

2023 HOUSE ENERGY AND NATURAL RESOURCES

HB 1315

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1315
2/2/2023

Relating to factors to be considered when evaluating applications and designation for sites, corridors, and routes
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9:00 AM

Chairman Porter opened the hearing. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Olson, and Roers Jones. Absent: Rep Ruby

Discussion Topics:

- PSC siting authority
- Affordability and reliability
- Grid reliability
- Energy needs
- Technology
- Excess transmission capacity
- Low carbon economy
- ND Transmission Authority
- GIA (Generation Interconnection Agreement)
- Transmission grid expansion
- Federal government control
- Climate control
- Exporting
- Grid congestion
- Badger Wind Project
- Integrated resource requirements

In favor:

Rep Novak, District 33, introduced HB 1315, Testimony 19108, 20870

Randy Christmann, Chairman, PSC, Testimony 18761

Geoff Simon, Executive Director, Western Dakota Energy Association, Testimony 18730

David Straley, legal counsel, North American Coal, oral testimony

In opposition:

Julie Fedorchak, Commissioner, PSC, Testimony 18766

Carlee McLeod, President, Utility Shareholders of ND, Testimony 18764

Levi Andrist, lobbyist, Wind Industry of ND, oral testimony

Additional written testimony:

Joe Spiekermeier, Beulah, ND, Testimony 17805

Jeremy Eckroth, Bismarck, ND, Testimony 17866

Kayla Spiekermeier, Beulah, ND, Testimony 18601

Jerry Obernauer, Hazen, ND, Testimony 18635

Mark Bring, Director, Public Policy & Government Affairs, Otter Tail Power, Testimony 18691

Mark Pierce, Beulah, ND, Testimony 18693

Justin Dever, Senior Public Affairs Specialist, MDU Shareholders Group, Testimony 18769

Levi Andrist, WND #19096

10:48 AM Chairman Porter closed the hearing.

Kathleen Davis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1315
2/16/2023

Relating to factors to be considered when evaluating applications and designation for sites, corridors, and routes
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11:00 AM

Chairman Porter opened the meeting. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Olson, Roers Jones, and Ruby.

Discussion Topics:

- Proposed amendment

Rep Bosch, proposed amendment, Testimony 21029

Rep Olson moved a Do Pass, seconded by Rep Marschall. Motion was withdrawn.

Rep Bosch moved to Adopt the Amendment, Testimony 21029, seconded by Rep Anderson.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	AB
Representative Glenn Bosch	Y
Representative Liz Conmy	Y
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	Y
Representative Jim Kasper	AB
Representative Andrew Marschall	N
Representative Anna S. Novak	N
Representative Jeremy Olson	Y
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	N

9-3-2 Motion carried.

Rep Roers Jones moved a Do Pass as Amended, seconded by Rep Olson.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	AB
Representative Glenn Bosch	Y
Representative Liz Conmy	N
Representative Jason Dockter	Y
Representative Jared Hagert	Y

Representative Pat D. Heinert	Y
Representative Zachary Ista	Y
Representative Jim Kasper	AB
Representative Andrew Marschall	Y
Representative Anna S. Novak	Y
Representative Jeremy Olson	Y
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	Y

11-1-2 Motion carried. Rep Novak is carrier.

11:21 AM Chairman Porter closed the meeting.

Kathleen Davis, Committee Clerk

Act
2-16-23
(1-1)

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1315

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 49-22-09 of the North Dakota Century Code, relating to factors to be considered when evaluating applications and designation for sites, corridors, and routes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 49-22-09 of the North Dakota Century Code is created and enacted as follows:

Before the commencement of operations of the proposed facility, the applicant shall inform the commission that the applicant has executed or filed an unexecuted generation interconnection agreement, or comparable transmission services agreement, with the affected regional transmission organization or transmission owner."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1315: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). HB 1315 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 49-22-09 of the North Dakota Century Code, relating to factors to be considered when evaluating applications and designation for sites, corridors, and routes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 49-22-09 of the North Dakota Century Code is created and enacted as follows:

Before the commencement of operations of the proposed facility, the applicant shall inform the commission that the applicant has executed or filed an unexecuted generation interconnection agreement, or comparable transmission services agreement, with the affected regional transmission organization or transmission owner."

Renumber accordingly

2023 SENATE ENERGY AND NATURAL RESOURCES

HB 1315

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1315
3/10/2023

A bill relating to factors to be considered when evaluating applications and designation for sites, corridors, and routes.
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9:00 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Kessel, Kannianen, Boehm, Beard and Magrum are present.

Discussion Topics:

- Transmission lines
- Conversion facilities
- Reliable electricity
- Renewable electricity
- Power grids

9:02 AM Representative Anna Novak introduced the bill #23624, 23637, 23636.

9:10 AM Geoff Simon, Western Dakota Energy Association, testified in favor of the bill and provided written testimony #23557.

9:18 AM Ladd Erickson, McLean County State's Attorney, spoke in favor of the bill.

9:42 AM Carlie Mcleod, Utility Shareholders of North Dakota, spoke opposed to the bill.

10:15 AM Levi Andrist, Lobbyist, Wind Industry of North Dakota, testified opposed to the bill and provided written testimony #25615.

10:22 Jean Shaefer, Basin Electric Power Collective, spoke opposed to the bill.

10:24 AM Julie Fedorchak, Commissioner, Public Service Commission, spoke neutral on the bill and provided written testimony #23503.

10:48 AM Chairman Patten held the public hearing open.

10:48 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1315
3/23/2023

A bill relating to factors to be considered when evaluating applications and designation for sites, corridors, and routes

9:00AM Chairman Patten opened the meeting.
Chairman Patten and Senators Kessel, Kannianen, Boehm, Beard and Magrum are present.

Discussion Topics:

- Transmission lines
- Conversion facilities
- Reliable electricity
- Renewable electricity
- Power grids

9:01 Representative Novak spoke to amendments that are being proposed for the bill and provided written testimony #26425, 26424.

9:07 AM Ladd Erickson, McLean and Sheridan County State's Attorney, spoke in favor of the bill.

9:30 AM Randy Christmann, Public Service Commission, testified in favor of the bill and provided written testimony #26416.

9:40 AM Goeff Simon, Western Dakota Energy Association, spoke in favor of the bill.

9:43 AM Julie Fedorchak, Public Service Commission, spoke opposed to the bill.

10:07 AM Carlee McLeod, President Utility Shareholders of North Dakota, spoke opposed to the bill.

10:21 AM Levi Adrist, Wind Industry of North Dakota, spoke opposed to the bill.

Additional written testimony

Levi Adrist #25615

Mark Bring #26417

10:25 AM Chairman Patten closed the public hearing.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1315
3/24/2023

A bill relating to factors to be considered when evaluating applications and designation for sites, corridors, and routes

9:30 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Kessel, Kannianen, Boehm, Beard and Magrum are present.

Discussion Topics:

- Amendments
- Similar bills

9:30 AM The committee has discussion on the bill and then Chairman Patten states he would like to hold off on any action on the bill until next week.

9:32 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1315
3/30/2023

A bill relating to factors to be considered when evaluating applications and designation for sites, corridors, and routes

9:39 PM Chairman Patten opened the meeting.
Chairman Patten and Senators Kessel, Kannianen, Boehm, Beard and Magrum are present.

Discussion Topics:

- Committee action

9:39 AM Senator Kessel moved to adopt amendment LC 23.0504.06004. #27072
Motion is seconded by Senator Kannianen.

9:40 AM Roll call vote was taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	N
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passes 5-1-0.

9:46 AM Senator Kessel moved to Do Pass the bill as Amended.

9:47 AM Motion is seconded by Senator Kannianen.

9:47 AM Roll call vote was taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passes 6-0-0.

Senator Boehm will carry the bill.

This bill does not affect workforce development.

9:47 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

JA
3-30-23

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1315

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 49-22-09 of the North Dakota Century Code, relating to factors to be considered when evaluating applications and designation for sites, corridors, and routes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-22-09 of the North Dakota Century Code is amended and reenacted as follows:

49-22-09. Factors to be considered in evaluating applications and designation of sites, corridors, and routes.

1. The commission shall be guided by, but is not limited to, the following considerations, where applicable, to aid the evaluation and designation of sites, corridors, and routes:
 - a. Available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment.
 - b. The effects of new electric energy conversion and electric transmission technologies and systems designed to minimize adverse environmental effects.
 - c. The potential for beneficial uses of waste energy from a proposed electric energy conversion facility.
 - d. Adverse direct and indirect environmental effects that cannot be avoided should the proposed site or route be designated.
 - e. Alternatives to the proposed site, corridor, or route which are developed during the hearing process and which minimize adverse effects.
 - f. Irreversible and irretrievable commitments of natural resources should the proposed site, corridor, or route be designated.
 - g. The direct and indirect economic impacts of the proposed facility.
 - h. Existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route.
 - i. The effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites.

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- JH
3-30-23
- j. The effect of the proposed site or route on areas unique because of biological wealth or because the areas are habitats for rare and endangered species.
 - k. Problems raised by federal agencies, other state agencies, and local entities.
2. The commission may not condition the issuance of a certificate or permit on the applicant providing a mitigation payment assessed or requested by another state agency or entity to offset a negative impact on wildlife habitat.
 3. If a project will interconnect into a regional transmission authority, the commission may condition the issuance of a certificate or permit for a new electric energy conversion facility on having a power purchase agreement with an entity that directly, or through its members, provides retail electric service."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1315, as engrossed: Energy and Natural Resources Committee (Sen. Patten, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1315 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 49-22-09 of the North Dakota Century Code, relating to factors to be considered when evaluating applications and designation for sites, corridors, and routes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-22-09 of the North Dakota Century Code is amended and reenacted as follows:

49-22-09. Factors to be considered in evaluating applications and designation of sites, corridors, and routes.

1. The commission shall be guided by, but is not limited to, the following considerations, where applicable, to aid the evaluation and designation of sites, corridors, and routes:
 - a. Available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment.
 - b. The effects of new electric energy conversion and electric transmission technologies and systems designed to minimize adverse environmental effects.
 - c. The potential for beneficial uses of waste energy from a proposed electric energy conversion facility.
 - d. Adverse direct and indirect environmental effects that cannot be avoided should the proposed site or route be designated.
 - e. Alternatives to the proposed site, corridor, or route which are developed during the hearing process and which minimize adverse effects.
 - f. Irreversible and irretrievable commitments of natural resources should the proposed site, corridor, or route be designated.
 - g. The direct and indirect economic impacts of the proposed facility.
 - h. Existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route.
 - i. The effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites.
 - j. The effect of the proposed site or route on areas unique because of biological wealth or because the areas are habitats for rare and endangered species.
 - k. Problems raised by federal agencies, other state agencies, and local entities.

2. The commission may not condition the issuance of a certificate or permit on the applicant providing a mitigation payment assessed or requested by another state agency or entity to offset a negative impact on wildlife habitat.
3. If a project will interconnect into a regional transmission authority, the commission may condition the issuance of a certificate or permit for a new electric energy conversion facility on having a power purchase agreement with an entity that directly, or through its members, provides retail electric service."

Renumber accordingly

TESTIMONY

HB 1315

**House Energy and Natural Resources Committee
Hearing on HB1315: Factors to be Considered When Evaluating Applications and
Designation for Sites, Corridors, and Routes
February 2, 2023**

Chairman Porter, members of the committee, my name is **Joe Spiekermeier**. I live in **Beulah, ND**. I am writing **in favor** of HB1315 granting the PSC the authority to consider grid reliability in issuing permits for generation sources. Currently, ensuring grid reliability doesn't exist. In all of the national regulatory agencies (FERC/NERC), RTO markets, ISO rules, generating utility policies there is a void when it comes to grid reliability/resiliency. HB1315 will provide the NDPSC the ability to consider reliability when no one else is, even though it is a vital component of grid security.

North Dakota electrical service is primarily provided by two RTO's (MISO and SPP). They each run complex auctions for electricity sales but no entity is responsible for actually having enough power plants available to meet real time demand. MISO and SPP have stated they are policy takers not policy makers. They have no policies for ensuring reliability. Their required accredited capacity policies have proven to be inadequate during times of extreme energy use or greatly reduced generation from renewable sources. In terms of reliability, inside an RTO the buck stops nowhere.

When there isn't enough power to meet demand skyrocketing prices are supposed to provide the incentives for utilities to keep enough baseload plants operational. The increased rate of baseload plant closures continues to prove the markets are not providing enough incentive to ensure reliability.

Across the nation RTO's are falling into the Fatal Trifecta of grid failure.

1. Over-reliance on renewables: Overbuilding cost-distorted, weather dependent, energy-dilute generation, such as wind and solar, which shut off when they want cannot be counted on to supply steady power. Renewable sources are not load following generation and cannot handle the demands of modern society. They always need to be backed up by reliable plants, mostly natural gas. With the push to "electrify everything" the demand for electricity will grow even faster. Many want to believe renewables can do everything and there is always some "expert" willing to say they can, if only enough are built. Statements like that are a good way to be popular but they don't change the facts.
2. Relying on just in time natural gas delivery. Renewables are primarily backed by natural gas which rely on just-in-time fuel deliveries. Natural gas plants do not store fuel on site but gas delivery is frequently interrupted, especially in winter and the natural gas plants may not be able to get the gas they need. Winter storm Uri and ERCOT's disaster proved just-in-time deliveries of gas is a problem.
3. Over reliance on their neighbors. In times of power scarcity RTO's routinely source generation from neighboring organizations. Usually the issues causing power shortages in your grid are also being experienced by your neighbors. Naturally each grid is going to take care of itself first before rescuing their neighbor. If everyone is relying on their neighbor to bail them out and no one in the neighborhood is doing enough to ensure reliability there won't be enough generation for all. Like most difficulties in life personal responsibility is required. During

winter storm Uri a considerable amount of negative press was written about ERCOT not being adequately connected to their neighboring grids. In truth more, connections wouldn't have been able to supply adequate power to ERCOT. Their neighbors SPP and MISO were also suffering through power shortages and buying power from PJM which was supplying as much power to its neighbors as it could. There wasn't enough power to go around regardless of the missing interconnects. The more recent cold snap of December 2022 proved you may not be able to rely on your neighbor to bail you out. SPP, MISO, and PJM were all issuing generation alerts, none of the neighbors had power to spare. What would have happened if demand was only slightly higher in any of the three RTOs? California blackouts every summer also show that your neighbor can only supply so much and grids need to look out for themselves.

If no one entity is ultimately responsible for ensuring grid reliability North Dakota needs to have regulations in place to look out for its citizens. HB1315 is a great starting point to have a regulatory agency consider the impacts to grid stability before continuing down the path of the fatal trifecta. I encourage a **"Do-Pass"** recommendation. Thank you for your consideration.

Respectfully submitted,

Joe Spiekermeier

Beulah, ND

**House Energy and Natural Resources Committee
Hearing on HB1315: Factors to be Considered When Evaluating Applications and
Designation for Sites, Corridors, and Routes
February 2, 2023**

Chairman Porter, members of the committee, my name is **Jeremy Eckroth**. I live in **Bismarck, ND**. I am writing **in favor** of House Bill 1315 which would grant the North Dakota Public Service Commission (“NDPSC”) the authority to consider impacts on reliability, integrity, or resilience of the existing electric supply and distribution system during their permitting oversight.

Currently, no agency has the authority or responsibility of ensuring reliability of our electric grid in our regulatory system. The trend of retiring baseload dispatchable generation sources and replacing them with intermittent and unreliable generation sources is not sustainable. Electric grids are under great strain and it is becoming more common for the U.S. to face rolling blackouts due to “unprecedented” weather-related record high demand. The problem is that these weather events are not “unprecedented”. These weather events are not unlike others in the past, the difference now is that poorly guided regulations and subsidies have forced too much dependable, baseload power off the grid. These blackouts will be more common as more dependable, baseload electric generation from coal and natural gas is forced off the grid.

I believe that the NDPSC should have the authority to consider reliability during the approval processes. Adding additional generation to the grid with no stated customer in an area of known transmission congestion is a recipe for failure and only continues to exacerbate the problem.

North Dakota’s commerce and livelihoods depend on safe, reliable, and affordable electric power generation. This bill is a good start in the right direction for the State of North Dakota. I encourage a “**Do-Pass**” recommendation. Thank you for your consideration.

House Energy and Natural Resources Committee
Hearing on HB1315: Factors to be Considered When Evaluating Applications and
Designation for Sites, Corridors, and Routes
February 2, 2023

Chairman Porter, members of the committee, my name is **Kayla Spiekermeier**. I live in **Beulah, ND**. I am writing **in favor** of House Bill 1315 which would grant the North Dakota Public Service Commission (“NDPSC”) the authority to consider impacts on reliability, integrity, or resilience of the existing electric supply and distribution system during their permitting oversight.

There is currently a gaping hole in our regulatory system in which no one has the authority/responsibility of ensuring reliability of our electric grid. Electric grids are dodging bullets of energy insufficiency with greater and greater frequency. The trend of retiring baseload dispatchable generation sources and replacing them with intermittent generation sources is not sustainable in a world that is supposedly concerned with “sustainability”. North Dakota’s commerce and livelihoods depend on safe, reliable, and affordable electric power.

This bill is a good start in the right direction for the State of North Dakota. I encourage a **“Do-Pass”** recommendation. Thank you for your consideration.

**House Energy and Natural Resources Committee
Hearing on HB1315: Factors to be Considered When Evaluating Applications and
Designation for Sites, Corridors, and Routes
February 2, 2023**

Chairman Porter, members of the committee, my name is **Jerry Obenauer**. I live in **Hazen, ND**. I am writing **in favor** of House Bill 1315 which would grant the North Dakota Public Service Commission (“NDPSC”) the authority to consider impacts on reliability, integrity, or resilience of the existing electric supply and distribution system during their permitting oversight.

There is currently a gaping hole in our regulatory system in which no one has the authority/responsibility of ensuring reliability of our electric grid. Electric grids are dodging bullets of energy insufficiency with greater and greater frequency. The trend of retiring baseload dispatchable generation sources and replacing them with intermittent generation sources is not sustainable in a world that is supposedly concerned with “sustainability”. North Dakota’s commerce and livelihoods depend on safe, reliable, and affordable electric power. It is a necessity of the Northern Plains.

This bill is a good start in the right direction for the State of North Dakota. I encourage a **“Do-Pass”** recommendation. Thank you for your consideration.

**Testimony of Mark Bring
Director of Public Policy and Government Affairs
Otter Tail Power Company**

**Before the House Energy & Natural Resources Committee
February 2, 2023**

Chairman Porter and members of the Committee, my name is Mark Bring and I serve as Director of Public Policy and Government Affairs for Otter Tail Power Company. I have been licensed as an attorney in North Dakota since 1992 and have been employed continuously in the electric industry since 1997. I respectfully submit this testimony regarding our company's opposition to House Bill 1315.

Otter Tail Power Company is one of the smallest investor-owned utilities in the nation and is a subsidiary of Otter Tail Corporation, which is traded on the NASDAQ as OTTR. Otter Tail Corporation also owns several manufacturing companies engaged in metal fabricating, custom plastic parts manufacturing, and PVC pipe manufacturing. These non-energy businesses include Northern Pipe Products in Fargo.

Otter Tail Power Company is headquartered in Fergus Falls, Minnesota, and provides electricity and energy services to more than 133,000 customers spanning 70,000 square miles in western Minnesota, eastern North Dakota, and northeastern South Dakota. Our service area is predominantly rural and agricultural. By way of example, a median-sized community we serve in North Dakota is Michigan in Nelson County. According to the most recent U.S. Census Bureau statistics, Michigan has a population of 263 people. We serve many towns that are smaller yet, including my hometown of Galesburg in Traill County. The largest North Dakota communities served by our company are Devils Lake, Jamestown, and Wahpeton. Following its incorporation in 1907, our company began serving its very first customer in Wahpeton in 1909.

While we are opposed to HB 1315, we want to commend Rep. Novak for her willingness to have a dialogue about the legislation prior to its introduction. Rep. Novak has been very receptive to stakeholder input throughout the legislative process. We recognize the legislation is well-intended and seeks to address concerns shared by constituents in her legislative district. However, we respectfully submit this is not the correct approach to those concerns.

HB 1315 would add an additional consideration to the list of considerations that the Public Service Commission must be guided by, pursuant to N.D. Century Code section 49-22-09, in evaluating and designating new electric energy conversion facility sites (i.e., power plants) and electric transmission corridors and routes (i.e., for high-voltage power lines) in applications submitted to the Commission. The additional consideration in HB 1315 would be “[s]ufficient evidence establishing the impact on the reliability, integrity, or resilience of the existing electric supply and distribution system.”

On its face, this perhaps doesn’t sound unreasonable. However, there are two primary problems with this approach. First, the new consideration would add an evidentiary standard that is not applicable to any of the existing statutory considerations: “[s]ufficient evidence establishing....” It is not at all clear what constitutes “sufficient evidence,” nor is it logical to create such an evidentiary standard when the existing statutory considerations have no such evidentiary standard. The technical issues associated with the impact of a new generation or transmission asset to the existing electric grid is not a subject matter for which the Public Service Commission and its staff has robust expertise. This would likely contribute to a need to engage a costly consultant and require an administrative law judge to weigh the sufficiency of evidence. This approach is fraught with regulatory uncertainty and potential delay and, therefore, is harmful to new electric energy-related development.

More importantly, North Dakota's Energy Conversion and Transmission Facility Act is about minimizing adverse human and environmental impact in the state. This is clear from a plain reading of N.D. Century Code section 49-22-02, which contains the Act's statement of policy. The Act is not about the reliability, integrity, or resilience of the electric grid. Indeed, the electric grid is a complex interconnected network for electricity delivery which, in the case of the Midcontinent Independent System Operator, or MISO, spans 15 U.S. states (including portions of North Dakota) and the Canadian province of Manitoba. This is not an appropriate consideration for the Public Service Commission under the siting act.

MISO has a process and technical requirements for interconnecting new electric generation to the grid and the interconnecting entity's obligations associated with doing so, including identifying the transmission network upgrades necessary to interconnect new generation and ensuring the upgrade costs are correctly allocated. Incidentally, MISO also has processes and technical considerations associated with the retirement of existing electric generation assets. These processes and technical considerations, along with important market signals and reforms, are continually undergoing evaluation and revision in a way that is designed to ensure the reliability, integrity, and resilience of the electric grid.

For the foregoing reasons, we urge a DO NOT PASS on HB 1315.

**House Energy and Natural Resources Committee
Hearing on HB1315: Factors to be Considered When Evaluating Applications and
Designation for Sites, Corridors, and Routes
February 2, 2023**

Chairman Porter, members of the committee, my name is **Mark Pierce**. I live in **Beulah, ND**. I am writing **in favor** of House Bill 1315 which would grant the North Dakota Public Service Commission (“NDPSC”) the authority to consider impacts on reliability, integrity, or resilience of the existing electric supply and distribution system during their permitting oversight.

There is currently a gaping hole in our regulatory system in which no one has the authority/responsibility of ensuring reliability of our electric grid. Electric grids are dodging bullets of energy insufficiency with greater and greater frequency. The trend of retiring baseload dispatchable generation sources and replacing them with intermittent generation sources is not sustainable in a world that is supposedly concerned with “sustainability”. North Dakota’s commerce and livelihoods depend on safe, reliable, and affordable electric power. It is a necessity of the Northern Plains.

On June 28, 2022, I testified in Wishek, ND at the public hearing in opposition to the Badger Wind Project (Attachment 1). There is no doubt in my mind that if the NDPSC had the tools to consider reliability during this approval process, this project would have been denied. Adding additional generation with no stated customer in an area of known transmission congestion is a recipe for failure.

This bill is a good start in the right direction for the State of North Dakota. I encourage a “**Do-Pass**” recommendation. Thank you for your consideration.

Badger Wind, LLC: Public Service Commission Testimony – 6/28/2022

Submitted by: Mark L. Pierce
Faces of North Dakota Coal
1024 Cherry Lane
Beulah, ND 58523

My name is Mark Pierce. I am a coal miner from Beulah, ND. Starting off, I would like to thank you all for the opportunity to testify today on behalf of thousands of coal miners and plant workers in ND Coal Country.

We are currently living in history. These are truly very interesting and challenging times. We owe much of this to the uncertainty of Federal Policy coming out of Washington, DC. Inflation, interest rates, commodity prices, etc. are hurting good people more and more as each day passes. Sadly, this is the exact environment that my livelihood has been dealing with for over a decade. Yet, we are still here today doing the same work to provide energy our society needs. How long will we be able to continue to provide the critical baseload electricity? Honestly, I don't know, but a lot of that depends on decisions made regarding issues like we are testifying on here today. Today is the most important day for my livelihood, and tomorrow maybe for yours. Access to affordable, reliable electric power is the single greatest eradicator of poverty in human history. This project and many others proposed like it threaten the very electric grid stability we have all grown to take for granted. We as a society are no longer able to ignore the reality of what we have allowed to happen to our grid. We are sacrificing our one last global competitive advantage.

I have devoted a lot of my personal time over the last several years to advocating for my industry. I have found our coal industry is one of the most misunderstood industries. People do not understand what they don't know. Unfortunately, our story of prosperity in Coal Country and the vast benefit we provide society is rarely told. If told, it is seldom told accurately in today's hyperpolarized world.

This led me in 2019 to start "Faces of North Dakota Coal". We are a grassroots organization dedicated to telling the great story of Coal Country from the perspective of those of us who live and breathe it each and every day. Humanizing our industry and putting a "face" to the black rock and electron we produce is an aspect that most never even consider. Our motto is "People, Families, Communities". It is far reaching from ours to yours.

Over a decade ago, our industry began to question the direction federal policy was taking our electric grids with the never ending subsidization of intermittent energy. Many spoke about the potential consequences replacing baseload energy with intermittent energy would likely bring to our electric grids. It fell on deaf ears for years because nothing happened. Our electric grid infrastructure had excess capacity that was able to absorb the redundant buildout of generation. Today, that is no longer the case. We are now at the point of displacing baseload electrons with intermittent electrons. This displacement by subsidized energy has been undermining the economics of traditional energy putting our baseload plants at risk of closure. Many throughout the Midwest have succumbed to this economic pressure.

There is no doubt in my mind that this project if built as proposed would do irreparable harm to some of our critical baseload infrastructure in North Dakota. Fortunately for me, you don't have to rely on my words to see this quite clearly. It is plainly clear from the information the two (2) grid operators serving ND have on their respective public websites. Below is the detail of MISO's grid level notifications since May 13th. So far, MISO's 2022 has been quite interesting in their efforts to maintain the juggling act of grid stability that used to be an afterthought. Air Traffic Controllers have nothing over on MISO Grid Operators.



<https://www.misoenergy.org/mcsnotification/?id=1322>

Current NERC EEA Level = 0
 Current MISO Max Gen Level = Alert
 Current Emergency Pricing Level = Tier 0

Reliability Actions:

The MISO Reliability Coordinator is declaring a Maximum Generation Emergency Alert effective from 05/13/2022 15:35 EST until 05/13/2022 19:00 EST for the following entities: Central Region area(s) of: ALT, ALTE, AMIL, AMMO, AMRN, ATC, BREC, CIN, CONS, CWLD, CWLP, DECO, GLH, HE, HMPL, IPL, ITC, MECS, METC, MGE, MIUP, NIPS, PION, RTX, SIGE, SIPC, UPPC, WEC, WPS

The reason for the Event is because of Forced Generation Outages, Higher than Forecasted Load, Above Normal Temps.

The MISO Reliability Coordinator instructs the following:

Stakeholder Major Actions	Max Gen Step Level
MPs communicate available Module E Resources	Alert
MPs update energy interchange transaction E-Tags of Capacity Resources	Alert
LBA/TOP provide potential exclusion of constrained pockets within the declaration area	Alert
TOPs coordinate with MISO RC to identify potential reconfiguration options	Alert
LBAs/MPs ensure accuracy of LMM/LMR availability and Self Scheduled values in MCS/DSRI	Alert
Affected GOPs communicate capacity limited facilities to MISO and update limits and offers	Alert
Prepare to implement this procedure and follow procedures for emergency conditions	Capacity Advisory
Follow instructions per Conservative System Operations procedure and declaration	Capacity Advisory
If notified by MISO, Implement LMRs	Capacity Advisory



<https://www.misoenergy.org/mcsnotification/?id=1325>

Current NERC EEA Level = 0
 Current MISO Max Gen Level = Alert
 Current Emergency Pricing Level = Tier 0

Reliability Actions:

The MISO Reliability Coordinator is declaring a Maximum Generation Emergency Alert effective from 05/18/2022 14:30 EST until 05/18/2022 20:00 EST for the following entities: South Region area(s) of: AXLT, CLEC, EAI, EES, EMBA, LAFA, LAGN, LEPA, SME

The reason for the Event is because of Forced Generation Outages, Above Normal Temps, Higher than Forecasted Load.

The MISO Reliability Coordinator instructs the following:

Stakeholder Major Actions	Max Gen Step Level
MPs communicate available Module E Resources	Alert
MPs update energy interchange transaction E-Tags of Capacity Resources	Alert
LBA/TOP provide potential exclusion of constrained pockets within the declaration area	Alert
TOPs coordinate with MISO RC to identify potential reconfiguration options	Alert
LBAs/MPs ensure accuracy of LMM/LMR availability and Self Scheduled values in MCS/DSRI	Alert
Affected GOPs communicate capacity limited facilities to MISO and update limits and offers	Alert
Prepare to implement this procedure and follow procedures for emergency conditions	Capacity Advisory
Follow instructions per Conservative System Operations procedure and declaration	Capacity Advisory
If notified by MISO, Implement LMRs	Capacity Advisory



<https://www.misoenergy.org/mcsnotification/?id=1333>

The MISO Reliability Coordinator (RC) is declaring Conservative Operations, effective from 05/31/2022 04:45 EST to 05/31/2022 20:00 EST for the following entities: Reliability Coordinator Footprint and instructs that:

- TOPs, GOPs and LBAs are to review outage plans to determine any maintenance or testing, scheduled or being performed on any monitoring, control, generation or transmission equipment that can be deferred, revoked or cancelled. Coordinate with MISO and LBA for completing any maintenance that may enhance BES reliability, monitoring and control. The return to service of equipment on outage should be coordinated between MISO and the applicable entity.



<https://www.misoenergy.org/mcsnotification/?id=1340>

Current NERC EEA Level = 0
Current MISO Max Gen Level = Alert
Current Emergency Pricing Level = Tier 0

Reliability Actions:

The MISO Reliability Coordinator is declaring a Maximum Generation Emergency Alert effective from 06/15/2022 13:00 EST until 06/15/2022 20:00 EST for the following entities: MISO Balancing Authority Area

The reason for the Event is because of Forced Generation Outages, Above Normal Temps, High Congestion.

The MISO Reliability Coordinator instructs the following:

Stakeholder Major Actions	Max Gen Step Level
MPs communicate available Module E Resources	Alert
MPs update energy interchange transaction E-Tags of Capacity Resources	Alert
LBA/TOP provide potential exclusion of constrained pockets within the declaration area	Alert
TOPs coordinate with MISO RC to identify potential reconfiguration options	Alert
LBAs/MPs ensure accuracy of LMM/LMR availability and Self Scheduled values in MCS/DSRI	Alert
Affected GOPs communicate capacity limited facilities to MISO and update limits and offers	Alert
Prepare to implement this procedure and follow procedures for emergency conditions	Capacity Advisory
Follow instructions per Conservative System Operations procedure and declaration	Capacity Advisory
If notified by MISO, Implement LMRs	Capacity Advisory



<https://www.misoenergy.org/mcsnotification/?id=1350>

Due to:

Extreme high temperatures and near record high loads, in order to maximize generation availability and transmission system transfer capability.

The MISO Reliability Coordinator (RC) is declaring Conservative Operations, effective from 06/21/2022 00:00 EST to 06/23/2022 22:00 EST for the following entities: Reliability Coordinator Footprint and instructs that:

- TOPs, GOPs and LBAs are to review outage plans to determine any maintenance or testing, scheduled or being performed on any monitoring, control, generation or transmission equipment that can be deferred, revoked or cancelled. Coordinate with MISO and LBA for completing any maintenance that may enhance BES reliability, monitoring and control. The return to service of equipment on outage should be coordinated between MISO and the applicable entity.



<https://www.misoenergy.org/mcsnotification/?id=1351>

Current NERC EEA Level = 0
Current MISO Max Gen Level = Capacity Advisory
Current Emergency Pricing Level = N/A

Reliability Actions:

The MISO Reliability Coordinator is declaring a Maximum Generation Capacity Advisory effective from 06/21/2022 06:00 EST until further notice.

MP's and TOP's please ensure outages are up to date in CROW and offers are up to date in the portal.

The MISO Reliability Coordinator instructs the following:

- Prepare to implement the MISO Market Capacity Emergency procedure and follow procedures for emergency conditions
- Ensure all market data is updated with best available information
- If notified by MISO, Implement LMRs

<https://www.misoenergy.org/mcsnotification/?id=1356>

All,

MISO currently has 3 declarations that includes all three regions:

- Hot Weather Alert
- Conservative Operations
- Capacity Advisory

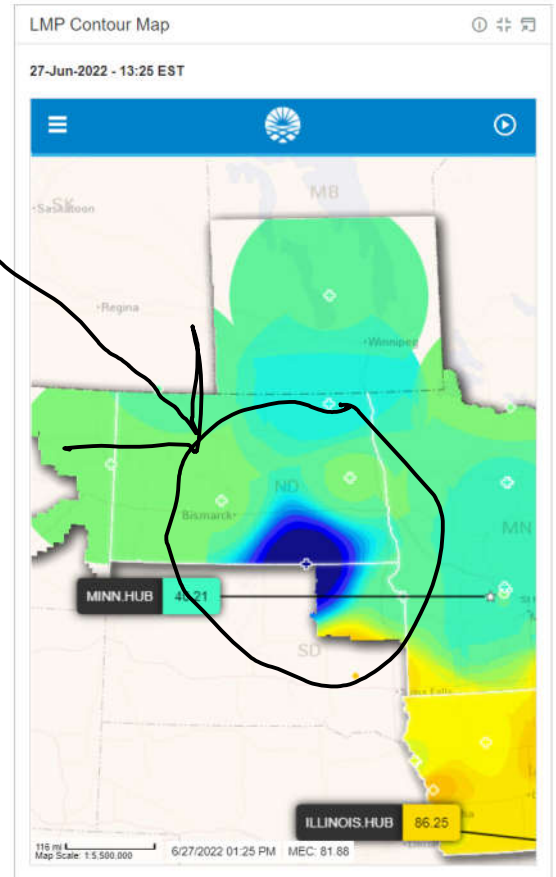
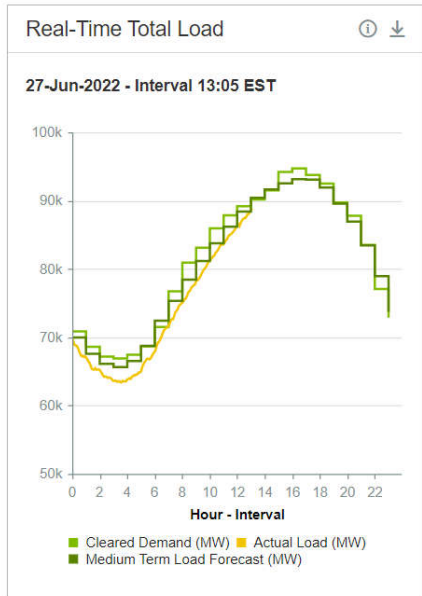
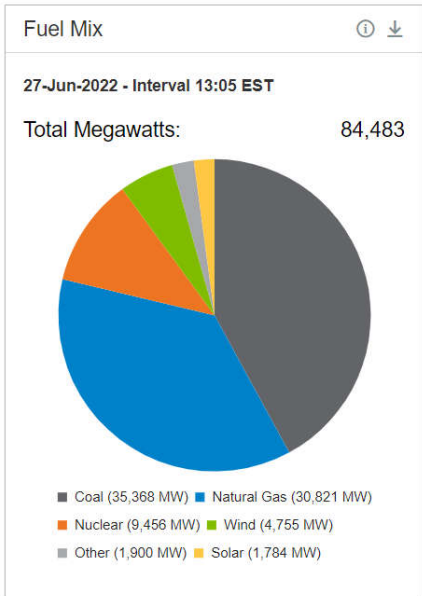
Please make extra efforts to have generation and other resource information updated in the portal accurately for today and tomorrow and keep your Regional operations staff updated with any changes.

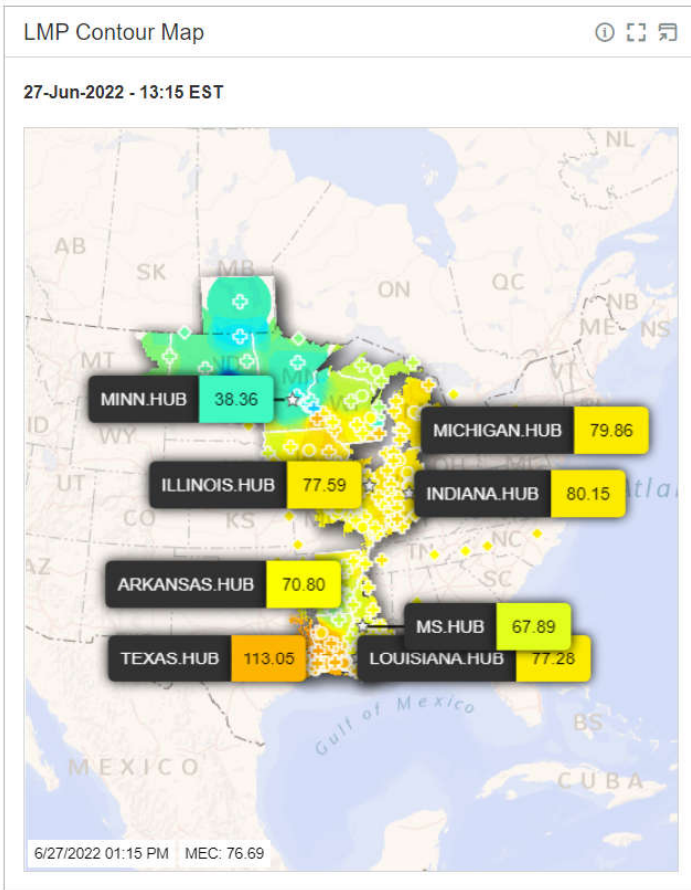
Thanks,

MISO Shift Manager

In addition, the proposed location for this wind farm would be in an area of MISO's footprint that is already known to be an area of high congestion and binding constraints. Without a significant investment in transmission infrastructure that is not disclosed currently, it is hard to fathom why anyone would propose this project in this location. Why would you develop and sell a product in a marketplace that frequently has negative pricing without a commitment of a power purchase agreement from a utility? The answer can only be to harvest the lucrative tax credits our federal policy provides in my opinion. Below is an example of the negative pricing in this area on June 27, 2022.

Area of negative locational marginal pricing on June 27, 2022 in ND's MISO footprint.





ExAnte LMP

27-Jun-2022 - Interval 13:15 EST

Name	LMP	MCC	MLC
ARKANSAS.HUB	51.19	-17.41	-2.19
ILLINOIS.HUB	74.23	3.11	0.33
INDIANA.HUB	77.66	2.61	4.26
LOUISIANA.HUB	73.25	1.58	0.88
MICHIGAN.HUB	77.15	2.62	3.74
MINN.HUB	37.58	-24.93	-8.28
MS.HUB	63.59	-6.54	-0.66
TEXAS.HUB	76.65	6.38	-0.52

Real-Time Binding Constraints

27-Jun-2022 - Interval 13:20 EST

Name	Shadow Price	Override	Curve Type	BP1	PC1	BP2	PC2
Butler_Bluemound_138_5061_fio_Arcadian_Granvil_3	-350.52	0	MW	0	2000		
El_Dorado_500_345_AT2_FLO_El_Dorado_Mount_Olive_	-222.57	0	MW	0	2000		
Ellendal_AberdeenJunction_115kV_fio_Ellendal_Oak	-46.11	0	MW	0	2000		
Prairiesland_NorthRochester_345_FLO_Hampton_Nor	-107.93	0	MW	0	2000		

To a lesser extent, ND's other grid operator struggles with much of the same dynamics. Below is a capacity advisory issued for the SPP on June 22, 2022. The Southwest Power Pool is a much smaller grid in terms of electric load and frequently experiences negative pricing throughout its footprint.

From: Southwest Power Pool <communications@spp.org>
 Date: Wed, Jun 22, 2022 at 9:55 AM
 Subject: **External Email** Grid Notice: SPP is issuing a Conservative Operations Advisory effective at 10 a.m. CT Wednesday, June 22, 2022
 To: SPP Grid Notice <gridnotice@spp.org>

This email originated from outside of the SPP network. Do not click links or open attachments unless you recognize or can verify the sender, or were expecting an email from the sender. The original sender of this email is communications@spp.org.

SPP is issuing a Conservative Operations Advisory for its entire 14-state Balancing Authority footprint in the eastern interconnection effective at 10 a.m. CT Wednesday, June 22, 2022, with an anticipated end at 10 p.m. CT Wednesday, June 22, 2022. Conservative Operations Advisories do not require the public to conserve energy.

This Conservative Operations Advisory is being declared due to high loads and wind generation output availability. As a result, the SPP Balancing Authority may use greater unit commitment notification timelines, including making commitments prior to Day-Ahead Market and/or committing Resources in Reliability Status.

SPP issues Conservative Operations Advisories when SPP there is a need to operate its system conservatively based on weather, environmental, operational, terrorist, cyber or other events. Generation and transmission operators have been provided instructions on applicable procedures, including to report any limitations, fuel shortages or concerns. SPP will send additional information if necessary. Conservative Operations Advisories do not require the public across our 14-state regional transmission organization (RTO) region to conserve energy. Individuals should contact their local utility for details specific to their area.

The following chart shows the relative severity of the Conservative Operations Advisory in effect from 10 a.m. CT Wednesday, June 22, 2022, through 10 p.m. CT Wednesday, June 22, 2022.



I understand there are many factors involved in a permit evaluation. In my opinion, my testimony and the information provided is as critical of a factor as any other, if not more so. Someone has to draw the line in the sand at some point, and say that we can't continue to serve the greater good of society if we continue down this path.

With all I have presented, too often our detractors paint our grassroots group as anti-wind and anti-business. Nothing could be farther from the truth. Yes, it is true that we dislike the unlevel playing field that Federal policy has created, giving wind developers an unfair advantage in the marketplace. Yes, it is true that we have supported county level policy that has restricted wind development in Coal Country to avoid the transmission congestion that has plagued many baseload plants throughout the Great Plains. Neither of those facts will change.

The honest truth, though, is that we support value-added wind development that is a true comprehensive energy solution for North Dakota...we always have and we always will. Wind has an opportunity to be a +1 for North Dakota, but most people don't understand the complexities required to make that happen. There is currently a McLean County Project that appears at face-value to be the prototype for the +1 model that will not displace coal-fired baseload electrons to accommodate the windblown intermittent electrons. It is a project that would feed and maximize the capacity of a HVDC line to Minnesota. It avoids the North Dakota AC grid in its entirety. Minnesota would get the intermittent renewables they want and more importantly, the baseload they need. All this will take place without negatively impacting the people, families, and communities in Coal Country or North Dakota.

You may hear "coexist", "grow the pie" and "all of the above" taglines often from elected officials. They sound great and make for good campaign slogans, but most don't understand the physics behind the rhetoric. In the last legislative session, sound energy policy bills that were designed to facilitate that rhetoric into becoming reality were killed before they were introduced in committee or watered-down in committee. The +1 opportunity slipped through North Dakota's fingers, in large part because of the powerful lobbyists representing the wind interests.

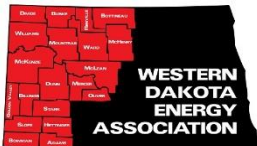
In summary, this project does not appear to fit the +1 economic model we advocate for benefitting North Dakota.

Respectfully submitted,

Mark L. Pierce, Founder

Faces of North Dakota Coal

Beulah, ND



WESTERN DAKOTA ENERGY ASSOCIATION

February 2, 2023

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Dunn County

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Counties

Testimony of:

Geoff Simon, Lobbyist #144
in support of HB 1315 – PSC Consideration of Grid Reliability
House Energy & Natural Resources Committee

Chairman Porter and Committee members:

On behalf of the city, county and school district members of the Western Dakota Energy Association (WDEA), especially our members in Coal Country, we wish to express our strong support for HB 1315 to make it clear the Public Service Commission should consider the impact on reliability, integrity, or resilience of the electric grid before issuing a certificate of site compatibility or certificate of corridor compatibility.

Discussion of the need for this provision in Century Code was brought to light in the PSC’s recent decision in Case No. [PU-22-86](#), otherwise known as Badger Wind. The Commission approved on a 2-to-1 vote a Certificate of Site Compatibility for the 250 MW wind farm. Commissioner Randy Christmann deserves praise for his strongly-worded [dissent](#) pointing out the state’s siting law directs the PSC to ensure that new energy facilities will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota. Christmann went on to point out the threat to reliability posed by “... this unbridled buildout of new generation facilities and the associated retirement of existing facilities,” which he said is “threatening both the reliability and the affordability of electricity.”

I would also call your attention to the pre-filed [testimony](#) of Joe Spiekermeier, a coal miner from Beulah, who writes of the “Fatal Trifecta” that will inevitably lead to failure and blackouts of the grids that serve North Dakota. Joe’s testimony points out both of the regional transmission organizations (RTOs) that deliver power to North Dakota (SPP and MISO) have succumbed to 1) Over-reliance on intermittent wind and solar, 2) Relying on just-in-time natural gas-fired generation, and 3) Over reliance on neighboring RTOs.

The Fatal Trifecta Joe describes is real. The grid operators know it’s happening, the utilities in this room know it’s happening, utility regulators know it’s happening, federal regulators and members of Congress know it’s happening, but with so many layers of accountability, one entity alone cannot prevent this advancing train wreck, which is driven by the mysterious belief of policy makers that carbon dioxide emissions cause bad weather.

HB 1315 would put into statute language that specifies the PSC must consider “evidence establishing the impact on the reliability, integrity, or resilience of the existing electric supply and distribution system” before issuing a certificate of site compatibility or certificate of corridor compatibility.

WDEA urges the House Energy and Natural Resources Committee to give HB 1315 a strong Do Pass recommendation.

House Bill 1315

Presented by: Randy Christmann, Chairman
Public Service Commission

Before: House Energy and Natural Resources Committee
Honorable Todd Porter, Chair

Date: February 02, 2023

TESTIMONY

Mr. Chair and members of the committee, I'm Randy Christmann, Chair of the Public Service Commission, here to testify on HB 1315. I am testifying on my own behalf.

HB 1315 adds language to Section 9 of NDCC Chapter 49-22. Chapter 49-22 is 13 pages. Section 9 is only about ½ page and contains eleven "Factors to be considered in evaluating applications and designation of sites, corridors, and routes." But let's start at the beginning of the Chapter instead of in the middle. Chapter 49-22 as a whole is known as the "ENERGY CONVERSION AND TRANSMISSION FACILITY SITING ACT." Section 1 has been repealed, so it really starts with Section 2. Section 2 is the "Statement of Policy." (4 sentences and less than 200 words)

This Statement of Policy is one of the few sections of law that starts out with the words "The legislative assembly finds ..." The Statement of Policy emphasizes that it is necessary to ensure that energy conversion and transmission facilities produce minimal adverse effects on the environment AND on the welfare of the citizens of this state. Then the last summarizing sentence

of the Statement of Policy emphasizes that "... sites and routes shall be chosen which minimize adverse human and environmental impact while ensuring continuing system reliability and integrity ..."

This Siting Act is nearly 50 years old now. It was actually created during North Dakota's coal boom of 40-60 years ago. It has since been an important part of the responsible buildout of infrastructure throughout the development of our oil and gas industry.

But let's think for a moment about what was happening decades ago in North Dakota that led to the Siting Act being adopted. Rural electrification and the Baby Boom had changed this country, and we needed more energy. Compared to now, power line rights of way were easy to acquire and costs were low, so many investors and utilities determined that rather than relying on railroads to haul coal to population centers for their power plants, they would build the power plants by the coal mines and send electricity over the wires. It was a boom for North Dakota. Transmission lines were constructed that anticipated many more plants being built. And then environmental issues derailed many of those plant construction plans. We were left with transmission capabilities that far exceeded our generation capabilities.

Then about 20-25 years ago another remarkable thing happened. Technology and engineering made available large scale wind energy generation. Many in North Dakota, myself included, proclaimed ourselves supporters of an "all of the above" energy generation strategy, and over the years we were finally able to capitalize on a lot of that excess transmission capacity. But along the way

we have added more nameplate wind capacity than the capacity of our entire coal fleet. And by doing that, we have gone from an area with excess transmission capacity to an area with some of the worst transmission congestion problems in the nation. Congestion problems for which both of the regional transmission operators with membership in North Dakota are seeking solutions. Solutions that will cost our citizens enormous amounts of money.

The severity and significance of congestion problems really became clear with Storm Uri in 2021. In the aftermath, extensive studies have been done by both regional transmission organizations, and a lot of learning has been done by utility regulators around the nation.

Until recently, it was logical to wear that “all of the above” mantra and focus on Section 9 of the Siting Act. Outside of the Section 9 factors, there really were no clear adverse effects on the welfare of the citizens of this state caused by continued generation buildout. Thus we have focused on these eleven, largely environmental considerations in Section 9. Unfortunately, decades of not needing to focus on system reliability and integrity in our siting process has now been perceived to mean that we cannot consider what is probably the most important single thing in the Siting Act. With what we have learned in the last two years, we must no longer focus exclusively on Section 9 during our siting decisions. We must also take into consideration the reliability, integrity, and resilience of our electric supply and distribution system as this bill clarifies.

I still think it is duplicative to add almost the same language already contained in the “Statement of Policy” to our “Factors to be Considered.” I

believe that is something we can and must do regardless of what you do with this bill.

But you have a dilemma. Failure to pass HB 1315 will leave doubt. Some may think it was defeated because you assumed that the PSC can already do this. Others may think you want PSC siting decisions to ignore system reliability and integrity and focus exclusively on things like bugs and bunnies.

The problems associated with a constrained transmission system are very clear to me. I urge you to clarify to everyone that the Legislature continues to believe that the PSC has the necessary authority to do our best to ensure continuing system reliability and integrity.

This concludes my testimony. Thank you for your time and I am available for questions.



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House Bill 1315 Testimony in Opposition

House Energy and Natural Resources Committee, Representative Porter, Chair

February 2, 2023

Chairman Porter, members of the committee, I am Carlee McLeod, president of the Utility Shareholders of North Dakota, here on behalf of USND utility members, including ALLETE, Montana-Dakota Utilities, Otter Tail Power, and Xcel Energy. We ask you to oppose HB 1315.

We provide reliable electric service to our customers, and our records are among the best in the nation in providing that reliability. We do not operate in a vacuum. We serve regionally, and our transmission is carefully planned with the cooperation of a regional transmission organization (RTO). We participate in MISO, the Midcontinent Independent System Operator which serves 15 US states and Manitoba. Within MISO, there are over 6,800 generating units, and 68,000 miles of transmission. Each year, MISO conducts a reliability study of its transmission system. That study analyzes system needs, identifies alternative solutions, and resolves gaps where upgrades are needed. In addition to reliability study, MISO conducts economic planning to develop transmission plans that deliver efficient and lowest cost electricity. Lastly, MISO conducts broader transmission study for long range transmission planning (LRTP). MISO recently completed Tranche 1 of its LRTP, approving \$10.3 billion in new transmission projects. Two of those projects will directly benefit North Dakota.

Before any new project may interconnect with the MISO transmission system, it is subjected to analysis by MISO to determine its potential effect on the carefully managed transmission system. A more thorough and expert study on each project and its effect on the overall system does not exist.

This bill requires an applicant to file evidence regarding reliability, integrity, and resilience with a siting application. First, "sufficient" is not an evidentiary standard defined in law. Second, no other siting requirement includes an evidentiary standard. Third, in reality, this requirement is satisfied by an interconnection agreement from MISO. If the PSC were to interpret this bill as requiring something greater than this definitive analysis, it would be virtually impossible to produce something with greater credibility. Further, the PSC does not have the resources to expand its expertise and analysis to appropriately assess the evidence demanded in this bill. As such, this bill can only lead to delay and denial of applications, or litigation challenging the validity of this requirement.

North Dakota is blessed with an abundance of natural resources providing energy. We generate more electricity than our citizens require, and we export the rest. We should continue to grow our resources and move more of our energy to areas where it can be used. We should be supporting expanded transmission capacity and new transmission rather than limiting new generation. A bill like this, though well-intentioned, will guarantee no new transmission capacity will be built in North Dakota. Developers will move projects to more accommodating states. We are at the precipice of a new energy boom fueled by emerging technology and North Dakota persistence. This is not the time to stop growth. This bill would stop growth, and we ask you to oppose it.

Thank you.



House Bill 1315

Presented by: Julie Fedorchak, Commissioner
Public Service Commission

Before: House Natural Resources Committee
The Honorable Todd Porter, Chair

Date: February 2, 2023

TESTIMONY

Mister Chairman and committee members, I am Julie Fedorchak, Commissioner on the Public Service Commission, and I'm here to testify in opposition to HB 1315.

First, some background on my experience with siting and grid reliability. I've been serving on the PSC for 10 years and won my third statewide election for another 6-year term in November. I have managed the Commission's siting portfolio during my entire tenure.

Additionally, I am Vice President of the National Association of Utility Regulatory Commissioners (NARUC) and will become president of this, our national industry group, in November. For the last 6 years I have been the Commission's, and therefore North Dakota's, main liaison to the Midcontinent Independent System Operator, otherwise known as MISO. This is the regional transmission organization to which all of our state's investor owned utilities -- Xcel Energy, Otter Tail Power and MDU -- belong. State regulators from the 15 MISO states have our own independent group for engaging with MISO called the Organization of MISO states. I am past president of that group and served on the

executive committee for five years. For the last two years, I have been the lead regulator for OMS covering the markets and reliability workgroups. I sought this role in order to have the largest possible impact on policies to improve grid reliability. I hope this background underscores my passion for the issues of reliability and my involvement nearly every day in work being done to address it.

I appreciate the legislature's concerns about the reliability of our electric system and I share these concerns. The pace of thermal generation retirements in the MISO region is significantly faster than the availability of replacement resources capable of serving the same need. This is a threat to our regional grid.

I spend at least half of my time if not more advocating through various MISO processes for meaningful market changes to properly compensate capacity resources like our coal fired power plants that ensure reliability. They are threatened by many forces, but economics is a crippling one. The market must appropriately reward these vital units for their reliability contributions to the grid. Make no mistake about it, that is the real solution. I would welcome an opportunity to talk to you about measures underway right now in MISO to protect the reliability of the Bulk Power System. And I urge you to support the Commission's budget request to help us better engage with these RTOs.

I also share your concerns about challenges facing our state's lignite industry and the need to secure their position in our nation's power generation fleet longterm.

And I acknowledge the undeniable issues North Dakota has with congestion on our transmission grid.

So if I care about reliability, congestion and the future of our state's lignite industry, why do I oppose this bill? Because this bill doesn't address those things and it stands to add confusion and chaos to our siting process.

I have three concerns with this bill. First, as I mentioned I have a lot of experience with our state's siting law. I've also seen how other states approach siting. Experience tells me that North Dakota's fair, open and predictable process is a model for the nation. We need to be very careful not to add broad language that can be used to confuse or complicate the permitting of energy infrastructure that will pave the way for legal challenges.

This bill opens the door for people to use the siting process as a tool to regulate grid reliability. Many testified to this very thing today. This is exactly the kind of confusion we should NOT add to the siting law. There is no end to the worthwhile causes that could be considered in siting. We could use siting as a tool to mitigate global warming, regional impacts on air quality, or to refuse electricity from carbon emitting generation. All of these have been suggestions in the past. These exercises add uncertainty and create more avenues for siting to become a tool for activists on any side of an issue to stop projects.

Grid reliability is a shared responsibility between utilities, state regulators and MISO and it is a major focus of all three of these entities. The North Dakota siting law, on the other hand, establishes a process to examine the location or route of proposed energy infrastructure and to mitigate impacts to environmental and cultural resources and the people living near that infrastructure. I urge this legislative body to resist measures to use siting to accomplish goals beyond that.

Some have suggested this bill is an answer to congestion on our electric grid. When roads get too crowded we add more lanes rather than shut down development. Transmission lines are the roads for electricity. To the extent that this bill will prevent new generation from being developed it will control congestion. It will prevent additional traffic on the busy roads. It will also decrease energy production, decrease investment in areas of the state that want it, and decrease North Dakota's growth as an electricity exporter.

This bill could also make congestion worse. MISO is working to "widen the roads" so to speak. They are in the throes of modeling where future generation resources are likely to be developed so they can decide where to build the next wave of transmission lines. This bill will send a signal to MISO that North Dakota is leary of permitting new generation, therefore, building additional transmission infrastructure to alleviate existing congestion or to serve future new North Dakota generation would not be a wise investment. Rest assured, the messages this legislature sends about North Dakota's appetite for new electric generation will be heard loud and clear and factored into MISO's long range transmission plans. And this impacts the future of all North Dakota generation – wind, natural gas, coal and any new technologies on the horizon.

Finally, evaluating the impact of any new generation facility on the reliability and resilience of the grid is the purpose of the generation interconnection process run by regional transmission operators. Prior to connecting to the grid, new generation projects must have a signed Generation Interconnection Agreement, called a GIA. In MISO, that process involves three phases of study whereby the

impacts of new resources are evaluated while maintaining the rights of existing network resources like Coyote Station. Any upgrades needed to maintain system reliability and protect the rights of existing network resources are charged to the new generator and included in the GIA.

This bill requires the Commission to determine what is “sufficient evidence establishing the impact [of a new generation project] on the reliability, integrity or resilience of the *existing electric supply* and distribution system.” In evaluating this what would the commission consider that the grid operators aren’t already looking at in their multi-year studies? Are we suppose to evaluate the potential economic impact the new resource could have on existing resources and how that might play into future retirement decisions? Are we expected to model future curtailments of resources based on different capacity factors, weather patterns and real time energy prices? Are we to estimate the cost impact of that on existing generators and project how that impacts their longevity? How far are we suppose to go in the siting process to find “sufficient evidence” about the potential impacts of one project on another and then relate that to grid reliability? These complicated studies could take months if not years to complete. This legislative body has directed the agency to make a permitting decision within six months.

We have four-people in our public utilities division and they are tasked with regulating six multi-state natural gas and electric monopoly utilities, two Regional Transmission Organizations and permitting billions of dollars of

investments in energy infrastructure. We do not have the capacity on staff to do this additional work.

However, as I said a minute ago, the multi-state Regional Transmission Organizations already appropriately have teams of electrical engineers who evaluate generation interconnections every day. Perhaps the the legislature wants to address this issue by requiring companies to have a signed GIA prior to coming to us for a permit. That could be a workable compromise.

North Dakota's legal and regulatory framework for energy development has been a strength for our state for many decades and has helped support the responsible development of hundreds of billions of dollars in investment and economic impact. The energy infrastructure siting act has been an integral part of this. It is a thorough, fair, open process that is relatively predictable and encourages investment in North Dakota while minimizing impacts to people and the environment.

I urge you to reject this measure. It is well intentioned but misplaced. We have incredible opportunities to grow our power generating resources, both renewable and fossil fuels with carbon capture and storage, bio fuels, hydrogen and other new technologies. Our nation is hungry for our power. Now more than ever we should follow the example of Rainbow Energy and work together to leverage all of our resources to advance North Dakota's energy industry and help fulfill our nation's energy needs.

Mister Chairman, this concludes our testimony. I will be happy to answer any questions.



1200 W. Century Ave.
Bismarck, ND 58503
Mailing address:
P.O. Box 5650
Bismarck, ND 58506-5650
(701) 530-1000
www.MDU.com

TESTIMONY IN OPPOSITION OF HOUSE BILL 1315
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
FEBRUARY 2, 2023

JUSTIN DEVER – SENIOR PUBLIC AFFAIRS SPECIALIST, MDU RESOURCES GROUP, INC.

Good morning, Chairman Porter and members of the Committee. My name is Justin Dever and I am testifying today in opposition of House Bill 1315 on behalf of MDU Resources Group and its subsidiary Montana-Dakota Utilities Co. Montana-Dakota serves 157 communities in North Dakota with electricity and natural gas.

The reliability and resiliency of our electrical grid are vitally important, as well as resource adequacy. Electric public utilities, such as Montana-Dakota Utilities, already have an obligation to ensure reliable service under NDCC § 49-05-19. This is an obligation we take seriously, even prior to it being added into state law.

As critical as these concepts are, House Bill 1315 could unintentionally impede the ability to develop projects in the state that would help strengthen the electrical grid, such as additional transmission projects.

HB 1315 adds a consideration of “sufficient evidence establishing the impact on the reliability, integrity, or resilience of the existing electric supply and distribution system.” It is unclear what evidence would be required to sufficiently demonstrate the impact. The most direct source would be a regional transmission organization (RTO) which already conducts generator interconnection and transmission studies. The RTOs have the staff and expertise to perform this work, and these studies are conducted before a project can be connected to the regional electrical grid. If the state were to require anything in this regard, it would make sense to require that the applicant has obtained a transmission interconnect agreement.

Currently, the RTO process can run in parallel with the state’s siting process. HB 1315 could require the RTO generator interconnection or transmission study be completed prior to the siting process being completed, thus causing delays. To be clear, no project is going to be constructed if it doesn’t have the necessary RTO approval and the ability to connect to the regional grid.

I respectfully ask the committee to recommend a Do Not Pass on HB 1315.

Mr. Chairman and members of the committee, thank you for allowing me to visit with you today.



February 2, 2023

House Energy & Natural Resources Committee

Re: Oppose HB 1315

Chairman Porter and members of the committee,

Wind Industry of ND (WIND) is a coalition that advocates for the continued support of wind as one of North Dakota's many valuable natural resources.

A one-sentence bill might seem simple. Everyone wants low-cost, reliable electricity. HB 1315 however, expands the jurisdiction of the PSC from the core purpose of the siting act—protecting human and environmental health—to regulation of the regional grid. This is problematic for various technical, practical, and legal reasons.

The PSC does not currently have the resources or expertise to do its own analysis on grid or reliability issues. They do not have grid experts or electrical engineers mired in the technical and physical details of what keeps the grid reliable. These specialized staff demand competitive compensation in the private sector—a cost not currently supported in the PSC budget. Would MISO or SPP officials, or grid operators, voluntarily show up in siting hearings and offer expert testimony? Would the PSC have to subpoena them? Would the bill create a situation where there are competing studies of grid impact, when MISO and SPP are the qualified experts on impacts to the grid?

WIND members are also concerned about the subjectivity of the terms contained in HB1315. Integrity, reliability, and resilience are undefined in the bill. These terms are subject to wide debate. Our state has benefitted tremendously from its pro-business environment and predictable regulatory climate. WIND member companies seek to invest billions of dollars in our state, but this bill would add significant uncertainty and risk to the regulatory process and discourage this investment of private capital.

Before a wind project can place electrons into the grid, it must go through a long, technical, and oftentimes expensive process called interconnection, managed by the Regional Transmission Operator and with input from the transmission owner. The very purpose of the interconnection process is to determine impacts of new generation on the grid. If a new wind project creates an issue with the grid, the project will be responsible for upgrading the transmission system before it can send electrons into the grid to ensure, integrity, reliability, and resilience. Simply put, there is already a well-established process for assessing—and mitigating—how a new wind project might impact the grid.

Novak, Anna

From: Melberg, Samantha R. <smelberg@nd.gov>
Sent: Thursday, January 12, 2023 7:31 AM
To: Novak, Anna
Subject: RE: Wind Project
Attachments: Wind Petition List 2020.docx

Anna, attached you will find a list of names and addresses if they included it on the petition. I am going to drop Shannan Senger's, County Recorder, contact info below and she can assist you with lease information.

Senger, Shannan <shsenger@nd.gov>
701-745-3272

Thank you,

Samantha Melberg
Mercer County Auditor
(701) 745-3292
smelberg@nd.gov

From: Novak, Anna <anovak@ndlegis.gov>
Sent: Wednesday, January 11, 2023 1:04 PM
To: Melberg, Samantha R. <smelberg@nd.gov>
Subject: Re: Wind Project

******* CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe. *********

The area targeted for this wind farm was north of Hazen to the lake/Pick City.

I'd like the list of names and addresses. I don't necessarily need copies of the letter. What I am looking for is to show how many people that signed leases actually live in Mercer County and more specifically on the land leased.

Does that answer your questions?

Anna

From: Melberg, Samantha R. <smelberg@nd.gov>
Sent: Wednesday, January 11, 2023 11:19:08 AM
To: Novak, Anna <anovak@ndlegis.gov>
Subject: RE: Wind Project

Petition List:

Doris Usselman

Debra Moug

Sara & David Mittelstead – 4680 3rd ST SW, Hazen

Weston Berg – 1240 Hwy 31, Stanton

Leslie Neuberger – deceased

George & Pam Nygaard – 427 S Sibley Ave, Litchfield MN 55355

Keith & Patricia Kilber – 1545 Sundance Square, Fargo ND 58104

Steve Comer – 8518 38 ST SE, Jamestown ND 58401

Judy & Quintin Ziemann – 1210 Long Ave, Detriot Lakes MN 56501

Eldor Scheid – 22 Birch LN, Fargo ND 58103

Raymond & Jean Grosz – 314 Central Ave N, Hazen ND 58545

Allan Ziemann – 1008 27th ST NW, Mandan ND 58554

Terrance & Carletta Meuchel – 700 Summit Ave, Hebron ND 58638

Art Ziemann

Wayne & Sylvia Myers – 55th Ave NW Beualh ND 58523

Sheila & Charles Wittenberg – 1724 ValleMoor DR, Bismarck ND 58501

Richard Knell – 8660 Willow RD, Mandan ND 58554

Chen Shuh – 5912 Horeshoe Bend, Mandan ND 58554

Nancy Linde – 3619 Evergreen RD N, Fargo ND 58102

Paula & George Yates – 151 Bartell RD, Judsonia AZ 72081

Kenneth Adolf – 15585 Canyon Ridge, Eden Prairie MN 55347

Delray Galster – 5680 County 26, Beulah ND 58523

Lynn & Rhonda Kruckenberg – 1217 Sunflower Lane, Hazen ND 5854

Jeffrey & Bridget Schuster – 9610 County Rd 47, Bottineau ND 58318

John Cole – 4534 County RD 37, Hazen ND 58545

Roy & Ashley Rasch – 145 County 27 N, Hazen ND 58545

Early & Ann Wiedrich – 655 CTY 27, Hazen ND 58545

Daniel Knell – 54 51st Ave NW, Hazen ND 58545

Gary & Maxine Beckwith – 521 7th Ave NE, Hazen ND 58545

Brandon Flemmer – 3725 Augusta Way, Bismarck ND 58503

Delton & Michelle Grosz – 4565 County RD 37, Hazen ND 58545

Kenneth Isaak – 5710 N Woodview Lane, Spokane WA 99212

Susan Clemens – 1430 N Heights DR, Sheridan WY 82801

Bernice Heyd – 2602 Atlantic Dr S, Fargo ND 58103

Rodney Huber – 4512 Belgiam Ln, Pasco WA 99301

Ardella Ekstrom – 4805 Highland RD, Manda ND 58554

Robert & Pamela Miller – 1018 1st Ave NW, Hazen ND 58545

Frieda Maas – 101 8th ST NW, Hazen ND 58545

Micki Drath – 3833 Dorchester Lane, Eugene OR 97404

Brenda & Lee Miller – 16906 Country Club Lane, Spencer IA 51301

Ferdinand & Deetra Madche – 301 4th Ave NE, Hazen ND 58545

Nancy Lunde – 3619 Evergreen RD N, Fargo ND 58102

Ricky Scheid – 654 CTY RD 27, Hazen ND 58545

Justin & Danette Heinle – 812 Saddle Ridge RD, Bismarck ND 58503

Arlene & Calvin Wittmayer – 161 44th Ave SW, Hazen ND 58545

Nancy Olleburger – 904 Riverwood Dr, West Fargo ND 58078

Helen Ziemann – 4719 Easy St, Cheyenne WY 82009

Jerome Ziemann – PO Box 466, Cheyenne WY 82003

Mariz Ziemann – 6270 Buckskin Trail, Cheyenne WY 82009

Bruce C Maas – Pleasant Prairie, 580071

Barbara Cisneros – 6312 South Eudora Way, Centennial CO 80121

Shanon & Korrine Sailer – 125 49th Ave SW, Hazen ND 58545

Clarissa Sailer – 819 Brome Ave, Bismarck ND 58502

Dallas Rahn – 1301 Airport Fwy Apt 505, Bedford TX 76021

Curt Comer – 1795 W Opal Ct, Cold Springs NV 89508

Jennifer Olander – 4060 9th St SW, Stanton ND 58571

Judy Sickler – 173 Enchantment RD, Rapid City SD 57701

Gary & Laverne Scheid – 18 5th ST NW, Hazen ND 58545

Dan Knell

Weston Berg

RECEIVED

JUL 01 2020

6-29-2020



VIA E-MAIL AND U.S. MAIL

Mercer County Board of County Commissioners
Attention: Shana Brost, Mercer County Auditor
P.O. Box 39
Stanton, ND 58571-0039
E-mail: sbrost@nd.gov

Re: Petition Requesting a Separate Hearing on the May 6, 2020 Resolution Imposing a
Moratorium on Zoning Applications Related to Wind Energy and Wind Related
Operations

Dear Commissioners and Ms. Brost:

I submit this Petition for a Separate Hearing ("Petition") on the Resolution passed and adopted by the Mercer County ("County") Board of County Commissioners ("Board") at the May 6, 2020 Board meeting. Specifically, I oppose the May 6, 2020 Resolution, which "imposes a moratorium on zoning applications to the Mercer County Planning and Zoning Board and the Board of County Commissioners related to wind energy and wind related operations until further order of the Board but not to exceed 24 months." This Petition is submitted to the Board and filed with Ms. Brost, County Auditor, pursuant to North Dakota Century Code ("NDCC") § 11-33-10 and as provided in Section 2 of the May 6, 2020 Resolution.

The grounds for my objections to the May 6, 2020 Resolution include:

- I am a landowner in and resident of the County. A moratorium on zoning permit applications related to wind energy interferes with my existing wind energy lease and my right as a landowner to develop a wind energy project on my land. The Board has already enacted zoning requirements for wind energy development, and previously issued zoning permits for wind energy development in the County pursuant to those zoning requirements. Thus, the moratorium is directly at odds with the County's past approach to wind energy development, which the Board determined was an authorized conditional land use. No reason has been given for suddenly enacting a moratorium on wind energy zoning permit applications and, in turn, prohibiting me from developing and benefiting from a resource on land that I own – particularly since other landowners in the County have been allowed to develop and benefit from the same resource under the existing zoning requirements.
- I am also a taxpayer in the County. A new wind energy project in the County would provide a new source of tax revenue. The May 6, 2020 Resolution would delay, at best, and may stop development of wind energy in the County, which will also delay or stop receipt of the associated tax benefits, which our County needs.

- No prior notice was given that the Board would consider a moratorium on zoning applications related to wind energy. As a result, I did not have an opportunity to voice my concerns to the Board before the May 6, 2020 Resolution was adopted.

Please notify me of the time and place set for the separate hearing at the physical or e-mail addresses provided below. I understand that other landowners in the County plan to submit similar petitions, and I would support the Board holding a single hearing on all petitions submitted.

Sincerely,

cc: Jessica Binder, State's Attorney (jjbinder@nd.gov)



North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

HB 1315
2/2/23
HNAT



Representative Anna S. Novak

District 33
1139 Elbowoods Drive
Hazen, ND 58545-4923
anovak@ndlegis.gov

COMMITTEES:
Education
Energy and Natural Resources

Testimony - HB1315

February 2, 2023

Mr. Chairman, members of the committee – for the record, my name is Anna Novak, Representative from District 33, which is the heart of Coal Country. You have before you HB1315. This bill simply adds a section under Century Code to allow reliability, integrity and resilience to be factored into the Public Service Commission’s siting authority.

In my mind, this isn’t a controversial idea. I understand that there may be some opposition to this bill because the utilities may not want to be regulated more than they already are and intermittent energy is now known for their reliability. However, I believe that the PSC has a duty to the citizens of North Dakota to ensure that we have both affordable and reliable electricity based on its mission statement, which says:

The Public Service Commission fulfills its statutory mandates by protecting consumers, the public interest and the environment. Our values include:

- **Balance:** balancing public and private interest affecting each decision
- **Collaboration:** tackling work challenges as a team to harness expertise and achieve better outcomes with greater impact
- **Continuous Improvement:** building a workplace that fosters growth, excellence and diversity
- **Creativity:** generating solutions by turning new and imaginative ideas into sound policies and regulations that protect citizens and promote orderly development
- **Responsiveness:** taking action to address the needs of industry and the public

Oftentimes, a geographic area is only serviced by one utility so there aren’t options in terms of choosing a different utility to purchase power from. Disruptions in service and potential disruptions in service are becoming more commonplace. I’m sure you all remember the power outages North Dakota residents experienced in February of 2021 when Winter Storm Uri took place. I recognize that quick decisions had to be made to ensure the entire grid wasn’t disrupted and people weren’t left without power in deadly temperatures for a long period of time. But power was cut to the Bakken, resulting in millions of dollars lost by the state in oil production. Giving the PSC authority to factor in reliability will give them a tool in their toolbox to help them in making sure that doesn’t happen again.

I had the opportunity to visit with a wind lobbyist about this bill. Shockingly, they didn’t care for it. While I don’t believe there is anything controversial about wanting to provide North Dakota residents with reliable electricity, I was told that the wind industry’s belief is that the Regional Transmission Organizations, in our case MISO and SPP, are the ones that take care of ensuring there aren’t power outages. And I think that was what they were originally designed to do. But things have changed and the RTO’s have taken the stance that they are “Policy Takers, Not Policy Makers”. They try to do what the states tell them to do so it is our job to tell them what North Dakota wants.

Before 2016, MISO didn't have any events that required them to enact the use of emergency procedures. Since 2016, Miso has had 41 Maximum Generation events that required them to use emergency procedures. What's changed since 2016? The US Energy Administration System, otherwise called the EIA, is a governmental agency that tracks electricity generation in the US. According to them, renewable electricity generation went up from about 17% in 2016 to 28% in 2022. I'm not opposed to renewable electricity generation, but it cannot lead to reliability problems. It's unacceptable. North Dakota is an energy powerhouse, exporting 7x the electricity we produce. We shouldn't be without electricity.

Recently, there was a wind farm approved by Wishek, ND, and it's called the "Badger Wind Project". The transmission line that the project plans to connect with is already full of electricity from the Coyote Station Power Plant. It's baseload, otherwise known as "always reliable" electricity. That transmission line is already known to be congested and adding another electricity generation source to that line creates problems and will most likely displace energy produced at Coyote Station, making that plant less economical to run. This reduces reliability because the line is congested and they are adding unreliable intermittent energy to the line

Along with the bill, I handed out the first part of the Facility Siting Act from the Century Code. The part that I want to point out is the last sentence of the first paragraph, which says, "In accordance with this policy, sites and routes shall be chosen which minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion."

When I read this, it says to me that reliability must be factored in with permitting electricity generation projects. But it was not interpreted that way in the PSC's working session for the Badger Wind Project, which I listened to. Commissioner Christmann brought up that electricity reliability will be compromised with the project and should be factored into the permitting decision. Commissioner Fedorochek disagreed and said that it could not be a factor in permitting. Commissioner Fedorochek and Commissioner Haugen-Hoffart voted to give permitting to the project while Commissioner Christmann voted against it.

My bill is not complicated. It simply clears up any grey area and tells the PSC that reliability, integrity and resilience must be factored into siting electricity generation projects. It seems to me that the utilities say it's the Regional Transmission Organization's job to ensure there is electricity all the time. The Regional Transmission Organization's tell us that they're policy takers not policy makers. So, let's give them a policy to factor into their formula and tell them that the North Dakota state legislature is committed to making sure our citizen's are provided with reliable electricity. I urge you to give HB1315 a strong Do Pass recommendation. With that, I'll stand for questions.

HOUSE BILL NO. 1315

Introduced by

Representatives Novak, Dockter, S. Olson

Senator Patten

1 A BILL for an Act to amend and reenact subsection 1 of section 49-22-09 of the North Dakota
2 Century Code, relating to factors to be considered when evaluating applications and
3 designation for sites, corridors, and routes.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Subsection 1 of section 49-22-09 of the North Dakota Century
6 Code is amended and reenacted as follows:

- 7 1. The commission shall be guided by, but is not limited to, the following considerations,
8 where applicable, to aid the evaluation and designation of sites, corridors, and routes:
- 9 a. Available research and investigations relating to the effects of the location,
10 construction, and operation of the proposed facility on public health and welfare,
11 natural resources, and the environment.
 - 12 b. The effects of new electric energy conversion and electric transmission
13 technologies and systems designed to minimize adverse environmental effects.
 - 14 c. The potential for beneficial uses of waste energy from a proposed electric energy
15 conversion facility.
 - 16 d. Adverse direct and indirect environmental effects that cannot be avoided should
17 the proposed site or route be designated.
 - 18 e. Alternatives to the proposed site, corridor, or route which are developed during
19 the hearing process and which minimize adverse effects.
 - 20 f. Irreversible and irretrievable commitments of natural resources should the
21 proposed site, corridor, or route be designated.
 - 22 g. The direct and indirect economic impacts of the proposed facility.
 - 23 h. Existing plans of the state, local government, and private entities for other
24 developments at or in the vicinity of the proposed site, corridor, or route.

Sixty-eighth
Legislative Assembly

- 1 i. The effect of the proposed site or route on existing scenic areas, historic sites
- 2 and structures, and paleontological or archaeological sites.
- 3 j. The effect of the proposed site or route on areas unique because of biological
- 4 wealth or because the areas are habitats for rare and endangered species.
- 5 k. Problems raised by federal agencies, other state agencies, and local entities.
- 6 l. Sufficient evidence establishing the impact on the reliability, integrity, or resilience
- 7 of the existing electric supply and distribution system.

CHAPTER 49-22
ENERGY CONVERSION AND TRANSMISSION FACILITY SITING ACT

49-22-01. Short title.

Repealed by S.L. 2017, ch. 328, § 27.

49-22-02. Statement of policy.

The legislative assembly finds that the construction of energy conversion facilities and transmission facilities affects the environment and the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and upon the welfare of the citizens of this state by providing that no energy conversion facility or transmission facility shall be located, constructed, and operated within this state without a certificate of site compatibility or a route permit acquired pursuant to this chapter. The legislative assembly hereby declares it to be the policy of this state to site energy conversion facilities and to route transmission facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy, sites and routes shall be chosen which minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

49-22-03. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Certificate" means the certificate of site compatibility or the certificate of corridor compatibility issued under this chapter.
2. "Commission" means the North Dakota public service commission.
3. "Construction" includes a clearing of land, excavation, or other action affecting the environment of the site after April 9, 1975, but does not include activities:
 - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter, or on which a facility was constructed before April 9, 1975, if:
 - (1) The activities are for the construction of the same type of facility as the existing type of facility as identified in a subdivision of subsection 5 or 6 or in subsection 13 of this section and the activities are:
 - (a) Within the geographic boundaries of a previously issued certificate or permit;
 - (b) For an electric energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
 - (c) For an electric transmission facility constructed before April 9, 1975, within a width of three hundred fifty feet [106.68 meters] on either side of the centerline;
 - (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area;
 - (3) The activities are for the construction:
 - (a) Of a new electric energy conversion facility;
 - (b) Of a new electric transmission facility;
 - (c) To improve the existing electric energy conversion facility or electric transmission facility; or
 - (d) To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
 - (4) Before conducting any activities, the utility certifies in writing to the commission that:
 - (a) The activities will not affect a known exclusion or avoidance area;
 - (b) The activities are for the construction:
 - [1] Of a new electric energy conversion facility;

PROPOSED AMENDMENT TO HB 1315

Page 2, remove lines 6-7

Page 2, after line 7, insert a new subsection (3) to NDCC 49-22-09:

3. The applicant, before the commencement of operations of the proposed facility, shall inform the Commission that it has an executed or filed unexecuted generation interconnection agreement, or comparable transmission services agreement, with the affected regional transmission organization or transmission owner, respectively.

Renumber accordingly

House Bill 1315

Presented by: Julie Fedorchak, Commissioner
Public Service Commission

Before: Senate Energy and Natural Resources Committee
The Honorable Dale Patten, Chair

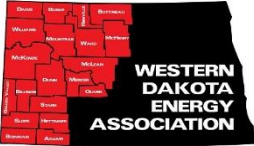
Date: March 10, 2023

TESTIMONY

Mr. Chair and committee members, I am Julie Fedorchak, Commissioner on the Public Service Commission, and I'm here to testify regarding HB 1315.

The Commission reviewed the existing amendment to HB 1315. While the Commission would like to provide testimony, it is difficult to understand the exact meaning of this legislation. However, the Commission is open to working with bill sponsors on additional amendments.

Mr. Chair, this concludes our testimony. I will be happy to answer any questions.



WESTERN DAKOTA ENERGY ASSOCIATION

March 9, 2023

EXECUTIVE COMMITTEE

Trudy Ruland
President
Mountrail County

Supt. Leslie Bieber
Vice President
Alexander PSD

Zach Gaaskjolen
City of Stanley

Keith Harris
Dickinson PSD

Supt. Tim Holte
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Shannon Holter
City of Bowbells

Lyn James
City of Bowman

Nick Klemisch
Garrison PSD
Coal Conversion
Counties

David Montgomery
Williams County

Craig Pelton
Dunn County

John Phillips
Coal Conversion
Counties

Testimony of:

Geoff Simon, Lobbyist #144

in support of HB 1315 – PSC Consideration of Grid Reliability
Senate Energy & Natural Resources Committee

Chairman Patten and Committee members:

On behalf of the city, county and school district members of the Western Dakota Energy Association (WDEA), especially our members in Coal Country, we wish to express our strong support for the original intent of HB 1315 to make it clear the Public Service Commission must consider the impact on reliability on retail markets before issuing a certificate of site compatibility to new, non-dispatchable electric energy conversion facilities.

Discussion of the need for this provision in Century Code was brought to light in the PSC's recent decision in Case No. [PU-22-86](#), otherwise known as Badger Wind. The Commission approved on a 2-to-1 vote a Certificate of Site Compatibility for the 250 MW wind farm. Commissioner Randy Christmann deserves praise for his strongly-worded [dissent](#) pointing out the state's siting law directs the PSC to ensure that new energy facilities will produce minimal adverse effects on the environment **and** upon the welfare of the citizens of North Dakota. Christmann went on to point out the threat to reliability posed by "... this unbridled buildout of new generation facilities and the associated retirement of existing facilities," which he said is "threatening both the reliability and the affordability of electricity."

I would also call your attention the House pre-filed [testimony](#) of Joe Spiekermeier, a coal miner from Beulah, who writes of the "Fatal Trifecta" that will inevitably lead to failure and blackouts of the grids that serve North Dakota. Joe's testimony points out that both of the regional transmission organizations (RTOs) that deliver power to North Dakota (SPP and MISO) have succumbed to 1) Over-reliance on intermittent wind and solar, 2) Relying on just-in-time natural gas-fired generation, and 3) Over reliance on neighboring RTOs.

The Fatal Trifecta Joe describes is real. The grid operators know it's happening, the utilities in this room know it's happening, utility regulators know it's happening, federal regulators and members of Congress know it's happening, but with so many layers of accountability, one entity alone cannot prevent this advancing train wreck, which is driven by the belief of policy makers that carbon dioxide emissions cause bad weather.

The original language of HB 1315 would put into statute language that specifies the PSC must consider "evidence establishing the impact on the reliability, integrity, or resilience of the existing electric supply and distribution system" before issuing a certificate of site compatibility or certificate of corridor compatibility. A friendly amendment to the original bill would clarify that the PSC specifically require that any approval of a non-dispatchable generation facility be conditioned on the requirement that the applicant has a provider of dispatchable electricity to retail markets interested in buying power from the proposed non-dispatchable electric energy conversion facility.

Western Dakota Energy Association
1661 Capitol Way, Bismarck ND 58501
www.ndenergy.org • 701-527-1832

23.0504.06002

FIRST ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1315

Introduced by

Representatives Novak, Dockter, S. Olson

Senator Patten

1 | A BILL for an Act to ~~create and enact a new subsection to~~ amend and reenact section 49-22-09
2 | of the North Dakota Century Code, relating to factors to be considered when evaluating
3 | applications and designation for sites, corridors, and routes.

4 | **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 | ~~SECTION 1. A new subsection to section 49-22-09 of the North Dakota Century Code is~~
6 | ~~created and enacted as follows:~~

7 | ~~Before the commencement of operations of the proposed facility, the applicant shall~~
8 | ~~inform the commission that the applicant has executed or filed an unexecuted~~
9 | ~~generation interconnection agreement, or comparable transmission services~~
10 | ~~agreement, with the affected regional transmission organization or transmission~~
11 | ~~owner.~~

12 | **SECTION 1. AMENDMENT.** Section 49-22-09 of the North Dakota Century Code is
13 | amended and reenacted as follows:
14 | **49-22-09. Factors to be considered in evaluating applications and designation of**
15 | **sites, corridors, and routes.**
16 | 1. The commission shall be guided by, but is not limited to, the following considerations,
17 | where applicable, to aid the evaluation and designation of sites, corridors, and routes:
18 | a. Available research and investigations relating to the effects of the location,
19 | construction, and operation of the proposed facility on public health and welfare,
20 | natural resources, and the environment.
21 | b. The effects of new electric energy conversion and electric transmission
22 | technologies and systems designed to minimize adverse environmental effects.
23 | c. The potential for beneficial uses of waste energy from a proposed electric energy
24 | conversion facility.

- 1 d. Adverse direct and indirect environmental effects that cannot be avoided ~~should if~~
2 the proposed site or route ~~be is~~ designated.
- 3 e. Alternatives to the proposed site, corridor, or route which are developed during
4 the hearing process and which minimize adverse effects.
- 5 f. Irreversible and irretrievable commitments of natural resources ~~should if~~ the
6 proposed site, corridor, or route ~~be is~~ designated.
- 7 g. The direct and indirect economic impacts of the proposed facility.
- 8 h. Existing plans of the state, local government, and private entities for other
9 developments at or in the vicinity of the proposed site, corridor, or route.
- 10 i. The effect of the proposed site or route on existing scenic areas, historic sites
11 and structures, and paleontological or archaeological sites.
- 12 j. The effect of the proposed site or route on areas unique because of biological
13 wealth or because the areas are habitats for rare and endangered species.
- 14 k. Problems raised by federal agencies, other state agencies, and local entities.
- 15 l. The adverse effects of new nondispatchable electric energy conversion facilities
16 on reliability for retail markets or existing electric energy conversion facility
17 access to retail markets and distribution systems.
- 18 2. The commission may not condition the issuance of a certificate or permit on the
19 applicant providing a mitigation payment assessed or requested by another state
20 agency or entity to offset a negative impact on wildlife habitat.
- 21 3. Before a hearing is held under this chapter, the commission may require satisfactory
22 written assurance from an applicant indicating the applicant has a provider of
23 dispatchable electricity to retail markets interested in buying power from the proposed
24 electric energy conversion facility.
- 25 4. The commission may condition the issuance of a certificate or permit on having a
26 power purchase agreement with an entity that owns or operates existing dispatchable
27 electric energy conversion facilities.



North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Anna S. Novak

District 33
1139 Elbowoods Drive
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COMMITTEES:

Education
Energy and Natural Resources

March 10, 2023

Mr. Chairman, members of the committee-

For the record, my name is Anna Novak, representative from District 33. You have before you the Christmas-tree version of HB1315, which makes a few changes to the Public Service Commission's siting authority.

Section 1, subsection I - ensures that the PSC factors in how adding new electricity onto already congested transmission lines might impact the existing electric energy conversion facilities. In a nutshell, it tells the PSC that they at least have to factor in how current energy sources may be displaced by adding additional electricity onto the transmission lines.

Section 3 – The PSC may factor in the amount of dispatchable baseload electricity a utility has in their portfolio before a siting hearing is held.

Section 4 – the PSC may hinge permitting the new electric energy conversion facility on the company having adequate dispatchable electricity.

Protecting our baseload electricity sources by ensuring that the electricity they produce isn't kicked offline by intermittent electricity that they can offer at lower prices is important. This will help make sure that North Dakota residents have reliable electricity and it will help protect the jobs at our plants and mines.

When the Siting Act was written something like 40 years ago, there was extra room on our transmission lines. On top of that, most of the electricity was from baseload sources. Both of those things have changed dramatically since then. Minnesota just passed the Carbon Free by 2040 law. That law was designed to specifically hurt North Dakota's natural gas and coal industries. Several utilities that serve Minnesota generate a lot of their electricity in North Dakota. We cannot continue adding more and more electricity to our transmission lines without negative side effects.

The opposition to this bill will tell you that the Regional Transmission Organizations are responsible for reliability. Then why did we have power outages in February of 2021? Why is it that MISO had zero events that required them to enact the use of emergency procedures prior to 2016, but there have been 41 Maximum Generation events that required them to use emergency procedures since 2016? According to the US Energy Administration System, otherwise called the EIA, a governmental agency that tracks electricity in the US, renewable electricity generation went up from about 17% in 2016 to 28% in 2022. I am not opposed to renewable electricity generation, but it cannot lead to reliability problems.

For the past year or so, we have been hearing that the RTO's that service North Dakota are making progress with their accreditation process, essentially giving higher values to energy sources that are available all the time, like coal, nuclear and natural gas, versus energy sources that aren't available all the time, like wind and solar. That was progress and it felt like the needle was moving. In November of 2021, SPP submitted their proposal to FERC, which gave a lower accreditation to intermittent energy than baseload and it was approved in August. However, just last week FERC reversed its approval of SPP's capacity accreditation of wind and solar resources, due to a procedural flaw. SPP is encouraged to submit a new proposal, but there were comments made by FERC that show how politically charged the commission can be. As a reminder, the FERC commissioners are appointed by the President of the United States for 5-year terms. With this information, I've included information on that ruling.

One of the things that North Dakota has been doing right for several years and in many different areas is declaring primacy. Whether it be pore space, environmental rules or now waterway issues (SB2097), North Dakota taking control of important matters is in the best interest of our state and its citizens. While we cannot necessarily declare primacy for electricity generation because we are a part of RTO's, we most certainly can take control of the reliability issue by simply tasking our PSC with the responsibility of factoring it into their siting requirements. The problem I see is that they do not want the responsibility. However, they have added a number of employees recently and if that doesn't suffice, they have the ability to contract out for services that will help in determining the reliability of electricity generation projects that are asking for permitting.

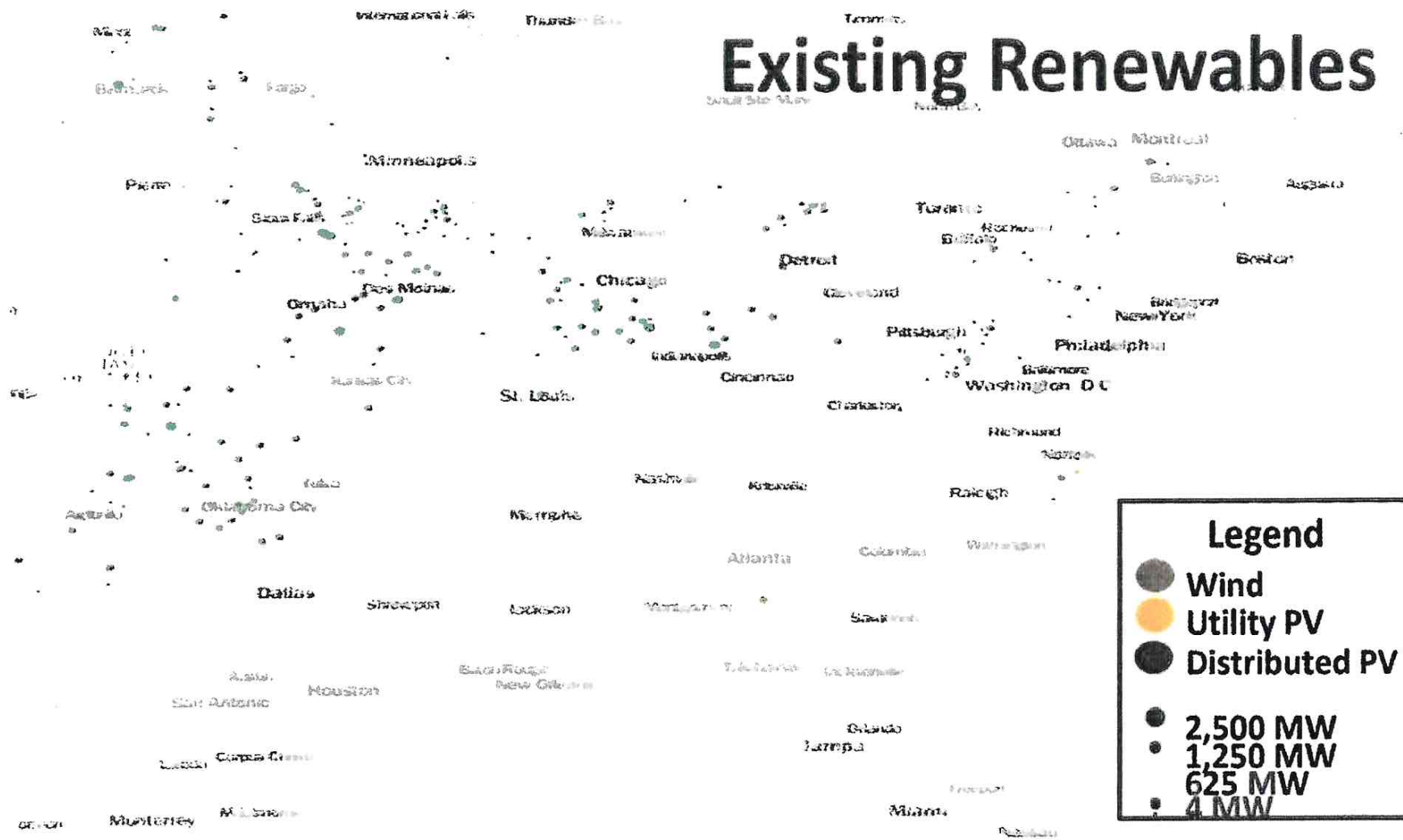
I handed out the first part of the Facility Siting Act from the Century Code. The part that I want to point out is the last sentence of the first paragraph, which says, "In accordance with this policy, sites and routes shall be chosen which minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion."

When I read this, it says to me that reliability must be factored in with permitting electricity generation projects. But it was not interpreted that way in the PSC's working session for the Badger Wind Project, which I listened to. Commissioner Christmann brought up that electricity reliability will be compromised with the project and should be factored into the permitting decision. Commissioner Fedorochek disagreed and said that it could not

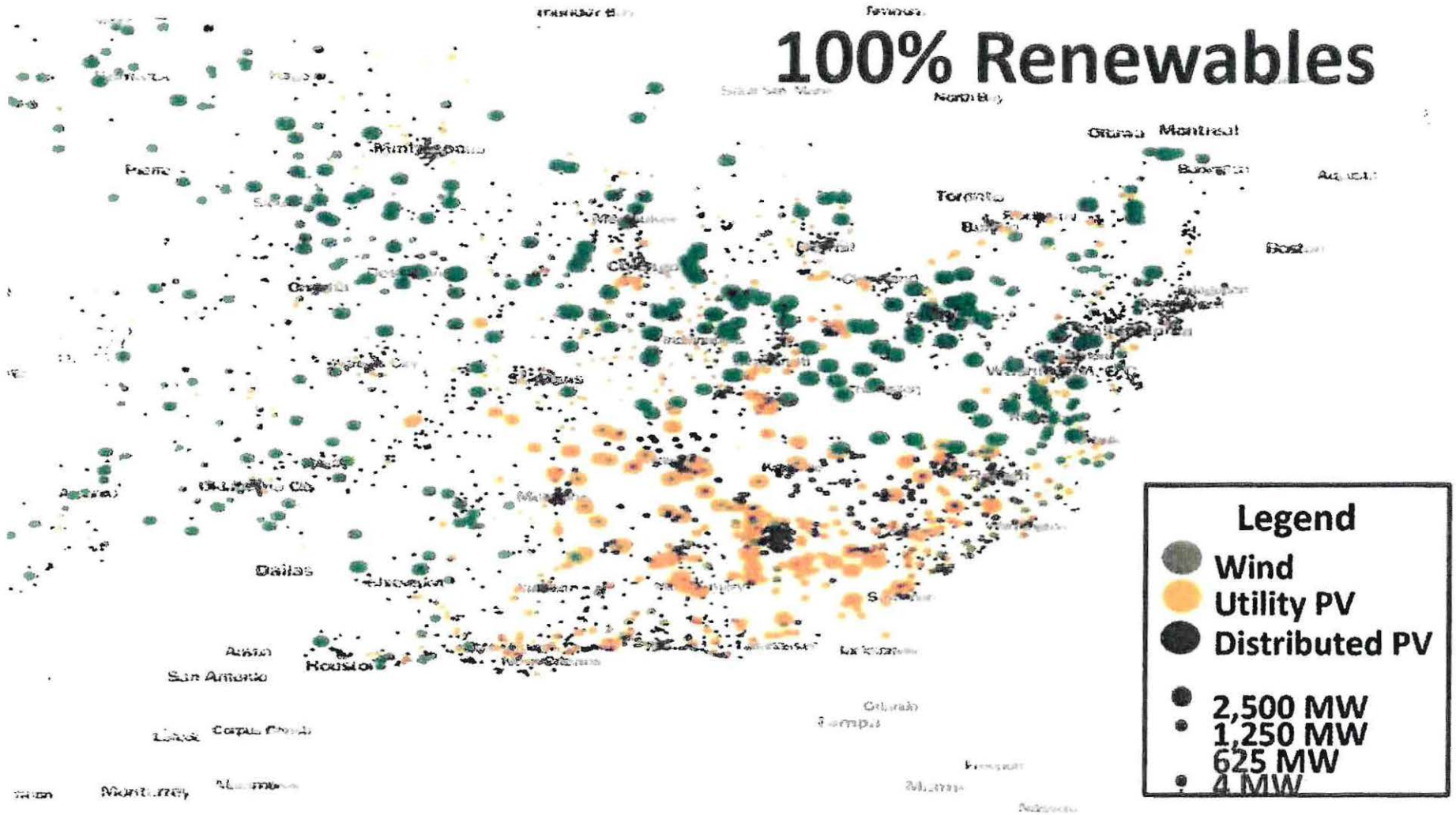
be a factor in permitting. Commissioner Fedorochek and Commissioner Haugen-Hoffart voted to give permitting to the project while Commissioner Christmann voted against it.

The RTO's claim to be policy takers, not policy makers. We are the policy makers and I believe we should make sure the PSC factors reliability into siting electricity projects, ensure that the utilities have adequate baseload electricity in their portfolio, and aren't just taking up space on our valuable transmission lines. With that, I'll stand for any questions you may have.

Existing Renewables



100% Renewables





March 10, 2023

Senate Energy & Natural Resources Committee

Re: Support HB 1315 as Introduced; Oppose Amendments to HB 1315

Chairman Patten and members of the committee,

Wind Industry of ND (WIND) is a coalition that advocates for the continued support of wind as one of North Dakota's many valuable natural resources.

HB 1315 began as a one-sentence bill on reliability, which on the surface seemed simple. Everyone wants low-cost, reliable electricity. HB 1315, however, sought to expand the jurisdiction of the PSC from the core purpose of the siting act—protecting human and environmental health—to regulation of the regional grid. This is problematic for various technical, practical, and legal reasons.

The house committee amended the bill to require applicants to inform the PSC that it has gone through the work with the RTOs to address impacts to the grid of a new project. That is done through the interconnection process. We support the bill as it came from the house because it reflects the reality of where reliability and markets are regulated—the RTOs—as required by federal law.

Yesterday, we were made aware of potential hog house amendments to the bill, which we will attempt to address in the short time we've had to analyze a technical area at the intersection of state of federal law.

The amendments seek to convert the siting act—the purpose of which is environmental and human health—to regulating the interstate electricity market. It seemingly requires the PSC to consider access to markets and distribution systems. It appears to give the PSC the authority to require that a new wind project must have either an interested buyer or a power purchase agreement before it can be approved. This is not the order in which project development occurs and does not reflect the myriad commercial arrangements in the market. This also appears to hamper or perhaps end opportunities for commercial or industrial users of generation to be supported by wind power—a type of commercial arrangement that does not require a utility offtaker.

At its core, this amendment is seeking to regulate the interstate electricity market, and it goes beyond the purpose of the siting act. The electricity markets and the reliability of the grid are squarely the responsibilities of the RTOs—not state siting regulators. Before a wind project can place electrons into the grid, it must go through a long, technical, and oftentimes expensive process called interconnection, managed by the RTO and with input from the transmission owner. The very purpose of the interconnection process is to determine impacts of new generation on the grid—the same impacts that these amendments are seeking to address. If a new wind project creates an issue with the grid, the project will be responsible for upgrading the transmission

system before it can send electrons into the grid to ensure integrity, reliability, and resilience. Simply put, there is already a well-established process for assessing—and mitigating—how a new wind project might impact the grid.

MISO and SPP are in the uniquely qualified position to oversee the interstate electricity markets and to determine impacts to the grid; and they are charged with doing so by the federal government (FERC).

We would urge the committee to support expanded transmission capacity and new transmission rather than limiting new generation. For these reasons, we urge a **DO NOT PASS** on the proposed amendments from the committee.

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House Bill 1315

Presented by: Randy Christmann, Chair
Public Service Commission

Before: Senate Energy and Natural Resources Committee
Honorable Dale Patten, Chair

Date: March 23, 2023

TESTIMONY

Mr. Chair and members of the committee, I'm Randy Christmann, Chair of the Public Service Commission, here to testify on HB 1315. I am testifying on my own behalf.

HB 1315 adds language to Section 9 of NDCC Chapter 49-22. Chapter 49-22 is 13 pages. Section 9 is only about ½ page and currently contains eleven "Factors to be considered in evaluating applications and designation of sites, corridors, and routes." But let's start at the beginning of the Chapter instead of in the middle. Chapter 49-22 is known as the "ENERGY CONVERSION AND TRANSMISSION FACILITY SITING ACT." Section 1 has been repealed, so it really starts with Section 2. Section 2 is the "Statement of Policy."

It is a real policy directive from the Legislative Assembly. The Statement of Policy emphasizes that it is necessary to ensure that energy conversion and transmission facilities produce minimal adverse effects on the environment AND on the welfare of the citizens of this state. Then the last summarizing sentence of the Statement of Policy emphasizes that "... sites and routes shall be chosen which minimize adverse human and environmental impact while ensuring continuing system reliability and integrity ..."

This Siting Act is nearly 50 years old now. It was actually created during North Dakota's coal boom of 40-60 years ago. It has gone through changes since then, but for the entire time it has been an important part of the responsible buildout of infrastructure, including the development of our oil and gas industry.

But let's think for a moment about what was happening decades ago in North Dakota that led to the Siting Act being adopted. Rural electrification and the Baby Boom had changed this country, and we needed more energy. Compared to now, power line rights of way were easy to acquire, and costs were low, so many investors and utilities determined that rather than relying on railroads to haul coal to population centers for their power plants, they would build the power plants by the coal mines and send electricity over the wires. It was a huge boom for North Dakota. Transmission lines were constructed that anticipated many more plants being built. And then environmental issues derailed many of those plant construction plans. We were left with transmission capabilities that far exceeded our generation capabilities.

Then about 20-25 years ago another remarkable thing happened. Technology and engineering made available large scale wind energy generation. Congestion was not a problem because we had built excess transmission. Since then, we have added more nameplate wind capacity than the capacity of our entire coal fleet. By doing that, we have gone from an area with excess transmission capacity to an area with some of the worst transmission congestion problems in the nation.

The severity and significance of congestion problems really became clear with Storm Uri in 2021, but I see it much more frequently in the day-to-day operations of our utilities and our regional transmission organizations. (RTO's) In the aftermath of Storm

Uri, extensive studies have been done by both of the RTO's, and a lot of learning has been done by utility regulators around the nation. Both of the RTO's with membership in North Dakota are seeking solutions to these congestion problems. Make no mistake, those solutions will cost our citizens enormous amounts of money.

In previous conversations about the reach of our siting responsibilities I have heard numerous references to the fact that every new interconnection to the grid is thoroughly studied by whichever RTO is involved, and that the developer pays an interconnection cost. But it is important to understand that paying for costs associated with interconnecting to the grid does not necessarily cover the costs of fixing congestion problems caused by that interconnection.

Although I think the Century Code already grants us this flexibility, I urge you to recognize the impacts of this problem by clarifying that transmission congestion is one of the many economic impacts that should be considered when the PSC reviews siting impacts, and also clarify that the actual providers of retail electric service are among the entities whose problems the PSC should consider.

I also urge you to clarify in code that the Commission has the discretion to condition the issuance of a certificate for a new generator on that generator actually having an agreement with a provider of retail electric service. This may allow us to potentially avoid additional congestion problems that will ultimately be costly for our own ratepayers.

This concludes my testimony. Thank you for your time and I am available for questions.

**Testimony of Mark Bring
Director of Public Policy and Government Affairs
Otter Tail Power Company**

**Before the Senate Energy & Natural Resources Committee
March 23, 2023**

Chairman Patten and members of the Committee, my name is Mark Bring and I serve as Director of Public Policy and Government Affairs for Otter Tail Power Company. I have been licensed as an attorney in North Dakota since 1992 and have been employed continuously in the electric industry since 1997.

During this time frame, I have continually been amazed and gratified by North Dakota's ability to attract capital investment with a favorable tax, regulatory, and business environment. Because the amendments to House Bill 1315 offered by Rep. Novak today counter this ability, I respectfully submit this testimony regarding our company's opposition to the amendments.

By way of background, Otter Tail Power Company is headquartered in Fergus Falls, Minnesota, and provides electricity to more than 133,000 customers spanning 70,000 square miles in western Minnesota, eastern North Dakota, and northeastern South Dakota. We own a diverse mix of electric generation resources fueled by subbituminous and lignite coal, oil, natural gas, wind, and soon, solar. Our coal generation includes a 53.9% ownership interest in the 500-megawatt subbituminous coal-fired Big Stone Plant near Big Stone City, South Dakota and a 35% ownership interest in the 427-megawatt lignite coal-fired Coyote Station near Beulah, North Dakota, both of which are co-owned with neighboring electric utilities but are operated by our company. Our oil-fired peaking generation facilities are located at Jamestown, North Dakota, and Lake Preston, South Dakota. Our wind generation assets are near Langdon, Ashtabula, Luverne, and Merricourt in North Dakota's Cavalier, Barnes, Griggs and Steele, and McIntosh and Dickey Counties, respectively. The 150-megawatt Merricourt Wind Energy Center in southeastern North Dakota, with a total cost of

approximately \$260 million, is the largest singular investment our company has ever made. Finally, our most recently completed electric generation asset is a 245-megawatt natural gas-fired peaking generation unit near Astoria, South Dakota, which was placed into commercial operation in February 2021, with a total cost of approximately \$160 million. Astoria Station obtains natural gas from the Northern Border Pipeline, which includes natural gas from North Dakota's Williston Basin and synthetic natural gas from Dakota Gasification Company's Great Plains Synfuels Plant near Beulah. Finally, we began construction on Hoot Lake Solar, a 49-megawatt solar farm near Fergus Falls, Minnesota, in May of 2022 and expect the solar farm to be fully operational by midyear 2023. Our company has invested hundreds of millions of dollars in North Dakota and it is here that we served our very first customer in Wahpeton in 1909. We could not be more grateful for our long-term relationship with North Dakota and for the state's hospitable business climate.

To be clear, our company was not opposed to the engrossed version of House Bill 1315 that passed the House 90-4. However, we are opposed to the amendments offered by Rep. Novak today. That said we appreciate Rep. Novak's willingness to have a dialogue on the legislation, and recognize it is well-intended and seeks to address concerns shared by constituents in her legislative district.

However, we believe these are issues to be addressed as a part of a broader regional discussion within the decision-making framework of the regional transmission organizations (i.e., the Southwest Power Pool, or SPP, and the Midcontinent Independent System Operator, or MISO), rather than in North Dakota's siting act. North Dakota is very well-served in those venues by Public Service Commission Chairman Randy Christmann on SPP's regional state committee, or RSC, and Commissioner Julie Fedorchak on MISO's Organization of MISO States, or OMS. Moreover, we have concerns about unintended consequences and practical application of the legislation. We respectfully submit these amendments are not the correct approach to Rep. Novak's concerns.

At page 2, lines 9-11 of the Christmas tree version of the proposed amendments to engrossed House Bill 1315, “transmission congestion” as a form of economic impact would be added to the list of considerations that the Public Service Commission must be guided by, pursuant to N.D. Century Code section 49-22-09, in evaluating and designating new electric energy conversion facility sites (i.e., power plants) and electric transmission corridors and routes (i.e., for high-voltage power lines) in siting applications submitted to the Commission. In addition, at page 2, lines 18-19 of the Christmas tree version, entities providing retail electric service would be able to identify problems for Public Service Commission consideration in siting act application dockets.

More substantively, at page 2, lines 23-26 of the Christmas tree version, the Public Service Commission would be authorized to “condition the issuance of a certificate or permit for a new electric energy conversion facility on having a power purchase agreement with an entity that directly, or through its members, provides retail electric service.”

Rep. Novak’s concerns appear to have their genesis in the proposed Badger Wind project in Logan and McIntosh Counties of North Dakota. The proposed approximately 250-megawatt, \$390 million wind farm project, which is sponsored by an affiliate of Ørsted (a large Danish corporation listed on the Nasdaq Copenhagen), received a certificate of site compatibility by a 2-1 vote of the Public Service Commission on November 30, 2022, in Case No. PU-22-86. Badger Wind does not appear to have a power purchase agreement for the energy output to be generated by the proposed facility. Whether or not the facility is ever constructed remains to be seen.

In any event, our company does not think it wise to create obstacles or create uncertainty about capital investment in the state. That is precisely what Rep. Novak’s amendments would do.

First, by adding “transmission congestion” as a form of economic impact by which the Public Service Commission must be guided, the legislation would allow the Commission to weigh topics that heretofore have been the province of regional transmission organizations. With all due respect, the technical issues associated with the impact of a new generation or transmission asset to the existing electric grid is not a subject matter for which the Public Service Commission and its staff has robust expertise. This would likely contribute to a need to engage a costly consultant. In addition, enabling entities providing retail electric service to identify problems for Public Service Commission consideration in siting act application dockets could result in warring between North Dakota’s electric utilities on the alleged impacts of proposed large energy facilities, whether they be generation or transmission. This counterproductive approach is fraught with regulatory uncertainty and potential delay and, therefore, is harmful to new electric energy-related development.

MISO already has a process and technical requirements for interconnecting new electric generation to the grid and the interconnecting entity’s obligations associated with doing so, including identifying the transmission network upgrades necessary to interconnect new generation and ensuring the upgrade costs are correctly allocated. In the case of Badger Wind, it appears that MISO has evaluated the impact of the proposed project on the grid and has assigned the project \$18 million in transmission upgrades to interconnect the proposed generation. Requiring burdensome and duplicative considerations in the North Dakota siting act, which was designed to minimize adverse human and environmental impact, could lead to delay and uncertainty, neither of which is helpful for capital-intensive projects.

Moreover, authorizing the Public Service Commission to condition issuance of a certificate for a new electric energy conversion facility on having a power purchase agreement, or PPA, could limit the range of options available to a

project proponent. Electric generation unit developers/owners have a range of options available to them. First, the electric generation output of an electric generation unit, regardless of its fuel source, can be sold into the regional transmission organization on a merchant basis, whereby the revenue for energy is derived by the developer/owner. Secondly, generation unit developers/owners can develop and construct electric generation and then sell the assets (or their stock interest) on a turnkey basis to a load serving entity like our company, thereby earning a return on the asset or stock sale. Finally, generation unit developers/owners can develop and construct electric generation and sell the energy output under a PPA to a load serving entity like our company. Limiting this range of options inhibits capital deployment and could strand capital that has already been invested. Both phenomena are anathema to a favorable regulatory and business climate.

Incidentally, MISO also has processes and technical considerations associated with the retirement of existing electric generation assets, which appears to be a longer-term concern of Rep. Novak. These processes and technical considerations, along with important market signals and reforms, are continually undergoing evaluation and revision in a way that is designed to ensure the reliability, integrity, and resilience of the electric grid. Chairman Christmann and Commissioner Fedorchak are playing a key role in this dialogue at SPP and MISO, respectively.

For the foregoing reasons, we urge you to oppose Rep. Novak's proposed amendments to HB 1315 and to recommend a DO PASS on the engrossed version of HB 1315.



North Dakota House of Representatives

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COMMITTEES:

Education
Energy and Natural Resources

March 23, 2023

Mr. Chairman and members of the Senate Energy and Natural Resources Committee-

You have before you the second Christmas tree version of HB1315. These changes came after a lot of work. I had help from Ladd Erickson with these amendments. Ladd understands the energy industry better than anyone I've ever met. A guy that helped save a coal-fired power plant from being shut down by the state of Minnesota, that wants nothing more than to hurt North Dakota's fossil fuel industry, was exactly the right person to help me come up with a solution. In crafting these amendments, Ladd and I worked with all the interested parties – including the Public Service Commission, the utilities and even the Wind Industry of North Dakota. Actually, one of the first things we did was sat down with Jack Schuh from the PSC and brought in Levi Andrist, as a representative from the wind industry. We wanted to make sure we were all reading and understanding things the same way. After that, we started coming up with drafts. All of the interested parties can attest that we have included them on emails with several different ideas and options. There have been many calls, emails and texts exchanged over the past few weeks. I've compromised a lot in hopes of finding common ground, but in the end, we couldn't get everyone to agree. And in fairness, what I was told from some of the utilities is that they didn't see a version of my bill that they could ever agree to because they don't want the burden of any additional regulations. So, you're aware, Basin Electric, Rainbow Energy and Great River Energy are coming in as neutral. I actually sent my contact at Basin a text message and asked if there was any way they might be able to support my amendments and he wrote back, "Ha ha...No!" It was worth a shot!

But as a reminder, the Siting Act hasn't been updated in 40 years and the electricity generation source landscape has changed tremendously since it was written. The Siting Act lays out guidelines that the PSC commissioners look at when siting electricity generation projects. 49-22-09, section 1, states "The commission shall be guided by, but is not limited to, the following **considerations** to aid the evaluation and designation of sites, corridors, and routes:" and goes from a-k. These guidelines simply help them when making decisions and give them more tools in the toolbox versus just rubberstamping every project that applies for permitting. We're at a point in which

we should be more selective for electricity generation permitting within the state. I'll walk you through the changes to the siting act that I'm proposing.

Section G – we are adding verbiage to this section to address the issue of congestion. The word “reliability” raised red flags for one of our PSC commissioners as well as a few utilities. While I'm still quite concerned about reliability, focusing on congestion is somewhat the same concept because my main concern is that with the limited transmission capacity, we currently have on our transmission lines, we should not allow our baseload electricity generation sources to be kicked off the lines by the permitting of new intermittent electricity generation sources.

g. The direct and indirect economic impacts of the proposed facility, including on an entity that directly, or through its members, provides retail electric service. As used in this subsection, economic impacts includes, but is not limited to, transmission congestion.

Section K allows a utility to raise concerns about new electricity generation facilities. I believe they do already have the right to speak up if they are concerned, but this codifies it into the Century Code and putting this into law lets them know from the get-go that their feedback is welcomed.

k. Problems raised by federal agencies, other state agencies, and local entities, or an entity that directly, or through its members, provides retail electric service.

Section 3 states that the PSC *may* require a power purchase agreement before construction commences. The word “may” is important because it allows the PSC some flexibility, with the co-ops that are G & T's and otherwise, to use that as a consideration. Like the other letters under Section 1, it is simply there to aid them in making a reasonable decision. Allowing the PSC the option to require a PSC will ensure that the transmission lines in North Dakota benefit North Dakota versus a Google, Apple or other entity that is looking to greenwash their company while taking up space on our transmission lines. These lines are valuable! Wanting and expecting the transmission lines in our state to benefit North Dakota isn't unrealistic or an outrageous expectation.

3. If a project will interconnect into a regional transmission authority electrical grid, the commission may condition the issuance of a certificate or permit for a new non-dispatchable electric energy conversion facility on having a power purchase agreement, before construction commences, with an entity that directly, or through its members, provides retail electric service.

The opposition has argued that this bill will negatively impact future transmission projects. Basin Electric has three new transmission projects moving forward and I've confirmed with them that HB1315 will not negatively impact any of those. Why? Because any new transmission built is going to alleviate congestion so future transmission projects can still move forward, regardless if this bill passes or not. Congestion is caused by new generation being added to the transmission lines. Giving the PSC direction to consider congestion when siting

electricity generation projects is in the best interest of our state because it affects reliability as well as the jobs in communities like mine, which have providing affordable and reliable electricity to the rest of our state and beyond for decades.

The other point they will argue is that congestion and reliability concerns should be dealt with at the RTO level. I actually agree with them. But between the RTO's telling us that they are policy takers and not policy makers, the fact that there has been a history of black and brownouts across the country, and states like Minnesota passing laws that essentially ban reliable, fossil fuels, it's hard to believe they really are dealing with those concerns.

With all due respect, the lobbyists opposing this bill represent companies operating in North Dakota, and their focus is on the particular business they represent, as it should be. But our responsibility as legislators is to the people of our state. I hope you'll give HB1315 a Do Pass recommendation and I'll stand for any questions. Thank you.

23.0504.06003

FIRST ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1315

Introduced by

Representatives Novak, Dockter, S. Olson

Senator Patten

1 A BILL ~~for an Act to create and enact a new subsection to section 49-22-09 of the North Dakota~~
 2 ~~Century Code, relating to factors to be considered when evaluating applications and~~
 3 ~~designation for sites, corridors, and routes.~~ for an Act to amend and reenact section 49-22-09 of
 4 the North Dakota Century Code, relating to factors to be considered when evaluating
 5 applications and designation for sites, corridors, and routes.

6 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

7 ~~SECTION 1. A new subsection to section 49-22-09 of the North Dakota Century Code is~~
 8 ~~created and enacted as follows:~~

9 ~~Before the commencement of operations of the proposed facility, the applicant shall~~
 10 ~~inform the commission that the applicant has executed or filed an unexecuted~~
 11 ~~generation interconnection agreement, or comparable transmission services~~
 12 ~~agreement, with the affected regional transmission organization or transmission~~
 13 ~~owner.~~

14 **SECTION 1. AMENDMENT.** Section 49-22-09 of the North Dakota Century Code is
 15 amended and reenacted as follows:
 16 **49-22-09. Factors to be considered in evaluating applications and designation of**
 17 **sites, corridors, and routes.**
 18 1. The commission shall be guided by, but is not limited to, the following considerations,
 19 where applicable, to aid the evaluation and designation of sites, corridors, and routes:
 20 a. Available research and investigations relating to the effects of the location,
 21 construction, and operation of the proposed facility on public health and welfare,
 22 natural resources, and the environment.
 23 b. The effects of new electric energy conversion and electric transmission
 24 technologies and systems designed to minimize adverse environmental effects.

- 1 c. The potential for beneficial uses of waste energy from a proposed electric energy
2 conversion facility.
- 3 d. Adverse direct and indirect environmental effects that cannot be avoided should
4 the proposed site or route be designated.
- 5 e. Alternatives to the proposed site, corridor, or route which are developed during
6 the hearing process and which minimize adverse effects.
- 7 f. Irreversible and irretrievable commitments of natural resources should the
8 proposed site, corridor, or route be designated.
- 9 g. The direct and indirect economic impacts of the proposed facility, including on an
10 entity that directly, or through its members, provides retail electric service. As
11 used in this section "economic impacts" includes transmission congestion.
- 12 h. Existing plans of the state, local government, and private entities for other
13 developments at or in the vicinity of the proposed site, corridor, or route.
- 14 i. The effect of the proposed site or route on existing scenic areas, historic sites
15 and structures, and paleontological or archaeological sites.
- 16 j. The effect of the proposed site or route on areas unique because of biological
17 wealth or because the areas are habitats for rare and endangered species.
- 18 k. Problems raised by federal agencies, other state agencies, ~~and~~ local entities, or
19 an entity that directly, or through its members, provides retail electric service.
- 20 2. The commission may not condition the issuance of a certificate or permit on the
21 applicant providing a mitigation payment assessed or requested by another state
22 agency or entity to offset a negative impact on wildlife habitat.
- 23 3. If a project will interconnect into a regional transmission authority, the commission may
24 condition the issuance of a certificate or permit for a new electric energy conversion
25 facility on having a power purchase agreement with an entity that directly, or through
26 its members, provides retail electric service.

23.0504.06003

FIRST ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1315

Introduced by

Representatives Novak, Dockter, S. Olson

Senator Patten

1 A BILL ~~for an Act to create and enact a new subsection to section 49-22-09 of the North Dakota~~
2 ~~Century Code, relating to factors to be considered when evaluating applications and~~
3 ~~designation for sites, corridors, and routes.~~ for an Act to amend and reenact section 49-22-09 of
4 the North Dakota Century Code, relating to factors to be considered when evaluating
5 applications and designation for sites, corridors, and routes.

6 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

7 ~~SECTION 1. A new subsection to section 49-22-09 of the North Dakota Century Code is~~
8 ~~created and enacted as follows:~~

9 ~~Before the commencement of operations of the proposed facility, the applicant shall~~
10 ~~inform the commission that the applicant has executed or filed an unexecuted~~
11 ~~generation interconnection agreement, or comparable transmission services~~
12 ~~agreement, with the affected regional transmission organization or transmission~~
13 ~~owner.~~

14 **SECTION 1. AMENDMENT.** Section 49-22-09 of the North Dakota Century Code is
15 amended and reenacted as follows:
16 **49-22-09. Factors to be considered in evaluating applications and designation of**
17 **sites, corridors, and routes.**
18 1. The commission shall be guided by, but is not limited to, the following considerations,
19 where applicable, to aid the evaluation and designation of sites, corridors, and routes:
20 a. Available research and investigations relating to the effects of the location,
21 construction, and operation of the proposed facility on public health and welfare,
22 natural resources, and the environment.
23 b. The effects of new electric energy conversion and electric transmission
24 technologies and systems designed to minimize adverse environmental effects.

- 1 c. The potential for beneficial uses of waste energy from a proposed electric energy
2 conversion facility.
- 3 d. Adverse direct and indirect environmental effects that cannot be avoided should
4 the proposed site or route be designated.
- 5 e. Alternatives to the proposed site, corridor, or route which are developed during
6 the hearing process and which minimize adverse effects.
- 7 f. Irreversible and irretrievable commitments of natural resources should the
8 proposed site, corridor, or route be designated.
- 9 g. The direct and indirect economic impacts of the proposed facility, including on an
10 entity that directly, or through its members, provides retail electric service. As
11 used in this section "economic impacts" includes transmission congestion.
- 12 h. Existing plans of the state, local government, and private entities for other
13 developments at or in the vicinity of the proposed site, corridor, or route.
- 14 i. The effect of the proposed site or route on existing scenic areas, historic sites
15 and structures, and paleontological or archaeological sites.
- 16 j. The effect of the proposed site or route on areas unique because of biological
17 wealth or because the areas are habitats for rare and endangered species.
- 18 k. Problems raised by federal agencies, other state agencies, ~~and~~ local entities, or
19 an entity that directly, or through its members, provides retail electric service.
- 20 2. The commission may not condition the issuance of a certificate or permit on the
21 applicant providing a mitigation payment assessed or requested by another state
22 agency or entity to offset a negative impact on wildlife habitat.
- 23 3. If a project will interconnect into a regional transmission authority, the commission may
24 condition the issuance of a certificate or permit for a new electric energy conversion
25 facility on having a power purchase agreement with an entity that directly, or through
26 its members, provides retail electric service.