the Commission ordered the following permit condition:

18  
19 *Applicant shall comply with any performance bond or other decommissioning*  
20 *requirement the U.S. Bureau of Indian Affairs imposes.*  
21

22 Given the site-specific facts and regulations, the decommissioning financial assurance  
23 condition for Lookout Solar Park provides limited guidance for this filing.

24  
25 **Q. Please explain why Commission Staff believes an escrow account is a reasonable**  
26 **financial assurance instrument for decommissioning.**

27 A. The Commission may take a conservative approach and assume a low risk tolerance for  
28 the benefit of the citizens of South Dakota. The requirement to have funds set aside in a  
29 separate account to fund the decommissioning rather than accept a contractual  
30 obligation from an affiliate or third-party lowers the risk that funds will not be available in  
31 the event of financial distress of an applicant.

32  
33



1 **Q. Do you have a recommended annual funding amount if the Commission**  
2 **determines an escrow account is the appropriate financial assurance to guarantee**  
3 **decommissioning costs?**

4 A. Yes. In response to Commission Staff data request 2-2, Wild Springs provided an  
5 updated decommissioning cost estimate of \$4,480,000. On Page 32 of the Application,  
6 Wild Springs stated that the estimated service life of the Project is 20 to 30 years. Since  
7 the term of the Power Purchase Agreement with Basin Electric Power Cooperative is  
8 only for 15 years, Commission Staff recommends funding the decommissioning cost  
9 over the more conservative estimated service life of 20 years resulting in an annual  
10 funding amount of \$224,000.

11  
12 **Q. Do you have an opinion on the Applicant's proposal to utilize a letter of credit or**  
13 **surety bond?**

14 A. I would like to review the Applicant's rebuttal testimony and discovery responses  
15 supporting their proposal before making a recommendation.

16  
17 Overall, I am concerned about deferring to a county's decommissioning financial  
18 assurance requirement without considering the merits of the proposed financial  
19 instrument and determining that the instrument ensures adequate protections. Without  
20 evidence which supports that a letter of credit or surety bond is a superior financial  
21 assurance option to an escrow account, Commission Staff recommends that the  
22 Commission order an escrow account as the financial assurance for decommissioning.

23  
24 If the Applicant submits additional testimony or documentation supporting its financial  
25 instrument proposal, Commission Staff may file supplemental testimony to assist in the  
26 efficiency of the evidentiary hearing.

27  
28 **Q. Does this conclude your testimony?**

29 A. Yes, this concludes my written direct testimony.

30