

2013 SENATE NATURAL RESOURCES

SB 2209

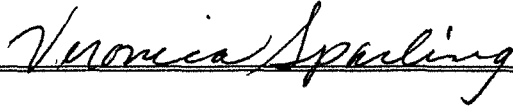
2013 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

SB 2209
January 31, 2013
18077

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to eminent domain siting of an energy conversion facility or a transmission facility

Minutes:

Testimony attached

All committee members were present.

Chairman Lyson opened the hearing on SB 2209.

Dale Niezwaag, representing Basin Electric Power Cooperative, spoke in favor of the bill. See attached testimony #1. He drew their attention to the picture on page 4 and explained that these new structures have a smaller footprint. He also emphasized the first line of print on page 2. It is important to maintain landowners' rights and protections under the law. His testimony ends at (08:48).

(09:00) There is a description of the route and a discussion that 50% of landowners have given permission. The question was posed: were the other landowners not yet contacted or were they contacted and they had said "no" to the request? All had been contacted, only 50% had signed. The other 50%, Mr. Neizwaag would consider in process at this time. There was discussion about landowner fatigue. Mr. Niezwaag said they generally have 85% of the landowners on board by the time they request a permit.

(11:40) There was discussion about how often eminent domain has to be used. Some will negotiate and some will say "no" just on principle. There was also discussion about reaching out-of-state landowners.

(13:40) Sandi Tabor with the Lignite Energy Council spoke in favor of the bill. She referred to a study that was done that estimates the demand for electricity in western North Dakota will triple from 2012 to 2032. This project is an important part of meeting that need. (15:40) There is a balance between negotiating, not missing the next construction season, and not running over the rights of people.

(16:20) There was discussion about how they are planning to go around Williston.

(18:15) Senator Triplett asked Ms. Tabor if the extra costs (when they negotiate for a higher price) are getting passed along to the consumer. Even missing a construction season can add to the costs.

(19:25) The 2016 deadline of the construction was discussed. The trend toward natural gas was mentioned. Why wouldn't we be pursuing natural gas rather than electricity? And why wouldn't we build a natural gas plant closer to where the demand is so we would not have to have a transmission problem? You have to consider that the grid's adequacy and ability to handle more power is an issue.

(22:00) Mr. Niezwaag feels it is a timing issue. There is not time to get it engineered, designed and built in time to stay ahead of the projected demand.

(23:42) Senator Triplett questioned why we are not keeping up with the latest trend of going toward natural gas and a larger facility. Building it would take 2-4 years. We should re-think this from a bigger picture perspective.

(24:30) Mr. Neizwaag said the idea is to build the largest and most efficient plant. We want to use the existing capacity and the infrastructure we presently have to its maximum potential. The plant similar to that description that was built in Brookings, SD took five years.

(25:50) There was discussion about whether the study took into account that some of the demand could be satisfied by off-grid production.

(28:00) John Olson with Ottertail Power Company spoke in support of the bill.

Dale Niezwaag presented written testimony #2 on behalf of Minnkota Power Cooperative.

Shane Goettle with MDU Resources stood in support of the bill.

Opposition:

(29:30 to 36:41) Richard Schlosser, representing ND Farmers Union, stood in opposition to the bill. See attached testimony #3.

There was discussion about balancing siting and eminent domain, and whether it was in the best interest of the landowners to give up one of their bargaining chips. Due diligence has to be taken but the time frame is also a consideration.

(41:25) There was discussion about where the Farmers Union chose to have the "listening" meetings. It seems they missed some important cities. The purpose of the meetings was to get input from their members and township officers, county commissioners, etc.

Neutral:

Illona Jeffcoat-Sacco presented attached testimony #4.

Ms. Jeffcoat-Sacco described the siting permit process (50:20 to 54:20)

There was a discussion about the timeline of the project. The application is projected to be in by February or March.

Chairman Lyson closed the hearing on SB 2209.

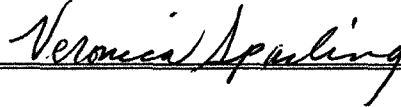
2013 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2209
February 1, 2013
18178

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to eminent domain siting of an energy conversion facility or a transmission facility

Minutes:

No attachments

Chairman Lyson opened the discussion on SB 2209.

Senator Murphy made a Do Not Pass motion.

Senator Triplett seconded the motion.

Senator Hogue spoke against the motion. This is a bill that will speed up the process of getting the power to the area. There will be less bargaining power but it is a trade-off to get the need met. They do get their costs and attorney fees covered.

(3:20 to 8:50) Senator Triplett feels as a legislative body they need to look past the sense of urgency everyone brings as they present their causes. She referred to the answer given during the hearing to her question about off-grid sources meeting some of the need. They hadn't even considered that. The study she referenced is on the Industrial Commission's website. Basin will apply for a permit in February and at the same time Basin has applied for a several-hundred million dollar loan from the rural utility service of USDA. The loan hinges on a draft environmental impact statement. They don't have a financing source for this until the environmental impact statement is completed. They are getting way ahead of themselves. (07:50) Senator Triplett feels this violates the rights of landowners.

(09:00 to 10:30) Senator Unruh feels this bill would help to make it a smooth process to meet the immediate needs.

Senator Triplett appealed to the committee members to read the Basin Electric study and the study from the transmission authority.

There was discussion about the need to meet the projected electrical demand of the area.

Roll Call Vote on the Do Not Pass motion: 2, 5, 0

Motion failed.

Senator Hogue made a Do Pass motion.

Senator Burckhard seconded the motion.

(12:50 to 20:40) Senator Triplett feels it is not necessary to change the delicate balance of the law for this one project. She reminded the committee of Richard Schlosser's testimony yesterday of the balance of the rights of property owners, and of Ms. Jeffcoat-Sacco's testimony about the PSC not seeing it as necessary. It is not just a visual change to the environment. With large farm equipment, it is a big deal. Even if it were just the view obstruction, it is still a big deal. Our permitting process is fast. The bill is wrong-headed.

(20:50 to 22:30) Senator Hogue feels this is not taking away the rights of the landowners, it is just affecting the timing. We are just taking away the last few landowners who can hold out and use the leverage of a construction season to hold out for more money.

Roll call vote: 5, 2, 0

Carrier: Hogue

Date: 2-1-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2209

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Murphy Seconded By Triplet

Senators	Yes	No	Senators	Yes	No
Senator Lyson	✓	✓	Senator Triplet	✓	
Senator Burckhard		✓	Senator Murphy	✓	
Senator Hogue		✓			
Senator Laffen		✓			
Senator Unruh		✓			

Total (Yes) 2 No 5

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: motion defeated

Date: 2-1-13
 Roll Call Vote #: 2

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2209**

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Hogue Seconded By Burckhard

Senators	Yes	No	Senators	Yes	No
Senator Lyson	✓		Senator Triplett		✓
Senator Burckhard	✓		Senator Murphy		✓
Senator Hogue	✓				
Senator Laffen	✓				
Senator Unruh	✓				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Hogue

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2209: Natural Resources Committee (Sen. Lyson, Chairman) recommends DO PASS
(5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2209 was placed on the
Eleventh order on the calendar.

2013 HOUSE ENERGY AND NATURAL RESOURCES

SB 2209

2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

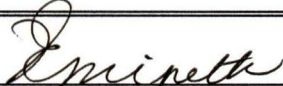
Pioneer Room, State Capital

SB 2209

19901

March 14, 2013

Conference Committee



Relating to eminent domain sitting of an energy conversion facility or a transmission facility

Minutes:

1-4 "attached testimony."

Rep. Porter: We will open the hearing on SB 2209.

Dale Neizwaag: Representing basin Electric; this would allow utilities to begin the eminent domain proceedings while the PSC is connecting the final review and approval of the route permit. I would like you all to go to the back page of (testimony 1-2) it is critical to remember that Basin Electric has an obligation to provide the power to the rural electric member systems in the most economical way. All this legislation will do is allow proceeding while the PSC is conducting the final review and approval of the route permit.

Sandy Tibor: Representing the Lignite Energy Council: a little more than a year ago the Industrial Commission awarded a contract to conduct a load study focused on the impact of the oil and gas development in western N.D. In the next 20 years load growth will triple. When it was confirmed by the Transmission Authority Report that they would have to have that line built by 2016 was startling to them. We believe that we are not impacting anybody's due process rights.

John Olson: Representing Otter Tail Power Company; My Company supports this bill. This does sent a clear indication that the court can grant a conditional order depending upon the approval of the site.

David Straley: Representing North American Coal and Basin Electric; we stand in support of this bill in the general concept.

Al Christianson: Representing Great River Energy; we too are here to support this bill SB 2209. It is very important to continue and support the growth in western N.D. in a manner that is safe and efficient to get the power that is needed.

Page 2

Illona Jeffcoat-Sacco: Representing General Council Public Service Commission; The reason the commission asked me to testify today was to explain what we understand about the bill in relationship to siting. (Testimony 3) We stress an caveat and that is that we do not have any knowledge, expertise, intuition, or position regarding the impact of the bill on judicial authority over eminent domain.

Rep. Keiser: What is the typical siting schedule?

Illona Jeffcoat-Sacco: Nothing is typical because it depends on the size of the project, or the location.

Rep. Keiser: Do the hearings provide any informational value to the landowners that might help them make a decision as to fight the eminent domain issue or not?

Illona Jeffcoat-Sacco: I have been told that they do provide some beneficial information. How to get information to the landowners early enough so that all of these issues get resolved early I don't know. I have been told that the hearing part is beneficial to landowners.

Rep. Keiser: If the companies file and start the process they would have meetings with the landowners outside of your hearing and explain what is coming and answer questions correct?

Illona Jeffcoat-Sacco: I understand it is and with many companies that kind of leg work is done before they file with us and that is better because when the application is filed it is complete and these things are worked out.

Rep. Silbernagel: Which lines require township permits I am not sure as to what level townships are required to issue permits.

Illona Jeffcoat-Sacco: It is a good example of what I was talking about in the first response. We hope that in the sitting process that would be done. If you need township permission you cannot operate under a signed certificate without it.

Kristie Schlosser Carlson: Representing N.D. Farmers Union; we believe that rural cooperatives transmissions companies need to have the authority of eminent domain in order to provide electricity to our neighbors and to our rural communities. (Testimony 4) We will propose and amendment at the end of the hearing.

Rep. Porter: Everything sunsets every year in the state of N.D.

Rep. Keiser: Do you have any examples where the companies in the past have attempted to build a line and have not worked as hard as they can to educate the impact to the people in process so that hopefully they will do everything possible to a void eminent domain?

Kristie Schlosser Carlson: I can't provide examples of where that is not true.

Page 3

Bob Banderet: I am from Cogswell; allowing the utilities and the pipeline companies to exercise the right of eminent before obtaining the certificate of compatibility or a route permit will put the landowner at a distinct disadvantage. (Testimony 5)

Rep. Hunskor: The utility companies say they have been working since 2011 with landowners; sometimes those companies may be coming at the last moment and because of farming practices its coming at you too fast.

Bob Banderet: That is part of it when we sit down with a utility to talk about these issues and negotiate there isn't a lot of negotiation up front.

Rep. Porter: Do you have any power lines going across your property?

Bob Banderet: Most of my experiences are with the pipeline.

Rep. Porter: What year?

Bob Banderet: 2009. I am under the gun for an electrical transmission line also.

Rep. Porter: Where is that running from?

Bob Banderet: From Ellendale down to the Big Stone Power Station in Minn.

Rep. Keiser: What did you hear at the public hearing that the PSC held that you did not know about prior to your discussions with the company?

Bob Banderet: There is a lot of information at the meetings that you don't hear about at the table. The biggest issue was being able to refute some of the things that the companies were saying.

Rep. Silbernagel: In this particular line that is coming cross your property did the township hold informational meeting?

Bob Banderet: No they haven't there have been 2 public meetings general meetings put on by the utility so far.

Rep. Silbernagel: So there is lots of the process left to do?

Bob Banderet: Yes.

Rep. Hunskor: Was your negative experience with the pipeline?

Bob Banderet: With the pipeline.

Paul Matthews: from Cogswell; I was affected by eminent domain and I believe the legislation would affect the pipeline too if they choose to use it. There was a strong

Page 4

indicated in the senate debate the landowners rights were protected by the utility having to pay for the cost of an attorney. From the landowners perspective that is pretty small because when I engaged in an attorney he cautioned me that "yes that is true Paul but its only reasonable attorney fees and the court may not decide my hourly rate is reasonable you would still be obligated to pay for the remaining fees." I think it is vital for the landowners to have as much information as possible.

Rep. Porter: We will close the hearing on SB 2209.

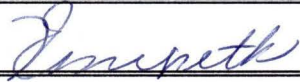
2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

SB2209
March 15, 2013
19966

Conference Committee



Related to eminent domain siting of an energy conversion facility or a transmission facility

Minutes:

"attached testimony."

Rep. Porter: We have SB 2209 1000 version in front of us. We have a do pass motion from Rep. Hofstad on the SB 220901000 version and a second from Rep. Silbernagel

Rep. Damschen: My concerns are when eminent domain is used as a level at the onset of the negotiations I don't think this is going to change the outcome of whether it is exercised or not. I am still opposed to using eminent as a bargaining tool.

Rep Hofstad: I agree with Rep. Damschen however I don't believe that this bill usurps the right of the property owner in any way; it just moves the timeline.

Rep. Porter: Roll call taken motion carries

Yes 9 No 2 absent 2 Carrier; Rep. Silbernagel

Date: 3-14-
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2209

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass

Motion Made By Rep. Hofstad Seconded By Rep. Silbernagel

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter	✓		Rep. Bob Hunsakor	✓	
Vice Chairman Chuck Damschen	✓		Rep. Scot Kelsh		✓
Rep. Jim Schmidt	-		Rep. Corey Mock		✓
Rep. Glen Froseth	✓				
Rep. Curt Hofstad	✓				
Rep. Dick Anderson	✓				
Rep. Peter Silbernagel	✓				
Rep. Mike Nathe	✓				
Rep. Roger Brabandt	✓				
Rep. George Keiser	2				

Total (Yes) 9 No 2

Absent 2

Floor Assignment Rep Silbernagel

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2209: Energy and Natural Resources Committee (Rep. Porter, Chairman)
recommends **DO PASS** (9 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING).
SB 2209 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2209

H /

**North Dakota Senate Bill 2209
Dale Niezwaag - Basin Electric Power Cooperative
Senate Natural Resources Committee
January 31, 2013**

Mr. Chairman and members of the committee, my name is Dale Niezwaag, representing Basin Electric Power Cooperative. I am here today in support of Senate Bill 2209, which will allow utilities to begin eminent domain proceedings while the PSC is conducting the final review and approval of the route permit.

You are all well aware of the rapid and continuous growth taking place in western North Dakota. This growth is creating an unprecedented demand for energy. Our distribution member systems have been going to extraordinary lengths to keep up with the demand for connecting new services, and in many cases, are still having trouble keeping up. It is Basin Electric's obligation to provide power to our members when it is needed. To meet the demand, Basin Electric has committed to completing and energizing a 200-mile, 345-kilovolt transmission line extending from our Antelope Valley Station, near Beulah, ND, to the Neset Substation, near Tioga, ND, by 2016.

Basin Electric's Right-of-Way personnel have been working with landowners along the route since 2011 to acquire easements for the new line, but constant requests for easements have created a situation of "landowner fatigue," whereby new easement requests are met with increasing resistance. This situation is presenting significant challenges for Basin Electric and has the potential to adversely impact our construction timeline and the delivery of a much needed commodity on which everyone in the area depends.

Basin Electric has already committed to construct six 45 megawatt natural gas-fired peaking units near Williston and Watford City to stabilize the transmission system in the area and serve the demand for electricity that is occurring before the new line can be placed in service. If this planned transmission line is delayed, to meet short-term demand, Basin Electric would have to build additional peaking units in the area at a cost of \$60 to \$100 million each.

Under current law, using the Public Service Commission (PSC) permitting process, a utility is not allowed to "exercise the right of eminent domain" until the Commission has approved the final transmission line route permit. This bill is being proposed to provide additional time for the

utilities to complete the easement acquisition process, while maintaining landowners' rights and protections under the law.

The legislative proposal before you includes two changes to the North Dakota Century Code. First, the modifications will allow utilities to begin eminent domain proceedings during the same time the PSC is conducting the review and approval of the route permit. Basin Electric believes this change will remove a two- to four-month delay in completing the easement acquisition process. Considering the loads in the area are growing at approximately 100 megawatts per year, combined with the short construction season in the state, this additional time can be significant.

Please note that the landowner protection that prohibits a utility from beginning any construction work before the route permit is issued by the Commission remains intact. Page 1, lines 22-24 and Page 2 line 1.

The second proposed modification included in this legislation allows the court to issue a delayed order to insure that, even if a judgment is determined, no other action can take place before the route permit is issued.

The PSC has been doing a very good job handling the increasing demands placed on their agency but those demands continue to increase. At this time, Basin Electric alone has four cases before the PSC. Under normal circumstances, a contested eminent domain proceeding can last anywhere from 12 to 18 months, but Basin Electric is concerned that additional delays can happen due to the overburdened court system in western North Dakota and the high number of criminal cases that take precedence over civil proceedings.

Currently, for smaller lines that don't need a route permit from the PSC, when all options have been exhausted in the easement acquisition process, utilities have the right to begin eminent domain proceedings. The modification we are proposing would allow the same opportunity for larger projects.

We understand that potential route changes may cause concern to some landowners if utilities have begun the eminent domain process prior to receiving PSC permits. However, once the route permit application and plan and profile drawings have been filed, modifications are

normally rare and when they do occur, are usually at the landowners' request. Additionally, if for some reason the PSC would change the route and remove the need for eminent domain, the statutes mandates that landowner expenses and attorney fees be paid by the condemner. N.D. C. C. Section 35-15-35.

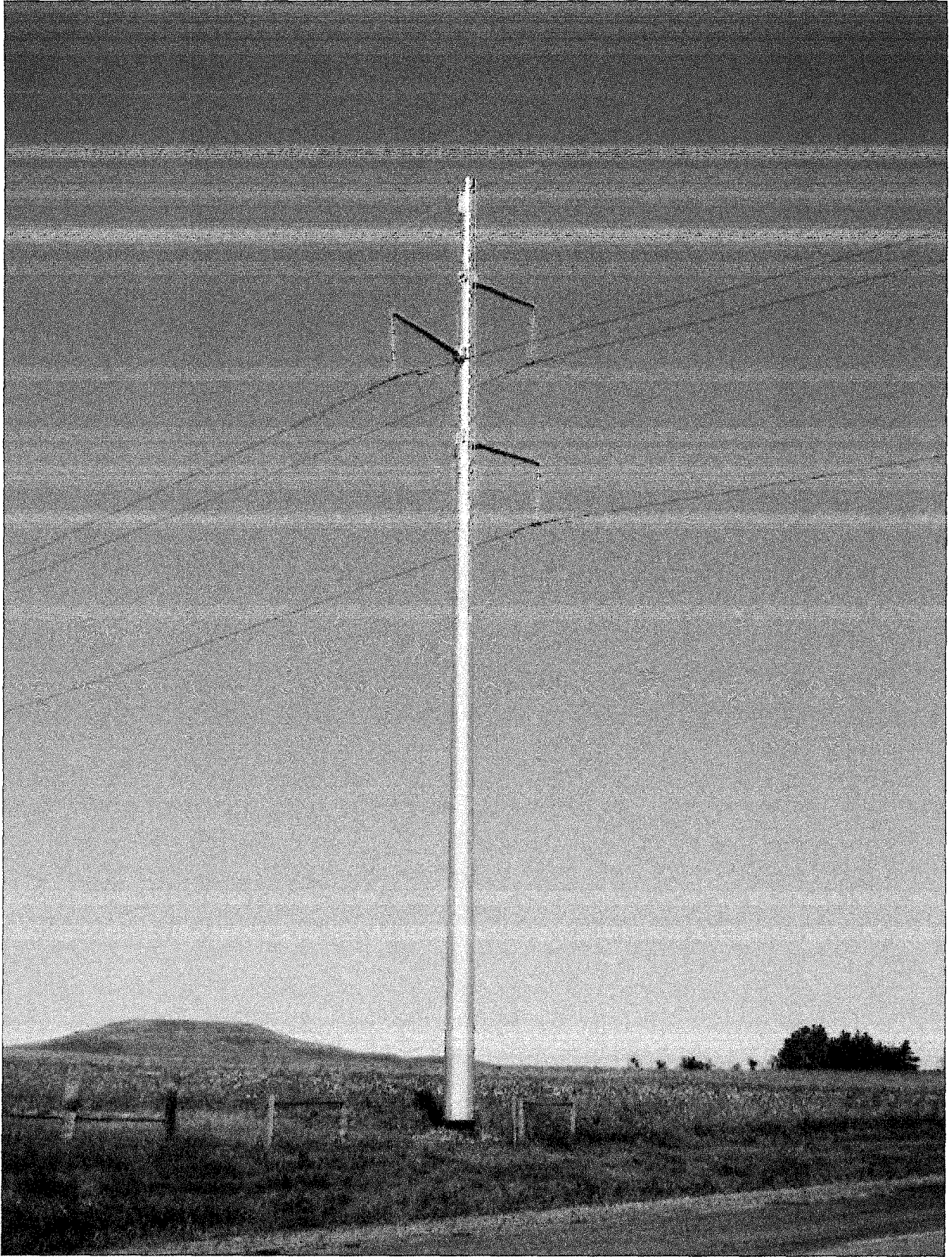
As stated before, this legislative proposal does not inhibit or alter landowner rights or protections or utilities' obligations throughout the siting or eminent domain process. The utility is still responsible for conducting environmental and cultural studies of the route, avoiding sensitive areas along the route, appraising the land, making good offers and negotiating in good faith. Utilities are committed to spend months, if not years, working with landowners to negotiate easements.

Basin Electric wants to ensure the committee that using the eminent domain process is the last choice in acquiring easements. We have a solid history of working with landowners and have developed subsequent long-lasting relationships with our landowners over our 50-year history.

Lastly, it is critical to remember that Basin Electric has an obligation to provide the power to our rural electric member systems in the most economical way. Balance must be sought between the rights of the landowner and utilities' obligations to provide much-needed power to the region.

Again, all this legislation will do is allow utilities to begin eminent domain proceedings while the PSC is conducting the final review and approval of the route permit.

I thank the committee for their time and consideration and urge a Do Pass vote on Senate Bill 2209. I would be happy to answer any questions from the Committee.



SB 2209 Transmission Siting Act

Legislative Change

Issue

- Loads in western North Dakota are growing at an unprecedented pace, so completing and energizing the planned 200-mile 345 kV transmission line by 2016 is critical.
- Increased demands on western North Dakota landowners – or “landowner fatigue” – is presenting significant challenges for the easement acquisition process, creating the potential for a delay in the in-service date.
- If transmission lines are delayed, to meet short term demand, Basin Electric will have to build additional peaking units in the area at a cost of \$60 to \$100 million each.

Goal

Develop a legislative solution to expedite the easement acquisition process while honoring landowner rights and protections.

Legislative Proposal

Basin is requesting two changes in the Century Code that will allow the utility to begin eminent domain proceedings before the final route permit is issued:

- Deletion of language to the Transmission Siting Act.
 - **49-22-07. Certificate of site compatibility or route permit required.**
 - A utility may not begin construction of an energy conversion facility or transmission facility in the state, ~~or exercise the right of eminent domain in connection with that construction,~~ without first having obtained a certificate of site compatibility or a route permit from the commission pursuant to this chapter.
- Allow the court to issue a conditional order.
 - **32-15-21. Power of court.**
The court shall have power:
 1. To regulate and determine the place and manner of making connections and crossings, or of enjoying the common use mentioned in subsection 6 of section 32-15-04.
 2. To hear and determine all adverse or conflicting claims to the property sought to be condemned and to the damages therefor.
 3. To determine the respective rights of different parties seeking condemnation of the same property.**4. Notwithstanding any other provision of law in situations where routing permits are required the court may issue an order allowing the taking through eminent domain conditional upon the receipt of permits.**

Rationale

- The proposed modifications will allow Basin Electric to begin eminent domain proceedings at the same time the PSC is conducting their review and approval of the route permit, therefore removing two to four months – or possibly more – from the full easement acquisition process.
 - An eminent domain proceeding can last anywhere from 12 to 18 months.
- A utility already has the ability to begin eminent domain proceedings when they determine there is no other recourse is available for smaller lines that do not need a PSC route permit.
- The following issues concern Basin Electric about possible approval delays and a timely execution of the eminent domain process (if needed):
 - The PSC staff is extremely busy (in 2013, Basin Electric has 4 projects that require siting).
 - The overburdened court system in western North Dakota
 - The requirement of criminal cases having priority over civil cases.

Addressing potential landowner impacts and concerns

- Some landowners may have concern with a utility commencing the eminent domain process before receiving the PSC route permit. However, once the route permit application and plan and profile drawings have been filed, any changes to the utility's preferred route are normally unlikely and very minimal in nature.
- If for some reason the PSC would change the route and remove the need for eminent domain, the statute mandates that landowners expenses and attorney's fees be paid by the utility.
- The process does not change any landowner rights or protections throughout the siting or eminent domain process.
 - The utility will:
 - conduct all the environmental and cultural studies of the route,
 - avoid or take into consideration all the sensitive areas along the route, and
 - appraise the land, make good offers, and negotiate in good faith..
- Eminent domain is not a preferable process; by the time eminent domain proceedings begin, the utility has already spent months, if not years working with the landowner to negotiate an easement and this is an action of last resort.
- The utility's obligation to serve consumers underscores the need to expedite the siting process to assure construction remains on schedule.

North Dakota Senate Bill 2209

Stacey Dahl – Minnkota Power Cooperative

Senate Natural Resources Committee

January 31, 2013

Good Morning Chairman Klein and Members of the Senate Natural Resources Committee,

I work as Manager of External Affairs for Minnkota Power Cooperative, based in Grand Forks. Minnkota is a non-profit electricity generation and transmission cooperative and is the sole supplier of electricity for eleven (11) non-profit cooperative distribution companies and the operating agent for Northern Municipal Power Agency which serves twelve (12) small cities in eastern North Dakota and northwest Minnesota. Minnkota serves approximately 130,000 customers over a 35,000 square mile area.

Minnkota is in the process of building a 250 mile 345-kilovolt transmission line from Center to Grand Forks to meet future energy needs in the northern Red River Valley. Minnkota encountered many of the challenges the Basin project now faces, including landowner easement fatigue, though certainly not to the same level Basin has experienced.

Had an option such as that contained in SB2209 existed as Minnkota built this line, we may have been able to remove a two- to- four month delay in completing the full easement acquisition process. Although we are sensitive to concerns of landowners, SB2209 does not inhibit or alter landowner due process rights or a utilities' obligations throughout the siting or eminent domain process.

Minnkota Power Cooperative supports SB2209, and encourages the Committee to recommend a Do Pass on this matter.

Sincerely,



Stacey Dahl



H3
PO Box 2136 • 1415 12th Ave SE
Jamestown, ND 58401
800-366-8331 • 701-252-2341
ndfu.org

SB 2209 – Eminent Domain Siting of an Energy Conversion Facility
North Dakota Farmers Union testimony
January 31, 2013

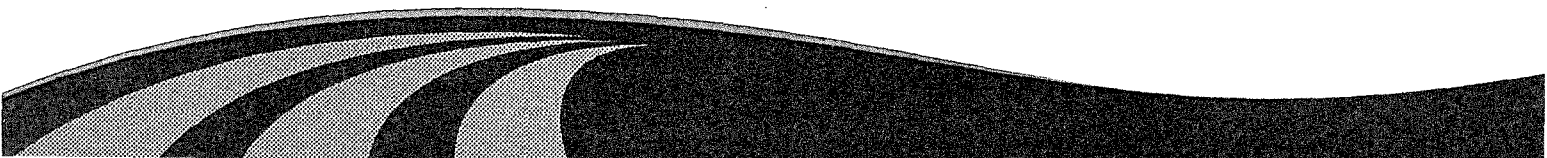
Mr. Chairman and members of the Senate Natural Resources Committee, my name is Richard Schlosser and I am testifying on behalf of the members of North Dakota Farmers Union. NDFU shares a heritage with the Rural Electric Cooperatives. Our members are REC members, and joined others to gather funds door-to-door to bring electricity to our farms and our neighbors' farms. Despite this shared cooperative heritage, we must oppose 2209.

We believe REC transmission companies need to have the authority of eminent domain in order to provide electricity to our neighbors and rural communities. We weigh that against the due process rights of landowners and the impositions they face when RECs or other energy providers need access to and use of our land.

Our policy speaks to that balance:

1) In the public hearing/siting process, it is important that the PSC continues to consider routes that minimize adverse human impact, avoid prime farmland, and minimize impacts on productive land. We also understand that significant energy infrastructure like high voltage transmission lines need the stability of long-term easements, but we weigh that against our firm principle that, as stewards of the land for current and future generations, we oppose tying the hands of future generations. That's why we oppose permanent easements and believe annual payments, instead of a one-time payment, are appropriate.

2) When condemnation is necessary, our policy states "individual notification and public hearings must be held before the project is allowed to be implemented." Our policy also supports compensation for the diminution of land values, increased expenses, and inconvenience suffered by affected landowners and operators. We also believe all initial court expenses, including attorneys' and appraisers' fees, must be borne by the constructing agency in condemnation proceedings.



As we try to strike that balance between landowner rights and efforts to energize the countryside, we will continue to work with the RECs. However, in this case, SB2209 throws the balance off, and blurs the line between the siting process/public hearing process and the eminent domain process.

Notably, while current statute identifies a clear timeline (hearings and permit first, condemnation second), the bill does not set any temporal parameters for a condemnation proceeding – it can begin at any time. The eminent domain process should be a last resort only after the public and landowners are fully aware of the impacts of the project and the need for the project, which is assured only after the public hearing process.

Further, the bill amendment grants discretion to the court to order the taking conditioned on the receipt of the route permit – at a minimum, the order should be mandatorily conditioned on the receipt.

Finally, we struggle to understand the need for this bill: if the concern is that the eminent domain process is too lengthy, the solution should not be to interrupt the public hearing process. The landowners affected by this line are already exhausted by the deluge of easement offers and energy development; to stack another process on top of the public hearing/siting process, particularly a process that is as charged as eminent domain, will jeopardize good will. While we understand the very tight timeline Basin faces, we oppose amending the statute for an immediate issue because we are concerned about long-term unintended consequences.

It is for these reasons that NDFU opposes SB 2209.

#4

Senate Bill 2209

Presented by: Illona A. Jeffcoat-Sacco
Public Service Commission

Before: Senate Natural Resources Committee
Honorable Stanley W. Lyson, Chairman

Date: January 31, 2013

TESTIMONY

Mister Chairman and committee members, I am Illona Jeffcoat-Sacco, General Counsel with the Public Service Commission. The commission asked me to appear here today to state the commission's understanding of the siting portion of the bill. If this understanding is not accurate, or the bill is amended, the commission requests another opportunity to provide its position to the committee.

The commission's jurisdiction under the Energy Conversion and Facility Siting Act (Siting Act), N.D.C.C. Chapter 49-22, does not extend to commission involvement in eminent domain issues. The Siting Act addresses land acquisition practices, but enforcement is reserved for the courts.

The land acquisition sections of the Siting Act are Section 49-22-16.1 and Section 49-22-16.2. Section 49-22-16.1 provides a court procedure for landowners to use if they experience unfair acquisition practices. If a court decision is reached finding unfair practices, the court decision is to be filed with the commission and the commission may refuse to issue a route permit, or if already issued, may revoke or suspend it. Section 49-22-16.2 provides easement compensation options and includes no commission involvement. As

you can see, under the Siting Act, the commission does not get involved with eminent domain proceedings in any way.

Existing law provides that the utility may not exercise the right of eminent domain without siting authority. We see this language as a limitation on the actions of the utility, not the commission. The definition of just what constitutes the exercise of eminent domain may be subject to interpretation. The commission's interpretation is that a utility would not exercise the right of eminent domain until a taking is authorized and just compensation determined by a court of law. This interpretation is based on the fact that both the necessity for taking and just compensation are, or can be, questions that must be decided by a court. Under this interpretation, the commission's authority under the Siting Act is unchanged whether the language the bill proposes to delete is deleted or not.

We recognize that others may interpret the sentence differently, but under either interpretation, the language affects the utility's options and actions, not the commission's. The only possible relationship between the commission's siting authority and the exercise of eminent domain is if the utility uses its eminent domain authority to try to sway the commission into approving a specific route, or if the utility uses the siting process to similarly sway landowners. While this potential is a concern, we believe it is no more or less a concern if the siting language at issue is in or out. We stress an important caveat, however, and that is that we do not have any knowledge, expertise, intuition, or position regarding the impact of the bill on judicial authority over eminent domain.

As noted above, if our understanding of the existing language and the intent of the revisions to the siting act is not accurate, or if the bill is amended, we respectfully request an opportunity for further review and testimony.

This concludes my testimony. I would be happy to answer any questions you may have.

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**North Dakota Senate Bill 2209
Dale Niezwaag - Basin Electric Power Cooperative
House Energy & Natural Resources Committee
March 14, 2013**

Mr. Chairman and members of the committee, my name is Dale Niezwaag, representing Basin Electric Power Cooperative. I am here today in support of Senate Bill 2209, which will allow utilities to begin eminent domain proceedings while the PSC is conducting the final review and approval of the route permit.

To begin I would like to direct your attention to the photo at the end of my testimony so that we all understand the type of design we are referring to when we talk about modern high voltage transmission lines. As you can see, the new structures are significantly smaller than the older four legged, lattice work type towers. Even though Basin Electric purchases 150 foot wide easements for a 345 kilovolt the actual footprint of each tower is approximately a 4 foot diameter for each foundation.

You are all well aware of the rapid and continuous growth taking place in western North Dakota. This growth is creating an unprecedented demand for energy. Our distribution member systems have been going to extraordinary lengths to keep up with the demand for connecting new services, and in many cases, are still having trouble keeping up. It is Basin Electric's obligation to provide power to our members when it is needed. To meet the demand, Basin Electric has committed to completing and energizing a 200-mile, 345-kilovolt transmission line extending from our Antelope Valley Station, near Beulah, ND, to the Neset Substation, near Tioga, ND, by 2016.

Basin Electric's Right-of-Way personnel have been working with landowners along the route since 2011 to acquire easements for the new line, but constant requests for easements have created a situation of "landowner fatigue," whereby new easement requests are met with increasing resistance. This situation is presenting significant challenges for Basin Electric and has the potential to adversely impact our construction timeline and the delivery of a much needed commodity on which everyone in the area depends.

Basin Electric has already committed to construct six 45 megawatt natural gas-fired peaking units near Williston and Watford City to stabilize the transmission system in the area and serve the demand for electricity that is occurring before the new line can be placed in service. If this

planned transmission line is delayed, Basin Electric will have to build additional peaking units in the area at a cost of \$60 to \$100 million each to meet the near term demand. However, just building the additional generation is not a long term solution to meeting the current and future electrical demand in this state.

Under current law, using the Public Service Commission (PSC) permitting process, a utility is not allowed to “exercise the right of eminent domain” until the Commission has approved the final transmission line route permit. This bill is being proposed to provide additional time for the utilities to complete the easement acquisition process, while maintaining landowners’ rights and protections under the law.

The legislative proposal before you includes two changes to the North Dakota Century Code. First, the modifications will allow utilities to begin eminent domain proceedings during the same time the PSC is conducting the review and approval of the route permit. Basin Electric believes this change will remove a two- to four-month delay in completing the easement acquisition process. Considering the loads in the area are growing at approximately 100 megawatts per year, combined with the short construction season in the state, this additional time is very significant.

Please note that the landowner protection that prohibits a utility from beginning construction before the route permit is issued by the Commission remains intact. Page 1, lines 22-24 and Page 2 line 1.

The second proposed modification included in this legislation allows the court to issue a conditional order to insure that, even if a judgment on the eminent domain is determined, no other action can take place before the route permit is issued.

The PSC has been doing a very good job handling the increasing demands placed on their agency but those demands continue to increase. At this time, Basin Electric alone has four projects before the PSC. Under normal circumstances, a contested eminent domain proceeding can last anywhere from 12 to 18 months, but Basin Electric is concerned that additional delays can happen due to the overburdened court system in western North Dakota and the high number of criminal cases that take precedence over civil proceedings.

Currently, for smaller lines that don't need a route permit from the PSC, when all options have been exhausted in the easement acquisition process, utilities have the right to begin eminent domain proceedings. The modification we are proposing would allow the same opportunity for larger projects.

We understand that potential route changes may cause concern to some landowners if utilities have begun the eminent domain process prior to receiving PSC permits. However, once the route permit application and plan and profile drawings have been filed, changes are normally rare and when they do occur, are usually at the landowners' request. Additionally, if for some reason the PSC would change the route and remove the need for eminent domain, the statute mandates that landowner expenses and attorney fees be paid by the condemner. N.D. C. C. Section 35-15-35.

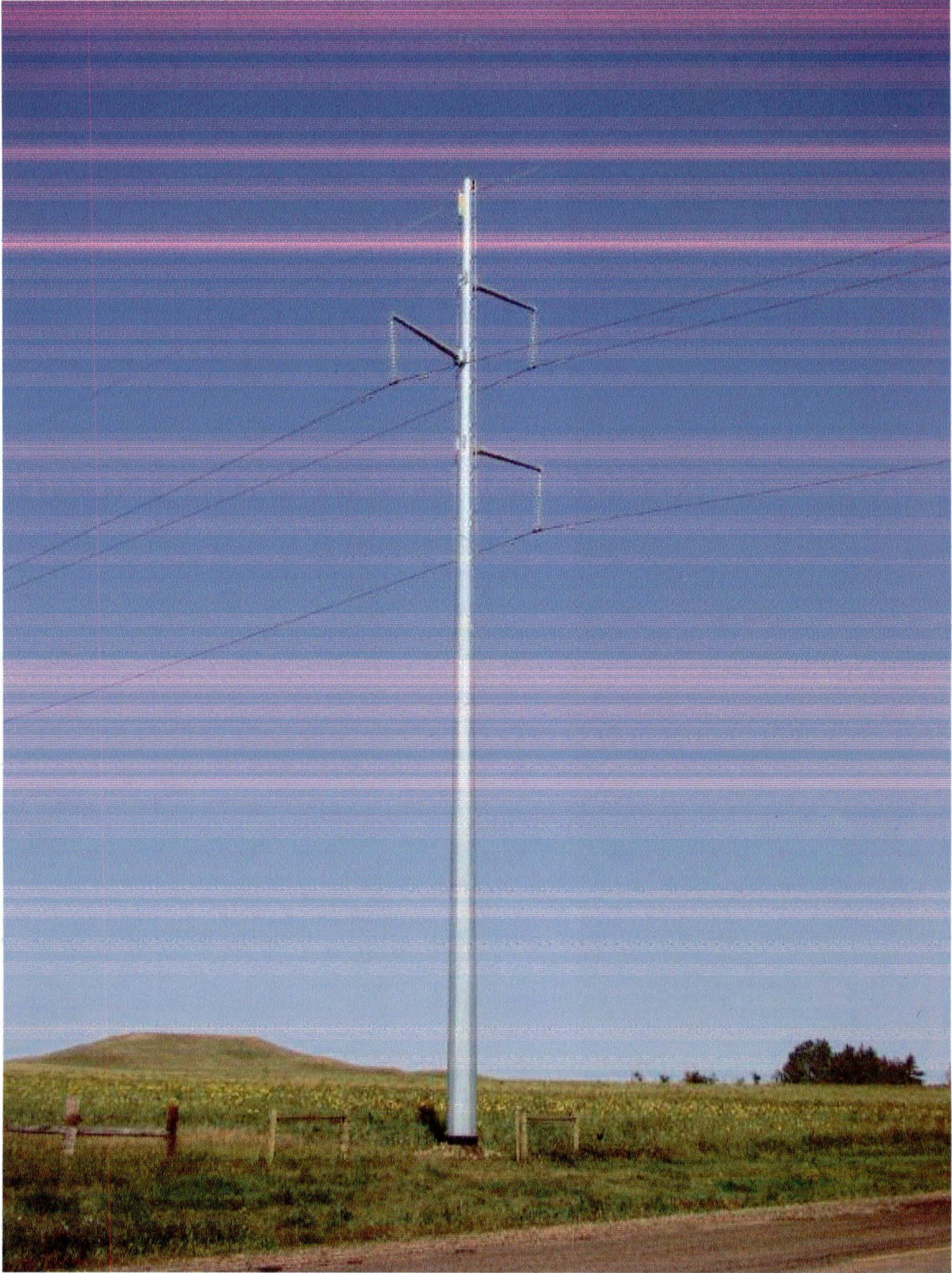
As stated before, this legislative proposal does not inhibit or alter landowner rights or protections or utilities' obligations throughout the siting or eminent domain process. The utility is still responsible for conducting environmental and cultural studies of the route, avoiding sensitive areas along the route, appraising the land, making good offers and negotiating in good faith. Utilities are committed to spend months, if not years, working with landowners to negotiate easements.

Basin Electric wants to ensure the committee that using the eminent domain process is the last choice in acquiring easements. We have a solid history of working with landowners and have developed subsequent long-lasting relationships with our landowners over our 52-year history.

Lastly, it is critical to remember that Basin Electric has an obligation to provide the power to our rural electric member systems in the most economical way. Balance must be sought between the rights of the landowner and utilities' obligations to provide much-needed power to the region.

Again, all this legislation will do is allow utilities to begin eminent domain proceedings while the PSC is conducting the final review and approval of the route permit.

I thank the committee for their time and consideration and urge a Do Pass vote on Senate Bill 2209. I would be happy to answer any questions from the Committee.





North Dakota Senate Bill 2209

Stacey Dahl – Minnkota Power Cooperative

House Natural Resources Committee

March 14, 2013

Good Morning Chairman Porter and Members of the House Natural Resources Committee,

I work as Manager of External Affairs for Minnkota Power Cooperative, based in Grand Forks. Minnkota is a non-profit electricity generation and transmission cooperative and is the sole supplier of electricity for eleven (11) non-profit cooperative distribution companies and the operating agent for Northern Municipal Power Agency which serves twelve (12) small cities in eastern North Dakota and northwest Minnesota. Minnkota serves approximately 130,000 customers over a 35,000 square mile area.

Minnkota is in the process of building a 250 mile 345-kilovolt transmission line from Center to Grand Forks to meet future energy needs in the northern Red River Valley. Minnkota encountered many of the challenges the Basin project now faces, including landowner easement fatigue, though certainly not to the same level Basin has experienced.

Had an option such as that contained in SB2209 existed as Minnkota built this line, we may have been able to remove a two to four month delay in completing the full easement acquisition process. Although we are sensitive to concerns of landowners, SB2209 does not inhibit or alter landowner due process rights or a utility's obligations throughout the siting or eminent domain process.

Minnkota Power Cooperative supports SB2209, and encourages the Committee to recommend a Do Pass on this matter.

Sincerely,


Stacey Dahl

Senate Bill 2209

Presented by: Illona A. Jeffcoat-Sacco
Public Service Commission

Before: House Energy and Natural Resources Committee
Representative Todd Porter, Chairman

Date: March 14, 2013

TESTIMONY

Mister Chairman and committee members, I am Illona Jeffcoat-Sacco, General Counsel with the Public Service Commission. The commission asked me to appear here today to state the commission's understanding of the siting portion of the bill. If this understanding is not accurate, or the bill is amended, the commission requests another opportunity to provide its position to the committee.

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The land acquisition sections of the Siting Act are Section 49-22-16.1 and Section 49-22-16.2. Section 49-22-16.1 provides a court procedure for landowners to use if they experience unfair acquisition practices. If a court decision is reached finding unfair practices, the court decision is to be filed with the commission and the commission may refuse to issue a route permit, or if already issued, may revoke or suspend it. Section 49-22-16.2 provides easement compensation options and includes no commission involvement. As

you can see, under the Siting Act, the commission does not get involved with eminent domain proceedings in any way.

Existing law provides that the utility may not exercise the right of eminent domain without siting authority. We see this language as a limitation on the actions of the utility, not the commission. The definition of just what constitutes the exercise of eminent domain may be subject to interpretation. The commission's interpretation is that a utility would not exercise the right of eminent domain until a taking is authorized and just compensation determined by a court of law. This interpretation is based on the fact that both the necessity for taking and just compensation are, or can be, questions that must be decided by a court. Under this interpretation, the commission's authority under the Siting Act is unchanged whether the language the bill proposes to delete is deleted or not.

We recognize that others may interpret the sentence differently, but under either interpretation, the language affects the utility's options and actions, not the commission's. The only possible relationship between the commission's siting authority and the exercise of eminent domain is if the utility uses its eminent domain authority to try to sway the commission into approving a specific route, or if the utility uses the siting process to similarly sway landowners. While this potential is a concern, we believe it is no more or less a concern if the siting language at issue is in or out. We stress an important caveat, however, and that is that we do not have any knowledge, expertise, intuition, or position regarding the impact of the bill on judicial authority over eminent domain.

As noted above, if our understanding of the existing language and the intent of the revisions to the siting act is not accurate, or if the bill is amended, we respectfully request an opportunity for further review and testimony.

This concludes my testimony. I would be happy to answer any questions you may have.



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PO Box 2136 • 1415 12th Ave SE
Jamestown, ND 58401
800-366-8331 • 701-252-2341
ndfu.org

SB 2209 – Eminent Domain Siting of an Energy Conversion Facility
North Dakota Farmers Union testimony
March 14, 2013

Mr. Chairman and members of the House Energy and Natural Resources Committee, my name is Kristi Schlosser Carlson and I am testifying on behalf of the policy developed democratically by the grassroots members of North Dakota Farmers Union.

We believe Rural Electric Company transmission companies need to have the authority of eminent domain in order to provide electricity to our neighbors and rural communities. We weigh that against the due process rights of landowners and the impositions they face when RECs or other energy providers need access to and use of our land. Our policy seeks a balance between landowner rights and efforts to energize the countryside. SB 2209 throws the balance off, confusing the line between the public hearing process and the eminent domain process.

Like the proponents, we too identify that landowners in the west/northwest part of the state are fatigued by the impact of rapid energy development. To us, though, the answer isn't to push forward the eminent domain process on landowners. Indeed, a utility should make use of any tool it has to build good will and educate landowners to facilitate those easement discussions. One tool is the Public Service Commission's public hearing process. We've heard landowners explain that compensation is only one of many issues they have when utilities need to build. While compensation is an eminent domain issue, the rest – concerns about construction, pole location, health, proximity to homes, interference with GPS systems, and so on – should be addressed by the utility well before discussions of eminent domain. The PSC hearings are an unbiased forum in which the landowner can hear the utility's response on all these issues. We believe that will provide a better platform for the "willing buyer-willing seller" discussion.



We oppose this bill, but if it must pass, we request an amendment that would set a trigger for the eminent domain process. While current statute identifies a clear timeline (permit first, condemnation second), the bill does not set any temporal parameters/triggers for a condemnation proceeding – it can begin at any time. The eminent domain process should be a last resort only after the public and landowners are fully aware of the impacts of the project and the need for the project, which is assured only after the public hearing process. We propose an amendment to identify that trigger as the “close of the hearing.”

Further, the bill grants discretion to the court to order the taking conditioned on the receipt of the route permit – at a minimum, the order should be mandatorily conditioned on the receipt.

Finally, we struggle to understand the need for this bill: if the concern is that fatigued landowners are not agreeing to easements, the solution should not be to interrupt the public hearing process. The landowners affected by this line are already exhausted by the deluge of easement offers and energy development; to stack another process on top of the public hearing/siting process, particularly a process that is as charged as eminent domain, will cause confusion at the least and will jeopardize good will. While we understand the very tight timeline the proponents face, we oppose amending the statute for this immediate issue because we are concerned about long-term unintended consequences.

It is for these reasons that NDFU opposes SB 2209.

Good morning Mr. Chairman and members of this committee. My name is Bob Banderet from Cogswell. Thank you for giving me the opportunity to speak in opposition to this bill.

Allowing utilities and pipeline companies to exercise the right of eminent domain before obtaining a certificate of compatibility or a route permit will put the landowner at a distinct disadvantage. The time between the application for the permit, the public hearings and the PSC's work session is the only time a busy landowner has to familiarize himself with all aspects of the project and determine his legal rights and options. This is also the time when utilities are most open to negotiations since they do not yet have eminent domain powers.

Granting the power of condemnation before a permit is obtained will significantly reduce the window of opportunity for a landowner to learn of his rights, find and possibly consult with an attorney and negotiate with the utility. Presently, a pipeline company or utility commonly threatens eminent domain at the initial or second meeting. If this bill is approved, not only will they be able to threaten condemnation at the first or second meeting, they will be able to actually start those proceedings. The pressure on a landowner to sign an agreement quickly will be even greater. Any incentive for the utility to negotiate has been removed and all this possibly before the PSC has even held hearings and gotten input from the public.

If a landowner is forced to seek legal advice to navigate through the condemnation minefield, who pays if the route permit is denied or the route is changed at the siting hearing?

On January 31st I testified in favor of a bill before this committee that would have helped level the playing field for landowners dealing with easement and eminent domain issues. Mr. Todd Kranda spoke in opposition to that bill stating our eminent domain laws were adequate as written, and since everything has been working well, no changes needed to be made. If that was the case on January 31st, why are we now considering a bill that will further weaken landowner rights?

Bob Banderet

9942 118th Av SE

Cogswell, ND 58017