



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.

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- 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;