



HB 2845

No Waste Left Behind: Insuring the Decommissioning of Wind Power Facilities

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Purpose

HB 2845 would insure that wind power facilities, including wind turbine generators and facilities or equipment used to support the operation of a wind turbine generator, are decommissioned at the end of their useful life and the land on which they stood cleaned and restored to its initial condition at the wind power facilities' expense.

Background

The oil and gas industry is required to provide financial assurance that their facilities will be decommissioned at the end of their useful life. This is aimed at preventing cases where wells are abandoned by their former owners at the end of their useful life.

Currently, there is no decommissioning provision for wind farms in Texas. Wind turbines are expected to have a working life of 20 to 25 years according to the industry, although studies have found some turbines in Europe to have a significantly shorter useful life. The rise of wind energy in Texas started in earnest in the 2000s, indicating that the first turbines installed in the state may soon come to the end of their useful life.

The numerous subsidies and tax preferences at the federal, state, and local levels for the wind energy industry are making it possible for wind energy companies to continually build more wind turbines in the very heart of Texas. This creates not only an enormous financial cost to taxpayers and ratepayers but also distortions of the market that decrease the reliability of the Texas electric grid—not to mention an eyesore to landowners. The insistence that the subsidies are necessary to support a once nascent industry now more than 40 years old, and that programs such as Chapters 312 and 313 must be renewed for wind energy companies to continue to build in Texas, generates concerns about the financial reliability of these companies.

The cost of decommissioning a single turbine and its base is difficult to know exactly, as it depends on the turbine and on how much of the land it occupies, but studies generally found the cost of the decommissioning of a single turbine to be in the tens of thousands of dollars. As a consequence, it is crucial to make sure that these are not abandoned once they do not produce any more electricity or to plan well in advance and secure payment for the financial cost of the decommissioning of wind energy facilities in the case the companies go bankrupt. Taxpayers at the local or state level should not be left to carry this additional financial burden.

Analysis

HB 2845 would mandate decommissioning provisions in a lease agreement between a landowner leasing his land to a wind power facility. The provisions would provide that the wind power facility is responsible for the cost of removing the turbines, their bases, and related amenities or appliances at the end of the turbines' useful life and of cleaning the land on which they were installed. These provisions cannot be waived in the private agreement.

HB 2845 would also provide additional cleanup provisions that would be left to the discretion of the landowner to request. The landowner could not require these provisions to be enforced after the first anniversary of the end of the facility's useful life—defined as when “the facility is no longer being used to generate electricity.”

The wind power facility would have to provide to the landowner financial assurance for the decommissioning with a bond or another form of financial assurance accepted by the landowner. The amount of the bond would be at least equal to the total cost of removing the entire facility and restoring the land to its previous condition. HB 2845 provides that the landowner can petition the district judge of the county in which the land is located to appoint an engineer to

estimate the cost of the decommissioning if the landowner and facility cannot agree on the cost nor on a choice of an engineer to estimate it.

The landowner could request that the amount of the bond be increased, following the same procedure to send the initial estimate. The wind power facility could request that the amount of the bond be decreased when at least 60 percent of the wind turbines on site are repowered or refitted after the effective date of the initial bond, also following the initial procedure to set the amount of the initial bond.

Finally, the bond must be delivered at the date of the termination of the agreement or 10 years after 95 percent of the installed capacity has been operating on the land, whichever is earlier. The bond cannot be canceled until the wind power facility has completed the decommissioning of the facility unless it is replaced by another financial assurance.

Recommendations

The bill addresses a serious and valid concern: the additional cost—on top of the already enormous cost of

subsidies, tax breaks, and market distortions imposed on taxpayers and ratepayers—of decommissioning wind turbines in the case that those that reach their end of useful life were abandoned or the company owning them were to go bankrupt.

The bill aims to protect landowners and their properties against such cases by mandating that the decommissioning of the facilities and the cleaning of the land used for these facilities be included in the lease agreement between a landowner and a wind energy company.

We recommend making these provisions voluntary and actionable at the local level by making both the possibility for wind power facilities to receive Chapter 312 tax abatements and Chapter 313 tax limitations and their connection to the grid dependent on the completion of these decommissioning provisions in the lease agreements, yet leaving the option to commissioners courts to waive the mandate in a regularly scheduled meeting of the court requiring a public notice. ★

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