



**Power
Companies**
OF NORTH DAKOTA

Good morning, Chairman Patten and members of the Senate Energy and Natural Resources Committee,

My name is Dennis Pathroff. I'm a lobbyist with the GA Group and here today representing the Power Companies of North Dakota ("PCND"). PCND is a coalition of the state's leading shareholder-owned gas and electric utilities. Our members include MDU Resources Group, Xcel Energy, Otter Tail Power Company, and ALLETE. Together, PCND members serve over 427,000 North Dakota customers, employ over 1,200 North Dakotans, and manage significant power generation and transmission infrastructure across our state.

Today, I express PCND's strong support for SB 2339 – the "Prevent the Event" wildfire mitigation bill. This important legislation empowers utilities to develop and implement wildfire mitigation plans or ("WMPs") designed to enhance public safety and reduce wildfire risks. Adherence to these plans is part and parcel to public safety and effective wildfire prevention.

Utilities forced into insolvency due to financial and litigation exposure from wildfires are not in the public interest. Moreover, electric consumers will benefit in the long term from utilities' lower borrowing costs and reduced insurance premiums, as utilities adopt and comply with WMPs, and rating agencies and insurance companies adjust the utilities' risk profiles accordingly.

I'd now like to walk you through the key components of the bill:

The **Definitions** (page 1, lines 7-16) define WMP, identify the types of utilities that may prepare a WMP, and outline what constitutes hazardous plant vegetation.

The **Limitation on strict liability standard for a qualified utility** (page 1, lines 17-19) is a very important section of this bill. It provides that a court may not apply strict liability to a qualified utility in a cause of action alleging the utility caused wildfire related damages.

This means that in a lawsuit involving wildfire damages, a plaintiff would have to prove a utility was negligent. The key difference between negligence and strict liability is that negligence requires proving fault (or failure to exercise a reasonable standard of care). Strict liability, on the other hand, focuses on the activity itself, making the defendant liable regardless of fault. Here's a comparison of the elements of the two types of torts:

<ul style="list-style-type: none"> • Elements of negligence <ul style="list-style-type: none"> ○ Duty of Care: The defendant owed a duty to act reasonably to plaintiff ○ Breach of Duty: The defendant failed to meet that standard of care ○ Causation: <ul style="list-style-type: none"> ▪ Actual: The defendant's actions directly caused the harm ▪ Proximate: The harm was foreseeable ○ Damages: The plaintiff suffered actual harm or injury 	<ul style="list-style-type: none"> • Elements of Strict liability <ul style="list-style-type: none"> ○ Activity: The defendant engaged in a dangerous activity ○ Causation: The activity directly caused the harm ○ Damages: The plaintiff suffered actual harm or injury
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The existing common law (or case law) in North Dakota is that strict liability does not apply to damages stemming from electric infrastructure. See the Eighth Circuit case, *Meyer v. McKenzie Elec. Coop., Inc.*, 947 F.3d 506 (8th Cir. 2020).

Accordingly, the bill codifies the existing North Dakota common law. Codifying this common law doctrine will prevent future North Dakota courts from applying strict liability. This statutory change will provide meaningful regulatory certainty for creditors and rating agencies, underwriters, and insurers in the utility sector. Contrast this with California, where application of strict liability has led to bankruptcy and insolvency among utilities.

The **Wildfire mitigation plan** section (page 1, line 20 through page 2, line 28) provides that a qualified utility may file a WMP and then specifies, in detail, what these plans must include.

The **Wildfire mitigation plan submission** section (page 2, line 29 through page 3, line 12) provides that the IOUs may submit their WMPs to the PSC, while the cooperatives may submit their plans to their boards of directors.

Importantly, this section provides (on page 3 lines 10-12) that compliance with a WMP constitutes evidence, subject to rebuttal, that the utility exercised a reasonable standard of care, addressing two critical elements of negligence: duty of care and breach of duty.

The last section, **Annual report** (page 3, lines 13-21) provides that IOUs may submit their WMP to the PSC and must publish their WMPs on their websites. Likewise, the cooperatives may submit their WMPs to their boards of directors and must publish their WMPs on their websites.

In summary, SB 2339, the “Prevent the Event” wildfire mitigation bill, helps ensure that utilities will continue to provide North Dakotans with safe, affordable, and reliable electric services. By codifying existing legal principles, creating sensible liability protections, and incentivizing the development and implementation of wildfire mitigation plans, this bill enhances public safety and reduces costs and financial risks for utilities and ultimately the customers they serve.

PCND strongly urges a “Do Pass” recommendation on SB 2339.

Thank you, Chairman Patten and members of the committee, for your time and consideration.