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House Bill 1458—Testimony in Opposition

House Finance and Tax, Chairman Headland

February 2, 2021

Chairman Headland, members of the committee, I am Carlee McLeod, President of the Utility Shareholders of North Dakota (USND). On behalf of my member companies, who collectively provide electric service to over 250,000 ND customers, we oppose HB 1458.

First and foremost, this legislation would increase the cost of electric generation which translates directly to higher costs for our customers. Second, this bill develops a program for dispatchable energy that was not requested by any North Dakota dispatchable generator, nor does it provide any guarantee of helpfulness to the industry. Third, this legislation departs from the business-friendly climate North Dakota leaders have created and defended. It will force development outside state borders, and with it, any economic benefit of such development. Finally, we are concerned with what passage of this bill and its unprecedented taxation of federal programs would mean to North Dakotans who deserve certainty in their financial affairs.

Proposed increased taxation of wind energy is not a new concept. Since 2015, when we worked with legislators to put generation taxation on par, we've encountered proposed increases. Each session, those bills have been defeated when legislators realize that an increase in taxation translates to an increase in cost for customers and the threat of development moving out of state. This past year alone, \$900,000 in development has moved to border states because of the increasingly hostile attitude toward wind development in regulatory channels. That generation still feeds into our regional electric grid, but any tax revenue resulting from these projects go to other state coffers. This legislation, if passed, will have the same effect. Higher taxes will affect customers, and North Dakota will miss out on any new development.

As proposed, the new tax revenue would feed a fund to provide grants by the PSC to coal generators to provide "reliability and resiliency." Coal generators have not asked for this. Attached to my testimony is a statement by the generating utilities of North Dakota. In it, we explain that company leadership worked in tandem with the LEC over the interim to develop realistic approaches to supporting the lignite industry. This is not one of those measures. As the generating utilities, we collectively oppose this bill. If you want to support the industry, we ask you to support HB 1412, a product of the interim work by lignite generators, which will be heard in this committee tomorrow. That bill provides temporary tax relief, which we believe, in

tandem with the other legislation put forward to support the industry, could have a positive impact. The bill before you does not.

This body has worked hard to create and defend a pro-business climate in North Dakota by providing certainty in the way of regulation and tax rates. Those concepts have been tested over and over as our economy expanded, as we rode the wave of the oil boom, and as opposing forces challenged that pro-business climate. You stood firm when the feds and other states passed anti-business laws and rules. We benefitted from investment in oil rigs, pipelines, innovation companies, healthcare groups, and retail expansion all because of your foresight and determination. HB 1458 does not fit our pro-business legislative tradition. This body, regardless of its feelings on one business or another, should not backtrack and jeopardize our pro-business climate.

Further, the idea that North Dakota's tax policy should be made to offset a federal policy is frightening. Here, the policy is only against one industry, but there are a lot of federal programs benefitting people in this state. The precedent set with this bill threatens North Dakotans in various ways. If members of my industry receive federal grants to research technologies that would bolster fossil fuel development, should they worry that future legislative bodies would impose a tax on those benefits? At what point are citizens and businesses safe to make financial decisions without fearing future retribution?

Finally, the mechanics of this bill are unclear. Although the new tax purports to attach only to projects developed after December 31, 2020, its inclusion to 57-05-14.1, the centrally assessed chapter under which wind projects developed prior to Jan 2015, is problematic. No new projects are allowed under that chapter. Yet, this tax is referenced. Following the interpretation convention of NDCC that words are included for a reason and that two inconsistent areas of code shall be read in a way to make each viable, this provision seems to add the additional tax on existing projects. We have been consistent in opposing these sorts of unfair, anti-business tax increases on existing projects, especially when those projects are, for lack of a better word, immovable, because of their capital-intense physical nature.

Chairman Headland, I urge you to reject this bill. It is not consistent with the pro-business climate the legislature has maintained, and it is not good for North Dakotans.

Thank you.

