

FISCAL NOTE
Requested by Legislative Council
02/17/2017

Amendment to: SB 2286

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed bill revises how the requirements of state and federal entities, and impacted political subdivisions, are incorporated into the Public Service Commission's siting application process. Engrossed bill has no fiscal impact.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Engrossed bill has no fiscal impact

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

No impact on revenues.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

No impact on expenditures.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

No impact on appropriations.

Name: Illona A. Jeffcoat-Sacco

Agency: PSC

Telephone: 701-328-2407

Date Prepared: 02/20/2017

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Date Prepared: 02/20/2017

2017 SENATE ENERGY AND NATURAL RESOURCES

SB 2286

2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2286
2/9/2017
Job # 28143

- Subcommittee
 Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution: Relating to energy conversion and transmission facility siting.

Minutes:

Atch#1=Sen Schaible; Atch#2, #3, #4=Todd Kranda;
Atch#5 and #6=Geoff Simon; Atch#7=Mike Fladeland;

Chairwoman Unruh: We will open the hearing on SB 2286.

Sen. Schaible: Dist. 31. This updates chapter 44.22.16 of ND Code also known as Energy Conversion Transmission Facility Siting Act. This is administered by the PSC. (see Atch#1)

Todd Kranda, Kelsch, Kelsch Ruff & Kranda Law Firm: I am here on behalf of ND Petroleum Council to support SB2286. (see Atch#2) (see Atch #3 and #4). If you look at part 4, which is not included in the bill, but it establishes a similar provision for state agencies. (10.20) We are asking the political subdivisions to come to the table at PSC and present any concerns, just like a state agency does now. I was involved in the original Trans Canada Keystone Pipeline, that ran completely through the state. We dealt with 8-10 counties. We could have had separate proceedings other than the PSC. This bill is intended to bring those concerns to the table at the PSC. The PSC travels to counties. Do pass with amendments.

Sen. Oban: I have a hard time with because I do not want to change a law because of one bad experience. Did this process work before the DAPL stuff?

Todd: DAPL just brought to faster forward to the forefront. We have had problems where companies had delays or jumping through more hoops after they get the permit. We thought it was handled at PSC level and finding out later there were problems at county level and not go forward. DAPL really highlighted it.

Chairwoman Unruh: Further in support. Testimony in opposition of SB2286.

Geoff Simon, Executive Director of Western Dakota Energy Assoc.: We are in opposition to SB 2286. (see Atch#5 and #6). We do not like the bill as is nor do we like the proposed amendment. We believe in consolidated hearings. We do not agree that you should deny the county it's zoning authority.

Sen. Armstrong: What do you tell a developer who is investing capital, etc. and then they get it approved through the Industrial Commission or PSC, and they end up in front of a local municipality. They are asking them questions about things already approved. That are outside the purview of that local municipality?

Geoff: I think those circumstances should be rare. But may happen. The county is to look out for their constituents. Local control is still important.

Chairwoman Unruh: Further testimony in opposition? Any agency testimony?

Mike Fladeland, Energy Business Development, Dept. of Commerce: (see Atch#7) (19.20-20.40). The chair of Commerce chairs the EmPower ND Commission. I provide staff for this. I am here in favor of this bill. It is part of the 2016 policy upgrade and recommendations. There are 53 counties, 300 communities, and a number of townships. To still afford them the opportunity to make comments to the PSC as it is going through their deliberations on an easement or pipeline route, this bill just helps the PSC, as well as communities, input in the issues. This bill provides clarification. Do pass.

Chairwoman Unruh: Any questions? Seeing none, we will close the hearing on SB2286.

2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Fort Lincoln Room, State Capitol

SB 2286
2/10/2017
Job #28200

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution: Relating to energy conversion and transmission facility siting.

Minutes:

Committee work

Chairwoman Unruh: Any discussion on SB 2286?

Sen. Schaible: There are amendments pending on this bill.

Chairwoman Unruh: That was easy.

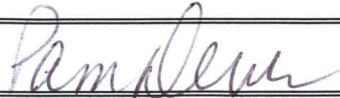
2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SB2286
2/16/2017
Job #28450

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution: Relating to energy conversion and transmission facility siting.

Minutes:

Committee work , Attch#1=Sen Schaible

Chairwoman Unruh: Called the committee to order. Take up SB2286.

Sen. Schaible: I passed out an amendment. 17.0950.02001. (see Attch#1) This bill is trying to streamline the approval process. So we do not have delays in projects. We do not want to duplicate things.

Chairwoman Unruh: Any questions? What are committee wishes?

Sen. Armstrong: I move a moved a Do Pass on amendment 17.0950.02001.

Sen. Schaible: I second.

Vice Chair Kreun: Originally, on section 2 we changed 'shall' to 'may' in two different areas. Why?

Sen. Schaible: To make sure we do not impede any authority that was given to counties. It was added to insure we do not take power away.

Chairwoman Unruh: Roll call was taken on amendments. YES 7 NO 0 -0- absent
Amendment Passed.

Chairwoman Unruh: We now have Sb 2286 as amended before us.

Sen. Schaible: Moved a Do Pass on SB 2286 as amended. **Vice Chair Kreun:** I second.
Roll call was taken. YES 7 NO 0 -0-absent. **Sen. Schaible** will carry the bill.

February 15, 2017

UM
2/16/17

PROPOSED AMENDMENTS TO SENATE BILL NO. 2286

Page 1, line 1, after "reenact" insert "section 49-22-14.1 and"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Section 49-22-14.1 of the North Dakota Century Code is amended and reenacted as follows:

49-22-14.1. Cooperation with state and federal agencies.

The commission ~~may, and is encouraged to,~~ shall cooperate with and receive and exchange technical information and assistance from and with any department, agency, or officer of any state, a directly impacted political subdivision, or of the federal government to eliminate duplication of effort, to establish a common database, or for any other purpose relating to the provisions of this chapter and in furtherance of the statement of policy contained herein."

Page 1, line 9, after "a" insert "gas or liquid"

Page 1, line 11, overstrike the first comma and insert immediately thereafter "or"

Page 1, line 11, overstrike ", or building rules,"

Page 1, line 11, overstrike ", or ordinances"

Page 1, line 13, after the first overstruck comma insert ". Before a gas or liquid transmission facility is approved, the commission shall require the applicant to comply with the approach or road crossing permits, public right-of-way setbacks, building rules, or physical addressing of the political subdivision. The commission may waive the requirements of a political subdivision if the applicant shows by a preponderance of the evidence the regulations or ordinances"

Page 1, line 13, remove the overstrike over "~~are unreasonably restrictive in view of existing technology, factors of~~"

Page 1, line 14, remove the overstrike over "~~cost or economics, or needs of consumers regardless of their location~~" and insert immediately thereafter ", or are in direct conflict with state or federal administrative law"

Page 1, line 14, remove the overstrike over the overstruck period

Page 1, line 16, remove "if representatives of the governing"

Page 1, remove lines 17 through 23

Page 2, replace lines 1 and 2 with "The commission shall provide notice to all the appropriate political subdivisions at the time an application for a certificate is made under this section. Upon notice, a political subdivision shall provide a listing to the commission of all local requirements authorized under this section. If the political subdivision does not submit the requirements at least ten days before the commission hearing, all requirements are waived."

Renumber accordingly

Date: 2/16/17
Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES SB 2286
BILL/RESOLUTION NO.

Senate Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 17.0950.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. Armstrong Seconded By Sen. Schaible

Senators	Yes	No	Senators	Yes	No
Chair Jessica Unruh	/		Sen. Erin Oban	/	
Vice Chair Curt Kreun	/				
Sen. Kelly Armstrong	/				
Sen. Dwight Cook	/				
Sen. Jim Roers	/				
Sen. Don Schaible	/				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Amend. passes

Date: 2/16/17
 Roll Call Vote #: 2

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2286**

Senate Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 17.0950.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Sen. Schaible Seconded By Sen. Kreun

Senators	Yes	No	Senators	Yes	No
Chair Jessica Unruh	/		Sen. Erin Oban	/	
Vice Chair Curt Kreun	/				
Sen. Kelly Armstrong	/				
Sen. Dwight Cook	/				
Sen. Jim Roers	/				
Sen. Don Schaible	/				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Schaible

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

REPORT OF STANDING COMMITTEE

SB 2286: Energy and Natural Resources Committee (Sen. Unruh, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2286 was placed on the Sixth order on the calendar.

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ReNUMBER accordingly

2017 HOUSE ENERGY AND NATURAL RESOURCES

SB 2286

2017 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau –A Room, State Capitol

SB 2286
3/9/2017
29005

- Subcommittee
 Conference Committee

Committee Clerk Signature

Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Relating to energy conversion and transmission facility siting

Minutes:

Attachments #1-5

Chairman Porter: Called the committee to order on SB 2286. Clerk read the short title.

Sen Don Schaible, Dist 31: presented Attachment #1.

Rep. Heinert: Do you know, in reference to your Page 2 Line 7-12, the 10 days for the local commission or political subdivision (to react ? inaudible 3:54) how long before the PSC has the hearing? How long the locals would have?

Sen. Schaible: I'm guessing 30 days, I'm not positive. 30 or 60.

Chairman Porter: We can see if we can get that clarified with more testimony or directly from the PSC.

Rep. Keiser: On line 19, the engrossed bill, we're making a big change there from may to must. Are we taking away local authority?

Sen. Schaible: The hope is not to. The hope is we would streamline the process and they would work together and that the PSC would not overstep the authority of our local entities. It's the idea of trying to do it together, at one time rather than multiple hearings and then trying to determine the overlap. It's the idea to combine it and get it together and get it that way. The hope is not to intercede on the political subdivisions.

Rep. Keiser I know what the intent is but that's not what this says. This doesn't say the 2 entities must cooperate in developing a single, this says you must do it to us at the exclusion of local input.

Sen. Schaible: Yes. What it says I would imagine that's some of the controversy that our political groups. Our stakeholders have been in communication and have worked with some

of that. I don't know if we're at total resolution or not but that's the process we're working through.

Chairman Porter: further testimony in support of SB 2286

6:47

Todd Kranda, Attorney, ND Petroleum Council, in support of engrossed SB 2286. Presented Attachment #2.

23:31

Rep. Lefor: You added a study and put "shall" study in there. Why did you do that instead of "may"?

Kranda: We really want the study. We've talked to our stakeholders and the commissioners and I think that helped bring everybody to the table so we're not here duking it out. I expect that to be a focus of one of the subsequent speakers to make sure that it's studied. There is some communication issues that need to be developed. A process, this is really important for our industry as well as the political subs and I think it's critical and PSC has to be part of that as well.

Rep. Heinert: Original bill, Page 1 line 19, changing MAY to MUST. Can you explain why we went to MUST?

Kranda: Correct. We see that as the streamlining and identifying that the PSC is the appropriate siting entity. You don't impact the site route corridor unless you have one entity saying, "this is what the route and corridor is." We do and what we anticipate happening, those local political subdivisions putting together that checklist and saying, here's all the things we need to have complied with in our county, in our jurisdiction, our city, our township, give that to the PSC. If you look at my handout is a certification by the PSC, deals with the DAPL corridor findings and certification letter. The certification letter says, and the PSC has this for each applicant, says, "company agrees to comply with all rules and regulations of other agencies having jurisdiction, including all city, township and county zoning regulations." So the PSC is the one telling us you MUST comply and the locals aren't losing any control. We're not trying to take away from what they do and what we have to comply with. We're saying it's all done at the PSC level and this one order will define everybody complying with that.

Rep. Heinert: It says they must preempt any local land use or zoning regulations. So if a local county or local city has a zoning ordinance, the pipeline is going through there they have to change their zoning ordinance.

Chairman Porter: Mr. Kranda, I think it would be helpful, because this Sub 2 is broken into 2 things. I think it would be helpful if you broke it down into Step 1, certificate of site capability which may not supersede or preempt, and then Step 2 the permit for construction which has to because all the other stuff has been looked at during the certification process. I think so we keep it straight, what we're performing in each of the processes, even inside of this the

amendment may not be correct. That each of those may need to be broken down into an A-B-C.

28:00

Kranda: I think that helps. I didn't catch that. Yes, so the first sentence, you don't because that site compatibility, the certificate for site compatibility may not supersede. So we are making sure the broader site doesn't preempt, but when you get to the actual permit when they say for construction, the permit that is issued by the PSC is the law of the land. It is what is followed and that's why, when the locals submit their restrictions and requirements or whatever they are required within their local jurisdiction, then it's incorporated within that permit.

Rep. Heinert: The locals still have to change their zoning of that parcel of that land. They can turn it in saying, we do not have this land zoned for this appropriate matter, nor do we want to change our zoning. And if the permit's issued the locals have to change their zoning.

Kranda: I don't believe so. It's not our intention that they have to, it's what

Rep. Heinert: It says "must". It used to say "may".

Kranda: But it used to say may with the additional items that are lined out. "Upon a finding that has applied"

Chairman Porter I think, but you're the lawyer, when we flip it, it used to say that on the actual certificate of site compatibility, that's where the "shall" used to be, and that was more onerous than the permit for construction. Now by flipping it, it may not supersede a preempt the local land use, zoning or building rules or facilities, then it flips, once that site compatibility is performed, then it says the permit for construction has to happen. That's where the flip is. You flip the top one also because that one used to be the "may" and you flipped it in order. The site compatibility is the important one. Once that's complete and everybody checks off, then the permit for construction goes forward.

Rep. Heinert: That's where my issue is. What happens if a local entity doesn't check off. If they say this is against what we have decided the land use is for this piece of property and our zoning regulations is contrary to allowing this.

Kranda: It was just brought to my attention, those changes on Line 15, 17 and 19 were LC's changes. But I think they're still consistent. If you look at the end of the changes that we're suggesting. If an applicant must still comply with the requirements that are proved by the commission and submitted by the townships. So what you're saying is, we're going to come in and do our due diligence, file our application, plan it to go through whatever building code requirements, zoning, locations, that are appropriate. Because if we don't, our plans are going to be skewed, someone's going to object and we're not going to be able to build the way we want. PSC will raise an objection, as shown in these certifications or better yet, the DAPL one, not allow us unless you comply. If you look at some of the provisions within the DAPL, there were communications made by outside entities. There was Dunn County Weed Board that submitted information about what you need to comply with. The PSC put that in

their findings and conditions. So when they send their requirements I anticipate the PSC will incorporate those as conditions. What it really does is present it at the initial siting, route, corridor, location hearing, so we can deal with it if the company has an issue with it. Or if the commissioners in their local jurisdictions have an issue with it, it can be addressed there instead of multiple late hearing where we're told we got a permit, you can build, and then all of a sudden, no you can't.

Chairman Porter Further questions? Further testimony in support

33:49

Jeff Simon, Western Dakota Energy Association. We also represent the coal producing counties and covers cities and school districts in the energy producing counties. Mr. Simon presented Attachment #3.

Rep. Keiser: In Subsection 2, the two changes to MAY do not change those lines. Shall not and may not are the same thing. When it's a negative, not, may not, there's no change there. The only thing we're really changing is MUST supersede. So we are superseding the local control.

Jeff Simon: This process will supersede the local zoning decision, that conditional use permit or in some cases the rezoning of the property at the conclusion of this process. As I say we have tried to incorporate those local concerns into the amendments to emphasize notification in the importance of local government participation in the citing process before the PSC.

39:32

Daryl Dukart, Dunn County Commissioner: I'm wearing multi hats. We are now in support of this bill. The reason I want to make clear. I'm chairman of the WDEA, of which Jeff Simon just visited with you. I'm also the past chairman of Vision West ND who worked at the beginning of this bill and since that time I left that. I'm a Dunn County Commissioner and a landowner. The impacts to us are a little different. My message will be a little different. As the statements were made, there were 100's of emails, phone calls, conversations that were share between all of us. The ND Association of Counties, the Petroleum Council, the Industry, and WDEA along with states attorneys from counties that were very concerned what this looked like. Since that time we've come to something that is somewhat palatable. We're ready to move along and we don't think we have relinquished local control with this bill. The big thing that fears me with this at this point is it's a tremendous change on how local planning and zoning boards are going to approach public service commission and approach industry with the planning and zoning CUP's and regulations and ordinances that we now presently have. That change will be made that no longer industry will be sitting at our table and let us hash it over with them. They're going to be coming to the table when PSC is in our county. We're going to have to be prepared and organized. I think in the western side of the state, in the 7 aggressive counties of energy production, are in a situation where we are fairly prepared for this. My concern was, as I represent and sit on the board of ND Association of Counties, is all fellow commissioners across the state of ND. A lot are not prepared. It's a different way of getting our views and points to the PSC. I look for this to be handed down to

other commissions operated in the state in time as well. That said, I've had the discussion with ND Association of Counties, executive Mark Johnson, starting to thinking and the process and to educate how we can better train county commissioners to handle this and their planning and zoning directors, and states attorneys because they're the ones to get in the middle of a lot of this. I have some questions I'd like you to consider.

(1) when you get into these situations, companies come out and start putting in a pipeline, you have all the stuff that comes along with it; a staging area, place to store trucks, place to house people, etc. I'm hoping that the industry and put in there someplace in regulations with PSC, that anything done outside the corridor still needs planning and zoning regulations from the area they're in. Back in 2004-08, that was a constant. They thought when they got a permit from PSC they could do what they wanted and doesn't work like that.

(2) the responsibility of a poor actor out in the field of the industry. After visiting at meetings and today, it's my understanding PSC is responsible because now it's in their court. Is there enough FTEs to take care of all the problems that could arise. Example, when Dakota Access went through Dunn County, we had several counties from digging to reclamation all within the same county, fencing crews, culverts, extra roads across creeks and rivers, remove, installation all happening at one time. Our road foreman continually watched what was happening and there was damage done to roads no question about it. There were times they unloaded Cats on the side of the road and drove them ¼ mil down the road. We caught that and they came back and fixed it. My worry is will there going to be enough inspectors to take care of that for us. So as we enter into what I would classify what I different water, as a leader in the state of ND and commissioner in a county in western ND, I'm willing to start up, start the educational process, I'll take hits on the head and they'll question me, I'm ready to move forward.

(3) We started with a public safety plan and it got kicked out again today. As I think about this is, Dunn County has locations in it where pipelines could possibly go, that still to this day do not have full cell phone coverage, that you will be able to get on the phone and reach 911. You *may* possible get to do a text message but there could be incidents, where there may be an accidental injury where they cannot get a hold of 911 and not get a message to an area fire department, rescue squad or ambulance. So I ask for that plan to be included, they come to the county and get the emergency cell phone numbers of those individuals, that can help respond to those incidents. Very simple, we have it, it can be provided, it just needs to be requested.

(4) last thing is in present law. If in the amendment, needs a consumers regardless of their location. I would like a good clarification of that. I'm concerned why we in local and planning and zoning should be dealing with issues; when I read that when the consumer we're probably serving is probably in MN, SD, MT or another state. We jumped on board now because once we got through the process to do the study that made me as a commission, and I believe will make my fellow commissioners, very satisfied, to move forward.

Rep. Mitskog: That 10 days, on Line 11, is that time frame, local zoning boards don't meet very often. Do you find that's too tight of a time frame?

Dukart: yes, we're comfortable with that because, it's 10 days to get your information in to the planning and zoning. You're going to know long before that there's going to be a hearing.

Those notices come out in 30 days or earlier. We feel the time frame is comfortable. You're planning and zoning director are going to have to be on the ball but I don't think it's not achievable.

Rep. Mitskog: the word MUST supersede, are you ok with that? I'd like your opinion.

Commission Dukhart: I was not at first, but I'm okay with it now. I think it serves what we want. It's about training and education back to the local level. The cumbersome part of this is your opportunity is that window when the PSC is there holding their hearing, no longer having that opportunity one on one at your board meeting.

Lisa Lee, Mountrail Planning and Zoning. We've been going back and for on drafts of this bill. At first we were very hesitant. We're proponents of local control. However, we can say with confidence the bill has come a long way. We feel confident the local zoning ordinances and our regulations will be factored in through the PSC and intend to be a partner in that process. At first we were concerned that hearings were only going to be in Bismarck and that was a red flag. We want our residents to in the local community to show up and have a voice. We are happy to hear there will be local hearings because we want all our people to attend and may not be able to if it was here in Bismarck. With counties, townships and cities, and changing borders and boundaries with annexation in extra territorial areas. We hope if this bill is enacted, either the PSC or the company is going to have some means of accurately determine the changing boundaries and getting constant communication with the correct zoning authorities. We want some provision for that in the bill. It'll take a lot of communication and collaboration amongst industry, PSC and different zoning authorities. We know some of the townships do their own zoning and are volunteers that do not hold frequent meetings. We just hope their voice is still heard in the bill. The second issue we had was with enforcement and want to make sure and clarify if currently as it stands, as a public planning and zoning administrator, if we have a problem we have a permit that we have issued as a local jurisdiction and the option to rescind that permit and assess fines and take enforcement actions. We want to clarify that if the permit is issued by the PSC, will they be ultimately responsible for all enforcement issues going forward? In the bill they talked about a 3rd party construction inspector which we think is a great thing but also want to know that during post construction if something comes up whether it's road use agreement, zoning agreement, infraction of any sort, we would like clarification at the county, who's handling it, the county or state? Our other question is the appeal process. If the industry did decide for whatever reason that some ordinance that we did submit to the PSC was unreasonable restrictive for whatever reason, that planning representative was not able to make the hearing for whatever reason, would they be notified that the industry is unable to meet this requirement for this reason and is there an appeal process.

16:25

Rep. Mitskog: That local ability to appeal and that process is one of my concerns.

Lisa Lee: If the planning zoning director can attend the hearing, then we'd be able to hear the concerns of the company but there's the option they might not make it to the hearing. In that case there would have to be some kind of notification procedure or process in place.

Rep. Heinert: If Mountrail County were to take 80 acres and identify it as commercial, 3 months later a pipeline asked to come through that property, do you think Mountrail County should have a reasonable expectation they can retain their authority or it should be changed over, mandated to change over.

Lisa Lee: As it stands now we have that right now with oil and gas well sites all over the county. Most of our land is agricultural and we have little pockets of industry. We don't rezone right now for oil and gas well pads or well sites. We have in the past rezoned for compressor stations, but with this bill I would not assume we'd be rezoning the land at that time. We'd be relinquishing that.

Chairman Porter: Further testimony in support?

56:54

Mike Fladeland, manager of Energy Business Development for ND Dept. of Commerce (Empower) presented Attachment #4.

59:51

Rep. Keiser: a certificate of site compatibility is issued by the PSC and a permit for construction is issued by the PSC, and those are 2 different events, is that correct?

Fladeland: I suspect that's accurate but I'm not sure.

Rep. Keiser: I ask because I'm looking at the SB 2286 with the proposed amendments added because hopefully that's what we would do. In Section 2 it says the commission "may" and in fact is encouraged to cooperative with and receive information. That's the cooperative part. I question what that shouldn't absolutely be a "shall" because when we go down to the new Subsection 2, this is for the certificate of site compatibility for an energy conversion, "may not supersede or preempt any local land use, zoning or building rules. They need to find this out before this happens. But that the commission may, and is encouraged to check into it but they don't have to. Then they're going to issue a certificate of site compatibility that says you have to meet them all. I understand later once you've done the permit, the work is done and the permits going to be issued. It seems those 2 sections are inconsistent with each other.

Fladeland: Yes as far as I know both would be issued by the PSC. Under this bill the PSC would have to consider local zoning and regulations and as was mentioned earlier, 80 acres is zoned in whatever county for a certain purpose, the PSC would have to take that into consideration. Before that

Rep. Keiser: they can't issue that permit without it doing it, which I support. The language up above, says we MAY, it would be convenient, we do recommend it. But now we're saying, why do we even have that section. Or we need to change it to they shall. Consider all those things, issue the certificate, once we're through that process the permits a done deal.

Fladeland: yes that makes sense.

Chairman Porter: further testimony in support? Opposition?

1:03:45

Natalie Pierce, ND Planning Association presented Attachment #5 in opposition.

Chairman Porter Questions?

1:07:00

Rep. Mitskog: The 10 days have been a concern to me since in rural areas they don't meet that often. To your knowledge, do most townships have some zoning authority or do they rely on the county for that?

Pierce: It's really a mixed across the state. There's townships, there's auditor, planning zoning board may meet very seldom or as needed and some township and cities do rely on the county to give them planning advise. Some may have larger and more thorough planning and zoning ordinances. Some may not. PSC already goes through their own process. We want to make sure that in the cases where there is a very robust planning and zoning ordinance to be able to have that be in effect.

Rep. Mitskog: the appeal process? Do you have any thoughts on that?

Pierce: yes, what would the appeal process would look like if what the PSC does make a determination that doesn't sit well with the local jurisdiction.

Rep. Keiser: 10 days, typically we say 10 business days. That's not a long time. Would you support the addition of 10 business days or would you want it longer?

Pierce: We would strongly recommend more than 10 days at least for the receipt of notice, but to get notices in the local newspaper. Often times notices from the PSC is just printed in a paper who many people don't subscribe to anymore. To get a letter at your residence so you know what's going on, I think does reduce the amount of back feeding into the process and people complain after the fact maybe because they just found out about it after it passed.

Chairman Porter Further opposition? Closed the hearing on SB 2286

2017 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau –A Room, State Capitol

SB 2286
3/23/2017
29634

Subcommittee

Conference Committee

Committee Clerk Signature

Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Relating to energy conversion and transmission facility siting

Minutes:

Attachments 1-2-3-4

Chairman Porter:

Todd Kranda, Kelsh Law Firm, represent the Petroleum Council: presented Attachments 1-4.

Rep. Heinert: Speaking of the 35 days for county and townships, how did we arrive at the 35 days?

17:42

Kranda: the 35 days is because we've established a 45 minimum the PSC cannot have a hearing prior to 45 days from the date notification is sent by mail or electronic mail. That's in the bill itself Page 6 Lines 29-30-31. We know that 10 days before that the local political subs have to have it filed. That's the next sentence. So then I just backed up to 35. Now 45 days is plus whatever days it takes for them to Notice it, plus 45 days doesn't mean they'll do it on the 45th day. It will most likely be out longer than that.

Rep. Heinert: The counties and townships aren't going to know when the PSC is going to schedule it. They're going to be stuck in the 35 days.

Kranda: I don't agree. They will know. They won't know when the first Notice is filed. They know the rules, regs and ordinances are when they go with a project like this. They will know because of all the notices that are required once the application is deemed complete, they're part of that notification process and part of those notices is scheduling a hearing.

Rep. Heinert: I don't think 35 days is enough. If a township's involved and they want to get together with a commission, you'll probably have one meeting that could possibly happen at. If we get within the 10 days, then the counties and townships are automatically not heard

from. We got 3-6 months beyond this. They're probably not going to schedule this for the 45th day. I don't understand how the county will hear when they're going to schedule it in that time frame is so the know when their 10th day is up. So I'm wondering if it can't be 60 days and the you got 55 days. It would give the county commission and townships 3 meetings to work with.

Kranda:

Rep. Heinert: County commissions meet 2xs month.

Kranda: We're trying to streamline this. We think they need to get their punch list ready, they have until August if this bill passes. We have some concerns as a company there's certain projects that could go faster. Because we're limited to 45 days, they're delaying those projects that are smaller. We don't believe the officials need to meet as often as you're suggesting before they submit. They should have a plan in place, just like they develop their ordinances now. We hope and encourage the commission and whoever it is, participates in these hearings held on this process. The organizations, WDEA, ND Association of Counties, and the townships who work with us would be emphasizing to members they have to get prepared for this and have everything ready in advance. They'll know in advance.

Rep. Heinert: County Commission meets twice a month. Let's look at this time frame as you're looking. The county gets notified, it comes up on the agenda for the first meeting, the checklist is in process, come back to the next meeting. But at the 2nd meeting the township officials have a checklist as well and want to confer with county commissioners prior to finalizing that. Then the county commissioners can't finalize until the third meeting which puts them outside the parameters of 35 days.

Kranda: I don't agree they can't have that all prepared in advance. The timeline and streamline, I'm not sure why the 45 days isn't a workable solution. We do have a study and if we find this is a problem and August 1 when the bill goes into effect come 2019, that can be resolved. That study is critical. The communication and cooperation that is impacted. It talks about efficiency, time lines, we are looking at that. Right now we think 45 is reasonable.

Rep. Keiser: Was there ever any discussion regarding business days? Did you ever think of converting it to business days?

Kranda: As an attorney we a rule that talks about that but it's if it's less than 10 days. They may have changed it to 14. If your deadline is less than 14 days, then it doesn't count holidays and weekends. 45 days is far enough out we've set it out 45 calendar days and feel that's adequate. Not business days.

Aaron Birst: We feel the 45 days is something we can work with.

Rep. Heinert: I have a huge concern possibly 2 meetings instead of 3 meetings.

Aaron Birst: We support the amendments to 2286. We agreed to the 45 days. Next session we come back and say that didn't quite work right, let's move it a little bit. We feel they brought forward a good bill. I'll make note for gathering lines, counties, townships have zero control.

So when we looked at this, we sat down with industry, worked through it and they've been fantastic. Commissions

Rep. Heinert: going back to my question. I have a huge concern allowing the County Commission possibly 2 meetings and not 3 meetings to make sure between the county and townships, they get their ducks in a row. As long as we're doing the study wouldn't it be easier to give the time now and cut it back after the study?

Birst: The 45 days we agreed to. I think on these zoning bills you're going to have to look at special meetings. Most meet 2xs a month. From our training we'd be suggesting if you're uncomfortable using 2 meetings, call special meeting.

Jeff Simon: Western Dakota Energy Association. We represent cities, counties, school districts in the oil producing counties. This is an administrative thing. I don't know that it requires a lot in front of the commission, much is done behind the scenes. We support this.

Chairman Porter: discussion? On the study, Commission Dukart was here, the condition of their support was the study. Language was changed from shall consider to shall study.

Rep. Seibel: Do we run the risk of losing this entire bill because of a shall study? I'm personally fine with it.

Chairman Porter: I think our persuasiveness on the agreement has streamlined the process is a selling point. A lot of the times the studies that are put in aren't part of the agreement and the streamlining of local units of government and the moving of power between them and the siting process and the approval process. I don't see it as an issue.

Rep. Mock: Is there any indication if this were a shall consider studying, that it wouldn't be chosen by legislative management?

Chairman Porter: if it were a shall consider study, because of the work that the Western Area Oil and Gas producing counties went through with the industry, they would pull their support of the entire agreement.

Rep. Devlin: I share Rep. Heinert concerns. I come from an area where they meet once a month, townships probably meet quarterly. It's a valid point they can have special meetings. I'd like to know if all the counties in the state other than one are members of the association now?

Birst: I'm happy to report all 53 counties are paying loving dues paying members!

Chairman Porter: committee we have an amendment in front of us.

Rep. Keiser: move adoption of the amendment.

Rep. Mitskog: second

Chairman Porter: we have a motion from Rep. Keiser, second from Rep. Mitskog to adopt amendment 03003. Discussion?

Rep. Heinert: I just have to say, we're streamlining this immensely. We still got a six month project moving from 45-60 days and allowing the commissioners 50 days backing this up the way Mr. Kranda did is going to make it any significant difference other than to county commissioners allowing them to at least think about it before they sign off.

Chairman Porter: further discussion? All those in favor? Aye, opposed. Voice vote, Motion carries. We have an amended bill in front of us.

Rep. Anderson: I move a Do Pass as Amended on SB 2286

Rep. Keiser: second

Chairman Porter: we have a motion for a Do Pass as Amended on SB 2286 from Rep. Anderson, and a second from Rep. Keiser. Discussion?

Roll call vote: 13 yes, 0 no, 1 absent. Motion carried. Rep. Lefor is carrier.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2286

Page 1, line 1, replace the first "section" with "sections 49-22-03 and"

Page 1, line 3, after "siting" insert "; and to provide for a legislative management study regarding the consideration of local zoning ordinances and zoning provisions during the application and public hearing process."

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

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 any clearing of land, excavation, or other action that would affect 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 subsections 5 or 12 of this section and the activities are:
 - (a) Within the geographic boundaries of a previously issued certificate or permit;
 - (b) For an energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
 - (c) For a 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 energy conversion facility;
 - (b) Of a new gas, liquid, or electric transmission facility;

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- (c) To improve the existing energy conversion facility or gas, liquid, or electric transmission facility; or
 - (d) To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, 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 any known exclusion or avoidance area;
 - (b) The activities are for the construction:
 - [1] Of a new energy conversion facility;
 - [2] Of a new gas, liquid, or electric transmission facility;
 - [3] To improve the existing energy conversion or gas, liquid, or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, or electric transmission facility; and
 - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
- b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:
- (1) Certifies in writing to the commission that:
 - (a) The activities will not affect any known exclusion area;
 - (b) The activities are for the construction:
 - [1] Of a new energy conversion facility;
 - [2] Of a new gas, liquid, or electric transmission facility;
 - [3] To improve the existing energy conversion facility or gas, liquid, or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, or electric transmission facility; and
 - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;
 - (2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area expected to be impacted and the reasons why impact cannot be avoided; and

- (3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission does not approve impacting the avoidance area, the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.
- c. Incident to preliminary engineering or environmental studies.
- 4. "Corridor" means the area of land in which a designated route may be established for a transmission facility.
- 5. "Energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:
 - a. Generation by wind energy conversion exceeding one-half megawatt of electricity;
 - b. Generation by any means other than wind energy conversion exceeding fifty megawatts of electricity;
 - c. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas per day, regardless of the end use of the gas;
 - d. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
 - e. Enrichment of uranium minerals.
- 6. "Facility" means an energy conversion facility, transmission facility, or both.
- 7. "Permit" means the permit for the construction of a transmission facility within a designated corridor issued under this chapter.
- 8. "Person" includes any individual, firm, association, partnership, cooperative, corporation, limited liability company, or any department, agency, or instrumentality of a state or of the federal government, or any subdivision thereof.
- 9. "Power emergency" means an electric transmission line and associated facilities that have been damaged or destroyed by natural or manmade causes resulting in a loss of power supply to consumers of the power.
- 10. "Road use agreement" means permits required for extraordinary road use, road access points, approach or road crossings, public right-of-way setbacks, building rules, physical addressing, dust control measures, or road maintenance and any repair mitigation plans.
- 11. "Route" means the location of a transmission facility within a designated corridor.
- ~~11.~~12. "Site" means the location of an energy conversion facility.

42-13. "Transmission facility" means any of the following:

- a. An electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts. "Transmission facility" does not include:
 - (1) A temporary transmission line loop that is:
 - (a) Connected and adjacent to an existing transmission facility that was sited under this chapter;
 - (b) Within the corridor of the sited facility and does not cross known exclusion or avoidance areas; and
 - (c) In place for less than one year; or
 - (2) A transmission line that is less than one mile [1.61 kilometers] long.
- b. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide. This subdivision does not apply to:
 - (1) An oil or gas pipeline gathering system;
 - (2) A pipeline with an outside diameter of four and one-half inches [11.43 centimeters] or less that will not be trenched and will be plowed in with a power mechanism having a vertical knife or horizontally directionally drilled, and its associated facilities; or
 - (3) A pipeline that is less than one mile [1.61 kilometers] long.

For purposes of this chapter, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport, or pipelines and associated facilities used to collect gas from the well to the gas processing facility at which end-use consumer-quality gas is produced, with or without the addition of odorant.
- c. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.

43-14. "Utility" means any person engaged in and controlling the generation, manufacture, refinement, or transmission of electric energy, gas, liquid hydrocarbons, or liquid hydrocarbon products, including electric power generation or transmission, coal gasification, coal liquefaction, petroleum refinement, uranium enrichment, and the transmission of coal, gas, liquid hydrocarbons, or liquid hydrocarbon products, or the transmission of water from or to any energy conversion facility."

Page 1, line 7, after "**agencies**" insert "**and political subdivisions**"

Page 1, line 8, remove the overstrike over "~~may, and is encouraged to,~~"

Page 1, line 8, remove "shall"

Page 1, line 10, remove "a directly impacted political subdivision,"

Page 1, line 12, after the period insert "The commission shall cooperate and exchange technical information with directly impacted political subdivisions as outlined in subsection 2 of 49-22-16."

Page 1, line 15, after "2." insert "a."

Page 1, line 18, overstrike "A" and insert immediately thereafter:

"b. Except as provided in this section, a"

Page 1, line 19, remove "must"

Page 1, line 19, overstrike "supersede" and insert immediately thereafter "supersedes"

Page 1, line 19, overstrike "pre-"

Page 1, line 20, overstrike "empt" and insert immediately thereafter "preempts"

Page 1, line 22, after the underscored period insert:

"c."

Page 1, line 23, remove "approach or road crossing"

Page 1, line 24, replace "permits, public right-of-way setbacks, building rules, or physical addressing" with "road use agreements"

Page 1, line 24, after "the" insert "impacted"

Page 2, line 1, replace "The commission may waive" with "A permit may supersede and preempt"

Page 2, line 5, replace "administrative law" with "laws or rules"

Page 2, line 7, replace "The" with:

"d. When an application for a certificate for a gas or liquid transmission facility is filed, the"

Page 2, line 7, remove "provide notice to all the"

Page 2, remove line 8

Page 2, line 9, replace "under this section" with "notify the townships with retained zoning authority, cities, and counties in which any part of the proposed corridor is located. The commission may not schedule a public hearing sooner than forty-five days from the date notification is sent by mail or electronic mail"

Page 2, line 9, replace "notice" with "notification"

Page 2, line 10, replace "authorized" with "identified"

Page 2, line 10, replace "section" with "subsection"

Page 2, line 10, remove "If the political"

Page 2, line 11, replace "subdivision does not submit the" with "The"

Page 2, line 11, after "requirements" insert "must be filed"

Page 2, line 11, remove "commission"

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Page 2, line 12, replace "hearing, all requirements are waived" with "hearing or the requirements are superseded and preempted"

Page 2, line 12, after the underscored period insert:

"e. An applicant shall comply with all local requirements provided to the commission pursuant to subdivision d, which are not otherwise superseded by the commission.

SECTION 4. LEGISLATIVE MANAGEMENT STUDY - COOPERATION BETWEEN THE PUBLIC SERVICE COMMISSION AND POLITICAL SUBDIVISIONS.

During the 2017-18 interim, the legislative management shall study cooperation and communication between the public service commission and political subdivisions in regard to ensuring local ordinances and zoning provisions are considered and addressed as part of the application and public hearing process. The study must include examination of the impacts on relationships between landowners and the oil and gas industry; impacts on the efficiency of the siting process, including timelines associated with notification and permitting; impacts on the public input process; and impacts on compliance with, and enforcement of, political subdivision zoning ordinances. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

Date: 3-23-17

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2286

House Energy & Natural Resources Committee

Subcommittee

Amendment LC# or Description: 17.0950.03003

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions

- Reconsider
- _____

Motion Made By Rep Keiser Seconded By Rep Mitskog

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Lefor		
Vice Chairman Damschen			Rep. Marschall		
Rep. Anderson			Rep. Roers Jones		
Rep. Bosch			Rep. Ruby		
Rep. Devlin			Rep. Seibel		
Rep. Heinert			Rep. Mitskog		
Rep. Keiser			Rep. Mock		

voice vote motion carried

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

03003

Date: 3-23-17

Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2286

House Energy & Natural Resources Committee

Subcommittee

Amendment LC# or Description: 17.0950.03003

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions Reconsider _____

Motion Made By Rep Anderson Seconded By Rep. Keiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Lefor	✓	
Vice Chairman Damschen	✓		Rep. Marschall	✓	
Rep. Anderson	✓		Rep. Roers Jones	✓	
Rep. Bosch	AB		Rep. Ruby	✓	
Rep. Devlin	✓		Rep. Seibel	✓	
Rep. Heinert	✓				
Rep. Keiser	✓		Rep. Mitskog	✓	
			Rep. Mock	✓	

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep Lefor

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

REPORT OF STANDING COMMITTEE

SB 2286, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2286 was placed on the Sixth order on the calendar.

Page 1, line 1, replace the first "section" with "sections 49-22-03 and"

Page 1, line 3, after "siting" insert "; and to provide for a legislative management study regarding the consideration of local zoning ordinances and zoning provisions during the application and public hearing process."

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 - (c) For a 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 energy conversion facility;
 - (b) Of a new gas, liquid, or electric transmission facility;
 - (c) To improve the existing energy conversion facility or gas, liquid, or electric transmission facility; or

- (d) To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, 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 any known exclusion or avoidance area;
 - (b) The activities are for the construction:
 - [1] Of a new energy conversion facility;
 - [2] Of a new gas, liquid, or electric transmission facility;
 - [3] To improve the existing energy conversion or gas, liquid, or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, or electric transmission facility; and
 - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
- b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:
 - (1) Certifies in writing to the commission that:
 - (a) The activities will not affect any known exclusion area;
 - (b) The activities are for the construction:
 - [1] Of a new energy conversion facility;
 - [2] Of a new gas, liquid, or electric transmission facility;
 - [3] To improve the existing energy conversion facility or gas, liquid, or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, or electric transmission facility; and
 - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;
 - (2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area expected to be impacted and the reasons why impact cannot be avoided; and
 - (3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission does not approve impacting the avoidance area,

the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.

- c. Incident to preliminary engineering or environmental studies.
4. "Corridor" means the area of land in which a designated route may be established for a transmission facility.
5. "Energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:
 - a. Generation by wind energy conversion exceeding one-half megawatt of electricity;
 - b. Generation by any means other than wind energy conversion exceeding fifty megawatts of electricity;
 - c. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas per day, regardless of the end use of the gas;
 - d. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
 - e. Enrichment of uranium minerals.
6. "Facility" means an energy conversion facility, transmission facility, or both.
7. "Permit" means the permit for the construction of a transmission facility within a designated corridor issued under this chapter.
8. "Person" includes any individual, firm, association, partnership, cooperative, corporation, limited liability company, or any department, agency, or instrumentality of a state or of the federal government, or any subdivision thereof.
9. "Power emergency" means an electric transmission line and associated facilities that have been damaged or destroyed by natural or manmade causes resulting in a loss of power supply to consumers of the power.
10. "Road use agreement" means permits required for extraordinary road use, road access points, approach or road crossings, public right-of-way setbacks, building rules, physical addressing, dust control measures, or road maintenance and any repair mitigation plans.
11. "Route" means the location of a transmission facility within a designated corridor.
- ~~11-12.~~ "Site" means the location of an energy conversion facility.
- ~~12-13.~~ "Transmission facility" means any of the following:
 - a. An electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts. "Transmission facility" does not include:
 - (1) A temporary transmission line loop that is:

- (a) Connected and adjacent to an existing transmission facility that was sited under this chapter;
 - (b) Within the corridor of the sited facility and does not cross known exclusion or avoidance areas; and
 - (c) In place for less than one year; or
- (2) A transmission line that is less than one mile [1.61 kilometers] long.
- b. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide. This subdivision does not apply to:
- (1) An oil or gas pipeline gathering system;
 - (2) A pipeline with an outside diameter of four and one-half inches [11.43 centimeters] or less that will not be trenched and will be plowed in with a power mechanism having a vertical knife or horizontally directionally drilled, and its associated facilities; or
 - (3) A pipeline that is less than one mile [1.61 kilometers] long.

For purposes of this chapter, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport, or pipelines and associated facilities used to collect gas from the well to the gas processing facility at which end-use consumer-quality gas is produced, with or without the addition of odorant.

- c. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.

~~13-14.~~ "Utility" means any person engaged in and controlling the generation, manufacture, refinement, or transmission of electric energy, gas, liquid hydrocarbons, or liquid hydrocarbon products, including electric power generation or transmission, coal gasification, coal liquefaction, petroleum refinement, uranium enrichment, and the transmission of coal, gas, liquid hydrocarbons, or liquid hydrocarbon products, or the transmission of water from or to any energy conversion facility."

Page 1, line 7, after "**agencies**" insert "**and political subdivisions**"

Page 1, line 8, remove the overstrike over "~~may, and is encouraged to,~~"

Page 1, line 8, remove "shall"

Page 1, line 10, remove ", a directly impacted political subdivision,"

Page 1, line 12, after the period insert "The commission shall cooperate and exchange technical information with directly impacted political subdivisions as outlined in subsection 2 of 49-22-16."

Page 1, line 15, after "2." insert "a."

Page 1, line 18, overstrike "A" and insert immediately thereafter:

"b. Except as provided in this section, a"

Page 1, line 19, remove "must"

Page 1, line 19, overstrike "supersede" and insert immediately thereafter "supersedes"

Page 1, line 19, overstrike "pre-"

Page 1, line 20, overstrike "empt" and insert immediately thereafter "preempts"

Page 1, line 22, after the underscored period insert:

"c."

Page 1, line 23, remove "approach or road crossing"

Page 1, line 24, replace "permits, public right-of-way setbacks, building rules, or physical addressing" with "road use agreements"

Page 1, line 24, after "the" insert "impacted"

Page 2, line 1, replace "The commission may waive" with "A permit may supersede and preempt"

Page 2, line 5, replace "administrative law" with "laws or rules"

Page 2, line 7, replace "The" with:

"d. When an application for a certificate for a gas or liquid transmission facility is filed, the"

Page 2, line 7, remove "provide notice to all the"

Page 2, remove line 8

Page 2, line 9, replace "under this section" with "notify the townships with retained zoning authority, cities, and counties in which any part of the proposed corridor is located. The commission may not schedule a public hearing sooner than forty-five days from the date notification is sent by mail or electronic mail"

Page 2, line 9, replace "notice" with "notification"

Page 2, line 10, replace "authorized" with "identified"

Page 2, line 10, replace "section" with "subsection"

Page 2, line 10, remove "If the political"

Page 2, line 11, replace "subdivision does not submit the" with "The"

Page 2, line 11, after "requirements" insert "must be filed"

Page 2, line 11, remove "commission"

Page 2, line 12, replace "hearing, all requirements are waived" with "hearing or the requirements are superseded and preempted"

Page 2, line 12, after the underscored period insert:

"e. An applicant shall comply with all local requirements provided to the commission pursuant to subdivision d, which are not otherwise superseded by the commission.

**SECTION 4. LEGISLATIVE MANAGEMENT STUDY - COOPERATION
BETWEEN THE PUBLIC SERVICE COMMISSION AND POLITICAL**

SUBDIVISIONS. During the 2017-18 interim, the legislative management shall study cooperation and communication between the public service commission and political subdivisions in regard to ensuring local ordinances and zoning provisions are considered and addressed as part of the application and public hearing process. The study must include examination of the impacts on relationships between landowners and the oil and gas industry; impacts on the efficiency of the siting process, including timelines associated with notification and permitting; impacts on the public input process; and impacts on compliance with, and enforcement of, political subdivision zoning ordinances. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

2017 TESTIMONY

SB 2286

Summary Comments for Senate Bill 2286

*Sen
Schwab*

*SB 2286
2-9-17
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pg 1*

Senate bill 2286, as proposed, updates section of Chapter 44-22-16 of the North Dakota Century Code, also known as the Energy Conversion and Transmission Facility Siting Act, which is administered by the North Dakota Public Service Commission.

What the bill does:

- Page 1, lines 6-8 update language to reflect the current preferences of Legislative Council, replacing 'shall' with 'may'.
- Page 1, lines 10-23 and Page 2, lines 1-2 requires notice and opportunity for political subdivisions (cities, townships, counties) to provide information to the Public Service Commission during its public hearings, which are held in the counties where a proposed pipeline project would be located, and removes the option for those political subdivisions to separately site or otherwise regulate gas or liquid transmission pipelines.

The intent of SB 2286 is to ensure a single siting process for gas and liquid transmission pipelines. The siting process would continue to be open to all stakeholders, including North Dakota's political subdivisions and local citizens, while minimizing the opportunity for outside interests to disrupt project siting proceedings. Our local experience with unlawful pipeline protest activities, as well as the recent acts of ecoterrorism on pipelines in Washington, Montana, and Minnesota, are a precursor to a larger and increasingly more organized movement that is currently underway in places like Texas, Oklahoma, and Arkansas to stop the development of critical infrastructure pipeline projects.

The North Dakota Petroleum Council will be proposing an amendment which would clarify this bill applies only to gas or liquid transmission pipelines, and would not apply to electrical transmission or wind projects. This will be a necessary distinction in relation to HB 1144 (passed the House 90-0), which would separate the Facility Siting chapter into two chapters, one for electrical generation and transmission (including wind), and the other for energy conversion and gas and liquid transmission facilities.

original

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AH # 2
pg 1

**Testimony in Support of
SENATE BILL NO. 2286**
Senate Energy and Natural Resources Committee
February 9, 2017

Chairman Unruh, Senate Energy and Natural Resources Committee members, for the record my name is Todd D. Kranda. I am an attorney with the Kelsch Kelsch Ruff & Kranda Law Firm in Mandan. I appear before you today as a lobbyist on behalf of the **North Dakota Petroleum Council (NDPC)** to support **SB 2286**.

NDPC represents more than 500 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipelines, transportation, mineral leasing, consulting, legal work, and oilfield service activities, and has been representing the industry since 1952.

SB 2286 provides for a single process and attempts to eliminate duplication and potential inconsistency under the North Dakota Energy Conversion and Transmission Facility Siting Act (Siting Act), found in Chapter 49-22 of the North Dakota Century Code when siting a gas and liquid transmission facility.

SB 2286 clarifies that the process by the Public Service Commission (PSC) when siting gas and liquid transmission facilities is the appropriate venue to handle the evaluation of and designation of sites, corridors and routes for gas and liquid transmission facilities taking into consideration all factors and criteria.

The PSC provides notice of the application filings to appropriate persons and agencies, and publishes notice in the official newspaper of each county involved.

original

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29-11
Add #2
7.52

Sections 49-22-08 (certificate) & 49-22-08.1 (permit) NDCC.

Also, the PSC requires an applicant to serve notice and a copy of a completed application on the county auditor in each county in which any part of the facility is located. Section 69-06-05-01 (4) ND Admin Code. There is also a specific administrative rule in which the PSC is required to provide notice of an application to the following specific entities:

- a. The chief executive officer of each city within the designated corridor.
- b. The agencies and officers entitled to notice as designated in section 69-06-01-05.
- c. The chairman of the board of county commissioners of each county in which any part of the designated corridor is located.
- d. The state senators and representatives of each legislative district in which any part of the designated corridor is located.”

See Section 69-06-05-01 (5) ND Admin Code.

In addition, the PSC holds public hearings in each county in which any portion of a site, corridor or route is proposed to be located. Section 49-22-13 NDCC. A consolidated hearing by the PSC is also permitted to be held in one or more of the affected counties. Section 49-22-13 NDCC.

Consistent with Chapter 49-22, the Siting Act, and the changes as proposed in SB 2286, the process completed by the PSC is intended and designed to provide an opportunity to any person, stakeholder or political subdivision that is or believes it is impacted by a project to present those concerns for review and consideration by the PSC when siting a gas and liquid transmission facility.

The PSC is the designated state agency with the experience and expertise to evaluate and make a determination “to ensure that the location, construction, and

operation of an energy” facility “will produce minimal adverse effects on the environment and upon the welfare of the citizens of [North Dakota]” which is specifically stated and declared in the Statement of Policy for the Siting Act, Section 49-22-02 NDCC, which is shown below.

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“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.”

Further, under Chapter 49-22, the Siting Act, the PSC is responsible for and tasked with designating a site, corridor or route following the study and hearings. Such designation is made in accordance with the evidence presented at the hearings, an evaluation of the application information and the criteria regarding exclusion and avoidance areas. Sections 49-22-08 (5) and 49-22-08.1(5) NDCC. Attached for your reference is a copy of the Criteria (Chapter 69-06-08 ND Admin Code) that is used by the PSC to review a project regarding exclusion and avoidance areas for facility siting.

The PSC is best suited to handle the siting of a gas and liquid transmission facility with input from interested parties, including political subdivisions, and SB 2286 simply

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pg 4

recognizes that a single process before the PSC to make such a determination as to these critical infrastructure projects is the most efficient and effective means available for siting such a facility.

As mentioned by the Prime Sponsor, there is a set of proposed amendments for SB 2286, a copy of which is attached. The proposed amendments simply are intended to clarify that SB 2286 applies to a gas or liquid transmission facility and that there is a single process within Chapter 49-22, the Siting Act, under which the PSC is responsible to make the determination for the siting of such a project with input available from any political subdivision that is impacted by or has an interest in the project.

In conclusion, **NDPC** urges your support of **SB 2286** with the proposed amendment and respectfully requests a **Do Pass** recommendation. Thank you and I would be happy to try to answer any questions.

From Todd K.

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PS 1

**CHAPTER 69-06-08
CRITERIA**

Section
69-06-08-01 Energy Conversion Facility Siting Criteria
69-06-08-02 Transmission Facility Corridor and Route Criteria

69-06-08-01. Energy conversion facility siting criteria.

The following criteria must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process.

1. **Exclusion areas.** The following geographical areas must be excluded in the consideration of a site for an energy conversion facility.
 - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; historic districts; monuments; wilderness areas; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
 - b. Designated or registered state: parks; forests; forest management lands; historic sites; monuments; historical markers; archaeological sites; grasslands; wild, scenic, or recreational rivers; game refuges; game management areas; management areas; and nature preserves.
 - c. County parks and recreational areas; municipal parks; parks owned or administered by other governmental subdivisions; hardwood draws; and enrolled woodlands.
 - d. Prime farmland and unique farmland, as defined by the land inventory and monitoring division of the soil conservation service, United States department of agriculture, in 7 C.F.R. part 657; provided, however, that if the commission finds that the prime farmland and unique farmland that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural productions, this exclusion does not apply.
 - e. Irrigated land.
 - f. Areas critical to the life stages of threatened or endangered animal or plant species.
 - g. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
 - h. Areas within one thousand two hundred feet of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.
2. **Additional exclusion areas for wind energy conversion facilities.** The following geographical areas must be excluded in the consideration of a site for a wind energy conversion facility:
 - a. Areas less than:
 - (1) One and one-tenth times the height of the turbine from interstate or state roadway right of way;
 - (2) One and one-tenth times the height of the turbine plus seventy-five feet from the centerline of any county or maintained township roadway;
 - (3) One and one-tenth times the height of the turbine from any railroad right of way;

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- (4) One and one-tenth times the height of the turbine from a one hundred fifteen kilovolt or higher transmission line; and
 - (5) One and one-tenth times the height of the turbine from the property line of a nonparticipating landowner, unless a variance is granted. A variance may be granted if an authorized representative or agent of the permittee and affected parties with associated wind rights file a written agreement expressing all parties' support for a variance to reduce the setback requirement in this subsection. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in North Dakota Century Code chapter 17-04.
3. **Avoidance areas.** The following geographical areas may not be approved as a site for an energy conversion facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative sites. Economic considerations alone will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area must be included. Natural screening may be considered in determining the width of the buffer zone.
- a. Historical resources which are not designated as exclusion areas.
 - b. Areas within the city limits of a city or the boundaries of a military installation.
 - c. Areas within known floodplains as defined by the geographical boundaries of the hundred-year flood.
 - d. Areas that are geologically unstable.
 - e. Woodlands and wetlands.
 - f. Areas of recreational significance which are not designated as exclusion areas.
4. **Additional avoidance areas for wind energy conversion facilities.** A wind energy conversion facility site must not include a geographic area where, due to operation of the facility, the sound levels within one hundred feet of an inhabited residence or a community building will exceed fifty dBA. The sound level avoidance area criteria may be waived in writing by the owner of the occupied residence or the community building.
5. **Selection criteria.** A site may be approved in an area only when it is demonstrated to the commission by the applicant that any significant adverse effects resulting from the location, construction, and operation of the facility in that area as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. The effects to be considered include:
- a. The impact upon agriculture:
 - (1) Agricultural production.
 - (2) Family farms and ranches.
 - (3) Land which the owner demonstrates has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.
 - (4) Surface drainage patterns and ground water flow patterns.
 - (5) The agricultural quality of the cropland.

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b. The impact upon the availability and adequacy of:

- (1) Law enforcement.
- (2) School systems and education programs.
- (3) Governmental services and facilities.
- (4) General and mental health care facilities.
- (5) Recreational programs and facilities.
- (6) Transportation facilities and networks.
- (7) Retail service facilities.
- (8) Utility services.

c. The impact upon:

- (1) Local institutions.
- (2) Noise-sensitive land uses.
- (3) Rural residences and businesses.
- (4) Aquifers.
- (5) Human health and safety.
- (6) Animal health and safety.
- (7) Plant life.
- (8) Temporary and permanent housing.
- (9) Temporary and permanent skilled and unskilled labor.

d. The cumulative effects of the location of the facility in relation to existing and planned facilities and other industrial development.

6. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits. The benefits to be considered include:

- a. Recycling of the conversion byproducts and effluents.
- b. Energy conservation through location, process, and design.
- c. Training and utilization of available labor in this state for the general and specialized skills required.
- d. Use of a primary energy source or raw material located within the state.
- e. Not relocating residents.
- f. The dedication of an area adjacent to the facility to land uses such as recreation, agriculture, or wildlife management.

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p4
- g. Economies of construction and operation.
 - h. Secondary uses of appropriate associated facilities for recreation and the enhancement of wildlife.
 - i. Use of citizen coordinating committees.
 - j. A commitment of a portion of the energy produced for use in this state.
 - k. Labor relations.
 - l. The coordination of facilities.
 - m. Monitoring of impacts.

History: Amended effective August 1, 1979; July 1, 2006; April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1

69-06-08-02. Transmission facility corridor and route criteria.

The following criteria must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process. Exclusion and avoidance areas may be located within a corridor, but at no given point may such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

1. **Exclusion areas.** The following geographical areas must be excluded in the consideration of a route for a transmission facility. A buffer zone of a reasonable width to protect the integrity of the area must be included. Natural screening may be considered in determining the width of the buffer zone.
 - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; monuments; and wilderness areas.
 - b. Designated or registered state: parks; historic sites; monuments; historical markers; archaeological sites; and nature preserves.
 - c. County parks and recreational areas; municipal parks; and parks owned or administered by other governmental subdivisions.
 - d. Areas critical to the life stages of threatened or endangered animal or plant species.
 - e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
 - f. Areas within one thousand two hundred feet of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.
 - g. Areas within thirty feet on either side of a direct line between intercontinental ballistic missile (ICBM) launch or launch control facilities to avoid microwave interference.
2. **Avoidance areas.** The following geographical areas may not be considered in the routing of a transmission facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility, the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative routes. Economic considerations alone will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area will be

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included unless a distance is specified in the criteria. Natural screening may be considered in determining the width of the buffer zone.

- a. Designated or registered national: historic districts; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
 - b. Designated or registered state: wild, scenic, or recreational rivers; game refuges; game management areas; management areas; forests; forest management lands; and grasslands.
 - c. Historical resources which are not specifically designated as exclusion or avoidance areas.
 - d. Areas which are geologically unstable.
 - e. Within five hundred feet [152.4 meters] of a residence, school, or place of business. This criterion shall not apply to a water pipeline transmission facility.
 - f. Reservoirs and municipal water supplies.
 - g. Water sources for organized rural water districts.
 - h. Irrigated land. This criterion shall not apply to an underground transmission facility.
 - i. Areas of recreational significance which are not designated as exclusion areas.
3. **Selection criteria.** A corridor or route shall be designated only when it is demonstrated to the commission by the applicant that any significant adverse effects which will result from the location, construction, and maintenance of the facility as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. The effects to be considered include:
- a. The impact upon agriculture:
 - (1) Agricultural production.
 - (2) Family farms and ranches.
 - (3) Land which the owner can demonstrate has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.
 - (4) Surface drainage patterns and ground water flow patterns.
 - b. The impact upon:
 - (1) Sound-sensitive land uses.
 - (2) The visual effect on the adjacent area.
 - (3) Extractive and storage resources.
 - (4) Wetlands, woodlands, and wooded areas.
 - (5) Radio and television reception, and other communication or electronic control facilities.
 - (6) Human health and safety.
 - (7) Animal health and safety.

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(8) Plant life.

4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits. The benefits to be considered include:
- a. Location and design.
 - b. Training and utilization of available labor in this state for the general and specialized skills required.
 - c. Economies of construction and operation.
 - d. Use of citizen coordinating committees.
 - e. A commitment of a portion of the transmitted product for use in this state.
 - f. Labor relations.
 - g. The coordination of facilities.
 - h. Monitoring of impacts.
 - i. Utilization of existing and proposed rights of way and corridors.
 - j. Other existing or proposed transmission facilities.

History: Amended effective August 1, 1979; January 1, 1982; February 1, 1995; July 1, 2006; April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1

Fr
Todd K.

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pg 1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2286

Page 1, line 9, after the second "a" insert "gas or liquid"

Page 1, line 10, remove "must", overstrike "supersede" and immediately thereafter insert "supersedes", and overstrike "pre-empt" and immediately thereafter insert "pre-empts"

Page 1, line 19, remove "Representatives of the governing body of each political subdivision"

Page 1, remove lines 20 through 23

Page 2, remove lines 1 and 2

Page 2, after line 2 insert "A political subdivision which receives notice and opportunity to testify at the hearing of the commission may not enact new or enforce any existing local land use, zoning, or building rules, regulations, or ordinances regulating or prohibiting a gas or liquid transmission facility as sited by the commission."

Renumber accordingly

original



Geoff Simon, Western Dakota Energy Association
Testimony SB 2287
Senate Energy & Natural Resources Committee
February 9, 2017

Against

SB 2286

2-9-17

Attch #5

pg 1

Good afternoon, Chairman Unruh and members of the committee. I am Geoff Simon, Executive Director of the Western Dakota Energy Association. Our members are the cities, counties and school districts in the energy-producing counties of western North Dakota.

While our association members are supportive of efforts to streamline government and make the regulatory process more efficient, we cannot support Senate Bill 2286 as originally drafted, or an amended version which has been circulated.

In my initial conversation with the bill's sponsor, Senator Schaible, I understood the intent was to eliminate duplicative hearings; that is to say, separate hearings held by local zoning boards and the Public Service Commission at which the same or similar information is presented and discussed. Our members appreciate that effort and believe accommodations can be made to make the hearing process more efficient. However, while local zoning decisions and PSC transmission siting decisions consider much of the same information, each serves a unique purpose.

The legislation before you, and the amended version that has been circulated, would essentially strip county zoning boards of their authority, and the important role they play in protecting the economic and quality-of-life concerns of adjoining land and home owners. While we appreciate the efforts of the bill's supporters to confine the scope of the legislation to just oil and gas pipelines, it's important to recognize the local impacts of those facilities, especially the fact that not all pipeline facilities are underground. Pumping stations and compressor stations produce noise and traffic, so it's important they be located in areas suitably zoned for that purpose, in order to minimize impacts to adjoining property owners.

We obviously appreciate the investments made by energy producers and transmission companies in our communities, and the economic activity they generate. I can assure you, county zoning authorities strive to establish and maintain good working relationships with the industry. We believe there may be an opportunity to improve the efficiency of the zoning and siting process. But bottom line, we also feel it is essential to preserve local government's authority to protect the interests of property owners who would be affected by a pipeline siting decision.

Thank you for your time and attention, and I would attempt to answer questions if you have any.

PLANNING & ZONING BOARD
COUNTY OF MOUNTRAIL

PO Box 248
Stanley, North Dakota 58784-0248
(701) 628-2909
lisal@co.mountrail.nd.us
lizh@co.mountrail.nd.us

*Fr. Geoff
Simon
Attach*

Board Members:

ROGER HOVDA
ARLO BORUD
THOMAS BIERI
BILL KLUG
LINDA WIENBAR
GARY WEISENBERGER
TRUDY RULAND
CHASE LINDBERG
CHARLIE SORENSON

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Attach #6
p51*

February 8, 2017

Sixty-fifth Legislative Assembly of North Dakota
Senator Unruh Schaible
Representative Porter Nathe

Re: Opposition to Senate Bill 2286 amendment

Dear Senator Unruh Schaible & Representative Porter Nathe,

On behalf of the Mountrail County Commissioners, Planning and Zoning Commission and planning staff, I would like to submit for you our opposition to the proposed amendment to Senate Bill #2286.

We find the proposed changes to work in opposition to the authority issued to local political subdivisions to exercise zoning authority as provided by North Dakota Century Code Chapter 11-33. The proposed changes usurp local zoning commissions and the voice of the residents who reside in Mountrail County, and everywhere in the State, where land is regulated by local zoning authority.

The proposed changes include all industry relating to "energy conversion and transmission facility siting" which under the North Dakota Century Code would include a widespan of industrial sites including electric transmission lines, gas compressor stations, wind energy conversion plants, and pumping stations which can affect sound pollution, light pollution, set-backs, right of ways for road improvements, zoning districts and overall generally disrupt the rural way of life that most residents in our County cherish.

Mountrail County's Planning and Zoning board works with local private industry to approve industrial sites within our county based on our ordinances which are written to protect our citizens and residents from undue interruption to their existing quality of life. We require notification of adjacent landowners and public hearings for any proposed facility in order to allow the residents to provide input, feedback, and to let the board know their concerns. The process allows for community members to show up and be engaged in the decision making process for developments that will directly impact their lives every day. Asking the residents, township officers, or Planning and Zoning board members to travel to Bismarck to testify would be placing an undue hardship on those who live hours away and work full time jobs on top of their involvement with their families, other community boards and responsibilities.

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pg 2

Mountrail County, like other counties who exercise zoning authority have created zoning districts will allow for orderly development in specific zoning districts. We have buffer zones and set backs required between these zoning districts in order to no infringe upon the quality of life of a resident in a residential area versus an industrial area. With the proposed changes, no resident in the State would be safe from having a very large industrial site being sited in their backyard and would have no say in the decision to deal with the increased light pollution, noise pollution, dust, truck traffic, and any other potential side effect of living next door to a large industrial plant.

Our county has already watched significant changes to the agricultural landscape occur with the placement of salt water disposal wells and oil well pads which create a large footprint on our area. If we now add in the remaining industries to include any gas compressor station, pumping station, oil, gas, electricity transmission, wind energy facility or any other industry that falls under the definition of "energy conversion and transmission facility siting" local planning and zoning boards would have ultimately no authority over its own industrial districts. This change would in effect disable local planning commissions from having their own zoning regulations and rules governing their zoning districts.

In order to better understand the need for such change, we propose the following questions:

- What is the problem that this bill is seeking to rectify?
- Is this bill trying to stream line the process? If so, at whose expense?
- Why is there such a need to dismiss local control?
- What is the financial implication to a county who wishes to expand their road system in the future and pay for the movement of utilities?

On behalf of Mountrail County, we oppose the proposed changes to Senate Bill 2286 and believe that the residents who are impacted most need to be an integral part of the process.

Lisa Lee

Planning/Zoning Administrator
Disaster Emergency Coordinator
Mountrail County, North Dakota
lisal@co.mountrail.nd.us

EMPOWER

North Dakota
LEGENDARY

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AA #7
pg 1

DEPARTMENT OF COMMERCE TESTIMONY ON SENATE BILL 2286

FEBRUARY 9, 2017, 2:00 P.M.

SENATE ENERGY & NATURAL RESOURCES COMMITTEE

SENATOR JESSICA UNRUH, CHAIR

MIKE FLADELAND – MANAGER OF ENERGY BUSINESS DEVELOPMENT, ND DEPARTMENT OF COMMERCE

I'm Mike Fladeland, Manager of Energy Business Development for the North Dakota Department of Commerce. The Commissioner of Commerce serves as chairman of the EmPower North Dakota Commission.

On behalf of the EmPower ND Commission, I am here today to speak in favor of Senate Bill 2286. The EmPower ND Commission has endorsed this bill as being related to a recommendation outlined in their 2016 Policy Updates and Recommendations report. Their full report is available at www.EmPowerND.com.

The EmPower ND Commission recommends the State:

- Provide legislative clarification of state permitting and jurisdictional authority where required. Any required state level permitting process should include input from local political subdivisions as part of the standard permitting process. Local permitting conditions should not be more stringent than state conditions, unless the political subdivision can prove commercially applicable and reasonably prudent.
 - Political subdivisions' input and discussion are valued, but should not duplicate a state permitting process and create jurisdictional uncertainty.
 - The input must follow the prescribed process and preserve the due process designed for state oversight and authorization.
 - The 53 sets of county rules, over 300 city rules, and 1,430 township rules create uncertainty, delays and duplication of efforts, economic development restriction, and limitations on the ability to build critical infrastructure that improves safety, transportation and quality of life.

Senate Bill 2286 provides representatives from political subdivisions the opportunity to provide input to the Public Service Commission as the PSC is considering a permit. The PSC would then be responsible to take into account the political subdivision input as they determine whether or not to grant the permit. This process will allow local governing bodies to have a say, without requiring a duplicative process at the local level.

Madam Chairman and members of the Energy and Natural Resources Committee, the EmPower ND Commission respectfully request your favorable consideration of Senate Bill 2286. That concludes my testimony and I am happy to entertain any questions.

February 15, 2017

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2-16-17
Attch #1
pg 1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2286

Page 1, line 1, after "reenact" insert "section 49-22-14.1 and"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Section 49-22-14.1 of the North Dakota Century Code is amended and reenacted as follows:

49-22-14.1. Cooperation with state and federal agencies.

The commission ~~may, and is encouraged to,~~ shall cooperate with and receive and exchange technical information and assistance from and with any department, agency, or officer of any state, a directly impacted political subdivision, or of the federal government to eliminate duplication of effort, to establish a common database, or for any other purpose relating to the provisions of this chapter and in furtherance of the statement of policy contained herein."

Page 1, line 9, after "a" insert "gas or liquid"

Page 1, line 11, overstrike the first comma and insert immediately thereafter "or"

Page 1, line 11, overstrike ", or building rules,"

Page 1, line 11, overstrike ", or ordinances"

Page 1, line 13, after the first overstruck comma insert ". Before a gas or liquid transmission facility is approved, the commission shall require the applicant to comply with the approach or road crossing permits, public right-of-way setbacks, building rules, or physical addressing of the political subdivision. The commission may waive the requirements of a political subdivision if the applicant shows by a preponderance of the evidence the regulations or ordinances"

Page 1, line 13, remove the overstrike over "~~are unreasonably restrictive in view of existing technology, factors of~~"

Page 1, line 14, remove the overstrike over "~~cost or economics, or needs of consumers regardless of their location~~" and insert immediately thereafter ", or are in direct conflict with state or federal administrative law"

Page 1, line 14, remove the overstrike over the overstruck period

Page 1, line 16, remove "if representatives of the governing"

Page 1, remove lines 17 through 23

Page 2, replace lines 1 and 2 with "The commission shall provide notice to all the appropriate political subdivisions at the time an application for a certificate is made under this section. Upon notice, a political subdivision shall provide a listing to the commission of all local requirements authorized under this section. If the political subdivision does not submit the requirements at least ten days before the commission hearing, all requirements are waived."

Re-number accordingly

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Senator Don Schaible District 31

Senate Bill 2286 updates Sections 49-22-14.1 and 49-22-16 of the North Dakota Century Code which is known as the Energy Conversion and Transmission Facility Siting Act, and which is administered by the North Dakota Public Service Commission. As amended, the bill applies only to gas or liquid transmission pipelines permitted by the Public Service Commission, and would not apply to electrical transmission.

The intent of SB 2286 is to ensure a single siting process for gas and liquid transmission pipelines. The siting process would continue to be open to all stakeholders, including North Dakota's political subdivisions and local citizens, while minimizing the opportunity for outside interests to disrupt project siting proceedings.

SECTION 1, Would require PSC consolidate with all stakeholders and which revises a statute to add directly impacted political subdivisions as an entity the Public Service Commission shall exchange information with. Such directly impacted political subdivision would be a city, county and township in which any part of the designated corridor is located.

Section 2 Clarifies that local authority is not superseded by site compatibility from the PSC. This section also clarifies that the bill applies only to gas or liquid transmission pipelines permitted by the Public Service Commission, and would not apply to electrical transmission.

Further, it requires that before a gas or liquid transmission line is approved the Public Service Commission shall require the applicant to comply with approach or road crossing permits, public right of way setbacks, building rules, or physical addressing of the political subdivision. The PSC also retains the right to waive the stipulations if they are clearly outside the law or unreasonably restrictive.

Page 2, lines 7-12 Requires the PSC to notify the appropriate political subdivisions when an application is made. The political subdivision can then provide the PSC a listing of all the local requirements to be considered in the application. If the political subdivision does not provide them within ten days of the commission hearing the PSC can proceed.

Once again, the process described in this amendment for SB 2286 is designed to ensure that there is only one formal permitting process for gas or liquid pipelines and that process ensures input from political subdivisions. The bill in its original draft did raise some concerns with our counties. With continuing discussions with stake holders, amendments were adopted by the senate to make this bill better. I believe there will be more improvement offered to this bill as more concerns were addressed.

1

2
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Krande

Testimony in Support of
ENGROSSED SENATE BILL NO. 2286
House Energy and Natural Resources Committee
March 9, 2017

Chairman Porter, House Energy and Natural Resources Committee members, for the record my name is Todd D. Kranda. I am an attorney with the Kelsch Kelsch Ruff & Kranda Law Firm in Mandan. I appear before you today as a lobbyist on behalf of the **North Dakota Petroleum Council (NDPC)** to support **Engrossed SB 2286**.

NDPC represents more than 500 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipelines, transportation, mineral leasing, consulting, legal work, and oilfield service activities, and has been representing the industry since 1952.

Engrossed SB 2286 provides for a single process and attempts to eliminate duplication and potential inconsistency under the North Dakota Energy Conversion and Transmission Facility Siting Act (Siting Act), found in Chapter 49-22 of the North Dakota Century Code when siting a gas and liquid transmission facility. **Attached** for your reference is a copy of the entire statute, Section 49-22-06 NDCC, which is the primary focus of the changes being made in Engrossed SB 2286 (SECTION 2 of the Bill).

Engrossed SB 2286 clarifies that the process by the Public Service Commission (PSC) when siting gas and liquid transmission facilities is the appropriate venue to handle the evaluation of and designation of sites, corridors and routes for gas and liquid transmission facilities, taking into consideration all factors and criteria.

The PSC provides notice of the application filings to appropriate persons and agencies,

and publishes notice in the official newspaper of each county involved. Sections 49-22-08 (certificate) & 49-22-08.1 (permit) NDCC.

Also, the PSC requires an applicant to serve notice and a copy of a completed application on the county auditor in each county in which any part of the facility is located. Section 69-06-05-01 (4) ND Admin Code. There is also a specific administrative rule in which the PSC is required to provide notice of an application to the following specific entities:

- “a. The chief executive officer of each city within the designated corridor.
- b. The agencies and officers entitled to notice as designated in section 69-06-01-05.
- c. The chairman of the board of county commissioners of each county in which any part of the designated corridor is located.
- d. The state senators and representatives of each legislative district in which any part of the designated corridor is located.”

See Section 69-06-05-01 (5) ND Admin Code.

In addition, the PSC holds public hearings in each county in which any portion of a site, corridor or route is proposed to be located. Section 49-22-13 NDCC. A consolidated hearing by the PSC is also permitted to be held in one or more of the affected counties. Section 49-22-13 NDCC.

Consistent with Chapter 49-22, the Siting Act, and the changes as proposed in Engrossed SB 2286, the process completed by the PSC is intended and designed to provide an opportunity to any person, stakeholder or political subdivision that is or believes it is impacted by a project to present those concerns for review and consideration by the PSC when siting a gas and liquid transmission facility.

The PSC is the designated state agency with the experience and expertise to evaluate and make a determination “to ensure that the location, construction, and operation of an energy”

facility “will produce minimal adverse effects on the environment and upon the welfare of the citizens of [North Dakota]” which is specifically stated and declared in the Statement of Policy for the Siting Act, Section 49-22-02 NDCC, which is shown below.

“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.”

Further, under Chapter 49-22, the Siting Act, the PSC is responsible for and tasked with designating a site, corridor or route following the study and hearings. Such designation is made in accordance with the evidence presented at the hearings, an evaluation of the application information and the criteria regarding exclusion and avoidance areas. Sections 49-22-08 (5) and 49-22-08.1(5) NDCC. **Attached** for your reference is a copy of the Criteria (Chapter 69-06-08 ND Admin Code) that is used by the PSC to review a project regarding exclusion and avoidance areas for facility siting.

The PSC is best suited to handle the siting of a gas and liquid transmission facility with input from interested parties, including political subdivisions, and Engrossed SB 2286 simply recognizes that a single process before the PSC to make such a determination as to these critical

infrastructure projects is the most efficient and effective means available for siting such a facility. Furthermore, **attached** for your review is a copy of an example of a Certification Letter that the PSC uses and is presented to an applicant that requires the company to be bound by and comply with numerous conditions and requirements including “all city, township and county zoning regulations” (see ¶2), “obtain all other necessary licenses and permits” (see ¶3), “comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies” (see ¶4). Also, the PSC requires for oversight with compliance and enforcement a “third-party construction inspector” (see ¶9) that monitors and inspects the activity of the company on behalf of the PSC to assure compliance with all of the siting requirements.

There is a set of proposed amendments for Engrossed SB 2286, a copy of which is **attached**. These proposed amendments were developed after discussing the implementation of the process through the PSC and were recommendations made to clarify that Engrossed SB 2286, which applies to a gas or liquid transmission facility, establishes a single process within Chapter 49-22, the Siting Act, under which the PSC is responsible to make the determination for the siting of such a project with input available from a political subdivision as indicated regarding the project. Additional changes were made as well to try to accommodate concerns that were raised about the input available to the local political subdivisions and the required compliance with the local requirements. I have also prepared for your review an **attachment** showing what Engrossed SB 2286 would be with the Proposed Amendments added.

In conclusion, **NDPC** urges your support of **Engrossed SB 2286** with the proposed amendment and respectfully requests a **Do Pass** recommendation. Thank you and I would be happy to try to answer any questions.

NORTH DAKOTA CENTURY CODE – CHAPTER 49-22 SITING ACT:

49-22-16. Effect of issuance of certificate or permit - Local land use, zoning, or building rules, regulations, or ordinances - State agency rules.

1. The issuance of a certificate of site compatibility or a route permit shall, subject to subsections 2 and 3, be the sole site or route approval required to be obtained by the utility.

2. A certificate of site compatibility for an energy conversion facility shall not supersede or pre-empt any local land use, zoning, or building rules, regulations, or ordinances and no site shall be designated which violates local land use, zoning, or building rules, regulations, or ordinances. A permit for the construction of a transmission facility within a designated corridor may supersede and pre-empt any local land use, zoning, or building rules, regulations, or ordinances upon a finding by the commission that such rules, regulations, or ordinances, as applied to the proposed route, are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of their location. Without such a finding by the commission, no route shall be designated which violates local land use, zoning, or building rules, regulations, or ordinances.

3. Utilities subject to this chapter shall obtain state permits that may be required to construct and operate energy conversion facilities and transmission facilities. A state agency in processing a utility's facility permit application shall be bound to the decisions of the commission with respect to the site designation for the energy conversion facility or the corridor or route designation for the transmission facility and with respect to other matters for which authority has been granted to the commission by this chapter.

4. No site or route shall be designated which violates the rules of any state agency. A state agency with jurisdiction over any aspect of a proposed facility shall present the position of the agency at the public hearing on an application for a certificate, a permit, or a waiver, which position shall clearly state whether the site, corridor, or route being considered for designation will be in compliance with such agency's rules. For purposes of this chapter it shall be presumed that a proposed facility will be in compliance with a state agency's rules if such agency fails to present its position on the proposed site, corridor, or route at the appropriate public hearing.

**CHAPTER 69-06-08
CRITERIA**

Section

- 69-06-08-01 Energy Conversion Facility Siting Criteria
- 69-06-08-02 Transmission Facility Corridor and Route Criteria

69-06-08-01. Energy conversion facility siting criteria.

The following criteria must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process.

1. **Exclusion areas.** The following geographical areas must be excluded in the consideration of a site for an energy conversion facility.
 - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; historic districts; monuments; wilderness areas; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
 - b. Designated or registered state: parks; forests; forest management lands; historic sites; monuments; historical markers; archaeological sites; grasslands; wild, scenic, or recreational rivers; game refuges; game management areas; management areas; and nature preserves.
 - c. County parks and recreational areas; municipal parks; parks owned or administered by other governmental subdivisions; hardwood draws; and enrolled woodlands.
 - d. Prime farmland and unique farmland, as defined by the land inventory and monitoring division of the soil conservation service, United States department of agriculture, in 7 C.F.R. part 657; provided, however, that if the commission finds that the prime farmland and unique farmland that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural productions, this exclusion does not apply.
 - e. Irrigated land.
 - f. Areas critical to the life stages of threatened or endangered animal or plant species.
 - g. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
 - h. Areas within one thousand two hundred feet of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.
2. **Additional exclusion areas for wind energy conversion facilities.** The following geographical areas must be excluded in the consideration of a site for a wind energy conversion facility:
 - a. Areas less than:
 - (1) One and one-tenth times the height of the turbine from interstate or state roadway right of way;
 - (2) One and one-tenth times the height of the turbine plus seventy-five feet from the centerline of any county or maintained township roadway;
 - (3) One and one-tenth times the height of the turbine from any railroad right of way;

- (4) One and one-tenth times the height of the turbine from a one hundred fifteen kilovolt or higher transmission line; and
 - (5) One and one-tenth times the height of the turbine from the property line of a nonparticipating landowner, unless a variance is granted. A variance may be granted if an authorized representative or agent of the permittee and affected parties with associated wind rights file a written agreement expressing all parties' support for a variance to reduce the setback requirement in this subsection. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in North Dakota Century Code chapter 17-04.
3. **Avoidance areas.** The following geographical areas may not be approved as a site for an energy conversion facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative sites. Economic considerations alone will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area must be included. Natural screening may be considered in determining the width of the buffer zone.
 - a. Historical resources which are not designated as exclusion areas.
 - b. Areas within the city limits of a city or the boundaries of a military installation.
 - c. Areas within known floodplains as defined by the geographical boundaries of the hundred-year flood.
 - d. Areas that are geologically unstable.
 - e. Woodlands and wetlands.
 - f. Areas of recreational significance which are not designated as exclusion areas.
4. **Additional avoidance areas for wind energy conversion facilities.** A wind energy conversion facility site must not include a geographic area where, due to operation of the facility, the sound levels within one hundred feet of an inhabited residence or a community building will exceed fifty dBA. The sound level avoidance area criteria may be waived in writing by the owner of the occupied residence or the community building.
5. **Selection criteria.** A site may be approved in an area only when it is demonstrated to the commission by the applicant that any significant adverse effects resulting from the location, construction, and operation of the facility in that area as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. The effects to be considered include:
 - a. The impact upon agriculture:
 - (1) Agricultural production.
 - (2) Family farms and ranches.
 - (3) Land which the owner demonstrates has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.
 - (4) Surface drainage patterns and ground water flow patterns.
 - (5) The agricultural quality of the cropland.

- b. The impact upon the availability and adequacy of:
 - (1) Law enforcement.
 - (2) School systems and education programs.
 - (3) Governmental services and facilities.
 - (4) General and mental health care facilities.
 - (5) Recreational programs and facilities.
 - (6) Transportation facilities and networks.
 - (7) Retail service facilities.
 - (8) Utility services.
 - c. The impact upon:
 - (1) Local institutions.
 - (2) Noise-sensitive land uses.
 - (3) Rural residences and businesses.
 - (4) Aquifers.
 - (5) Human health and safety.
 - (6) Animal health and safety.
 - (7) Plant life.
 - (8) Temporary and permanent housing.
 - (9) Temporary and permanent skilled and unskilled labor.
 - d. The cumulative effects of the location of the facility in relation to existing and planned facilities and other industrial development.
6. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits. The benefits to be considered include:
- a. Recycling of the conversion byproducts and effluents.
 - b. Energy conservation through location, process, and design.
 - c. Training and utilization of available labor in this state for the general and specialized skills required.
 - d. Use of a primary energy source or raw material located within the state.
 - e. Not relocating residents.
 - f. The dedication of an area adjacent to the facility to land uses such as recreation, agriculture, or wildlife management.

- g. Economies of construction and operation.
- h. Secondary uses of appropriate associated facilities for recreation and the enhancement of wildlife.
- i. Use of citizen coordinating committees.
- j. A commitment of a portion of the energy produced for use in this state.
- k. Labor relations.
- l. The coordination of facilities.
- m. Monitoring of impacts.

History: Amended effective August 1, 1979; July 1, 2006; April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1

69-06-08-02. Transmission facility corridor and route criteria.

The following criteria must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process. Exclusion and avoidance areas may be located within a corridor, but at no given point may such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

1. **Exclusion areas.** The following geographical areas must be excluded in the consideration of a route for a transmission facility. A buffer zone of a reasonable width to protect the integrity of the area must be included. Natural screening may be considered in determining the width of the buffer zone.
 - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; monuments; and wilderness areas.
 - b. Designated or registered state: parks; historic sites; monuments; historical markers; archaeological sites; and nature preserves.
 - c. County parks and recreational areas; municipal parks; and parks owned or administered by other governmental subdivisions.
 - d. Areas critical to the life stages of threatened or endangered animal or plant species.
 - e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
 - f. Areas within one thousand two hundred feet of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.
 - g. Areas within thirty feet on either side of a direct line between intercontinental ballistic missile (ICBM) launch or launch control facilities to avoid microwave interference.
2. **Avoidance areas.** The following geographical areas may not be considered in the routing of a transmission facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility, the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative routes. Economic considerations alone will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area will be

included unless a distance is specified in the criteria. Natural screening may be considered in determining the width of the buffer zone.

- a. Designated or registered national: historic districts; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
 - b. Designated or registered state: wild, scenic, or recreational rivers; game refuges; game management areas; management areas; forests; forest management lands; and grasslands.
 - c. Historical resources which are not specifically designated as exclusion or avoidance areas.
 - d. Areas which are geologically unstable.
 - e. Within five hundred feet [152.4 meters] of a residence, school, or place of business. This criterion shall not apply to a water pipeline transmission facility.
 - f. Reservoirs and municipal water supplies.
 - g. Water sources for organized rural water districts.
 - h. Irrigated land. This criterion shall not apply to an underground transmission facility.
 - i. Areas of recreational significance which are not designated as exclusion areas.
3. **Selection criteria.** A corridor or route shall be designated only when it is demonstrated to the commission by the applicant that any significant adverse effects which will result from the location, construction, and maintenance of the facility as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. The effects to be considered include:
- a. The impact upon agriculture:
 - (1) Agricultural production.
 - (2) Family farms and ranches.
 - (3) Land which the owner can demonstrate has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.
 - (4) Surface drainage patterns and ground water flow patterns.
 - b. The impact upon:
 - (1) Sound-sensitive land uses.
 - (2) The visual effect on the adjacent area.
 - (3) Extractive and storage resources.
 - (4) Wetlands, woodlands, and wooded areas.
 - (5) Radio and television reception, and other communication or electronic control facilities.
 - (6) Human health and safety.
 - (7) Animal health and safety.

(8) Plant life.

4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits. The benefits to be considered include:
- a. Location and design.
 - b. Training and utilization of available labor in this state for the general and specialized skills required.
 - c. Economies of construction and operation.
 - d. Use of citizen coordinating committees.
 - e. A commitment of a portion of the transmitted product for use in this state.
 - f. Labor relations.
 - g. The coordination of facilities.
 - h. Monitoring of impacts.
 - i. Utilization of existing and proposed rights of way and corridors.
 - j. Other existing or proposed transmission facilities.

History: Amended effective August 1, 1979; January 1, 1982; February 1, 1995; July 1, 2006; April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Dakota Access, LLC
Dakota Access Pipeline Project
Siting Application

Case No. PU-14-842

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

January 20, 2016

Appearances

Commissioners Julie Fedorchak, Randy Christmann, and Brian P. Kalk.

Brian Bjella and Blaine Johnson, Attorneys at Law, Crowley Fleck PLLP, 100 West Broadway, Suite 250, Bismarck, North Dakota 58501, on behalf of Dakota Access, LLC.

Zachary E. Pelham, Special Assistant Attorney General, 314 East Thayer Avenue, Bismarck, North Dakota 58502, on behalf of the Public Service Commission.

Derrick Braaten, Attorney at Law, Baumstark Braaten Law Partners, 109 North Fourth Street, Suite 100, Bismarck, North Dakota 58501, and Matt J. Kelly, Tarlow and Stonecipher, PLLC, 1705 West College Street, Bozeman, Montana 59715, on behalf of Intervenor Douglas Ferebee, Dale Ferebee, Lois Ferebee, John Schultz, Hildegard Steckler, Joel Johnson, John Steckler, Thomas L. Tuhy, Lois Wanner, Grant Johnson, Jeff Renner, Angie Renner, Edward Clive, Patricia G. Pelton, Vernon J. Leingang, Dennis Kunkel, Paula Jo A. Wanner, Adam J. Wanner, Leo Reisenauer, Karen Reisenauer, Robert J. Slavick, Kathleen Schmaltz, Timothy Wasen, Roberta Wasen, Russell J. Kunkel, Nina Filibeck, Michael L. Hapt, Bonnie Hapt, Michael Isaak, Janice Isaak, Gordon Kroh, Wesley Kroh, Eldon Kroh, Daniel H. Neurohr, Charlotte Neurohr, Delbert Zarr, Larry Erdmann, Hollis Erdmann, Zane Voigt, Alice Voigt, Florence Bessaw, Joann Payne, Mary Jane Miller, Doug Hille, Janet Anderson, Gail Howard, Milton O. Lindvig, and Jerome Rice.

Bryan L. Giese, Attorney at Law, 107 First Avenue Northwest, Mandan, North Dakota 58554, on behalf of Intervenor Douglas E. Bopp.

Bryan Van Grinsven, Attorney at Law, McGee, Hankla & Backes, P.C., 2400 Burdick Expressway East, Suite 100, Minot, North Dakota 58701, on behalf of Intervenor North Dakota Pipeline Company, LLC.

Wade C. Mann, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

Preliminary Statement

On December 22, 2014, Dakota Access, LLC (Dakota Access) filed applications for a certificate of corridor compatibility and a route permit concerning approximately 358 miles of 12-, 20-, 24-, and 30-inch diameter crude oil pipeline and associated facilities in Mountrail, Williams, McKenzie, Dunn, Mercer, Morton, and Emmons Counties, North Dakota, and terminals near Stanley in Mountrail County, near Tioga in Williams County, near Epping in Williams County, near Trenton in Williams County, near Watford City in McKenzie County, and near Johnsons Corner in McKenzie County (Project). The Project will be known as the Dakota Access Pipeline.

Also on December 22, 2014, Dakota Access filed an application for waivers of procedures and time schedules established under North Dakota Century Code sections 49-22-07.2, 49-22-08, 49-22-08.1, 49-22-13, and North Dakota Administrative Code section 69-06-01-02, requiring separate filings, separate notices, and separate hearings on such applications.

On March 25, 2015, the Commission deemed complete the applications for a certificate of corridor compatibility and a route permit, conditioned upon receiving from the applicant ten days prior to the first hearing in this case, the wetlands and waterbody field survey report, the wildlife inventory field survey report, the habitat assessment field survey report, and the tree and shrub inventory report (Reports).

Also on March 25, 2015, the Commission issued a Notice of Filings and Notice of Hearings (Notice) scheduling hearings for May 28, 2015, at 8:30 a.m. Central Time, at the Baymont Inn, 2611 Old Red Trail, Mandan, North Dakota 58554; June 15, 2015, at 9:00 a.m. Mountain Time, at the High Plains Cultural Center, 194 Central Ave South, Killdeer, North Dakota 58640; and June 26, 2015, at 9:00 a.m. Central Time, at the Ernie French Center, 14120 Highway 2, Williston, North Dakota 58801.

The Notice identified the following issues to be considered with respect to the application for a waiver of procedures and time schedules:

1. Are the proposed facilities of such length, design, location, or purpose that they will produce minimal adverse effects such that adherence to applicable procedures and time schedules may be waived?
2. Is it appropriate for the Commission to waive any procedures and time schedules as requested in the application?

The Notice identified the following issues to be considered with respect to the applications for certificate of corridor compatibility and route permit:

1. Will the location, construction, and operation of the proposed facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
3. Will the proposed facility locations 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?

On April 14, 2015, and on May 15, 2015, Dakota Access filed the Reports.

On May 11, 2015, on May 15, 2015, on May 18, 2015, on May 20, 2015, and on May 22, 2015, Petitions to Intervene (Petitions) were filed by Intervenors.

On May 27, 2015, the Procedural Hearing Office issued an Order granting the Petitions.

The hearings were held as scheduled.

On September 14, 2015, Dakota Access filed information concerning proposed adjustments to the corridor and route identified within the applications for a certificate of corridor compatibility and a route permit (Seventeen Adjustments), two of which were proposed to be located outside of the Study Area.

On September 16, 2015, the Commission issued a Notice of Opportunity for Hearing (Notice of Opportunity) concerning the Seventeen Adjustments. The Notice of Opportunity indicated that persons desiring a hearing must file a written request identifying their interest in the proceedings and the reasons for requesting a hearing by October 22, 2015. The Notice of Opportunity additionally indicated that the Commission can determine the matter without a hearing. No requests for a hearing were received by the deadline of October 22, 2015.

On December 2, 2015, Dakota Access filed information concerning one route adjustment to the corridor and route identified within the applications for a certificate of corridor compatibility and a route permit that would be located within the Study Area (Hovde Reroute).

Having allowed all interested persons an opportunity to be heard and having heard, reviewed, and considered all testimony and evidence presented, the Commission makes the following:

Findings of Fact

1. Dakota Access is a Delaware limited liability company authorized to do business in the State of North Dakota, as evidenced by corporate papers filed with the Commission on February 20, 2015, in Case No. PU-15-102.

Size, Type, and Preferred Location of Facility

2. The Project will consist of 358 miles of 12-, 20-, 24-, and 30-inch diameter steel crude oil pipeline and associated facilities in Mountrail, Williams, McKenzie, Dunn, Mercer, Morton, and Emmons Counties, North Dakota. The Project will also include tank terminals near Stanley in Mountrail County (Stanley Tank Terminal), near Tioga in Williams County (Ramberg Tank Terminal), near Epping in Williams County (Epping Tank Terminal), near Trenton in Williams County (Trenton Tank Terminal), near Watford City in McKenzie County (Watford City Tank Terminal), and near Johnsons Corner in McKenzie County, North Dakota (Johnsons Corner Tank Terminal).

3. The Project will originate at the Stanley Tank Terminal and will exit North Dakota to South Dakota at a point near Westfield, North Dakota.

4. The Project is part of an approximately 1,154-mile-long planned pipeline system that will stretch from near Stanley, North Dakota, to Patoka, Illinois.

5. Above-ground facilities associated with the Project will include approximately 59 block valves, and in-line inspection tool launch and receiver sites.

6. The maximum operating pressure for the pipeline will be 1,400 pounds per square inch throughout the Project.

7. Pipe wall thicknesses will be as follows: 0.375 inches for the 12-inch pipeline, except at crossing sites where the thickness will be 0.500 inches; 0.312 inches for the 20-inch pipeline, except at crossing sites where the thickness will be 0.438 inches; 0.375 inches for the 24-inch pipeline, except at crossing sites where the thickness will be 0.625 inches; and 0.429 inches for the 30-inch pipeline, except at the crossing sites where the thickness will be 0.625 inches.

8. The Stanley Tank Terminal will include two 120,000-barrel tanks; the Ramberg Tank Terminal will include one 100,000-barrel, one 150,000-barrel, and one 200,000-barrel tank; the Epping Tank Terminal and the Trenton Tank Terminal will each include one 100,000-barrel and one 150,000-barrel tank; the Watford City Tank Terminal will include two 100,000-barrel and one 150,000-barrel tanks; and the Johnsons Corner Tank Terminal will contain two 200,000-barrel tanks. Each tank terminal site will contain a pump station.

9. The pipeline diameter will be 12 inches between the Stanley Tank Terminal and the Ramberg Tank Terminal, 20 inches between the Ramberg Tank Terminal and the Trenton Tank Terminal, 24 inches between the Trenton Tank Terminal and the Watford City Tank Terminal, and 30 inches from the Watford City Terminal throughout the remainder of its route within North Dakota.

10. The maximum capacity of the Project will be 100,000 barrels per day between the Stanley Tank Terminal and the Ramberg Tank Terminal, 240,000 barrels per day between the Ramberg Tank Terminal and the Epping Tank Terminal, 300,000 barrels per day between the Epping Tank Terminal and the Trenton Tank Terminal, 450,000 barrels per day between the Trenton Tank Terminal and the Watford City Tank Terminal, and 600,000 barrels per day between the Watford City Tank Terminal and the South Dakota border.

11. Dakota Access testified that the design, construction, and operation of the pipeline will be in accordance with the United States Department of Transportation (USDOT) regulations governing the transportation of crude oil, including USDOT regulations as set forth in 49 Code of Federal Regulations Part 195.

12. The total cost of the Project is estimated to be \$1.41 Billion.

Study of Preferred Location

13. Dakota Access evaluated a one-mile-wide study area centered on the route (Study Area) for wetlands and waterbodies, vegetation, trees and shrubs, wildlife, protected species and critical habitats, soils, and geology.

14. Dakota Access conducted field surveys on the tank terminal sites and on a 400-foot-wide area centered on the route for the majority of the Project extent and where survey access was obtained for the purpose of inventorying wetlands and waterbodies, wildlife, protected species, and critical habitats (Survey Area).

15. Dakota Access conducted a Class I cultural resources literature search on the Study Area.

16. Dakota Access conducted a Class III cultural resources field inventory on the Survey Area.

17. The following agencies were contacted by Dakota Access: the United States Fish and Wildlife Service (USFWS); the United States Army Corps of Engineers (USACE); the United States Bureau of Reclamation (USBOR); the United States National Park Service; the United States Department of Agriculture, the Natural Resources Conservation Service (NRCS); the United States Department of Agriculture, Farm Service Agency; the United States Air Force (USAF); the North Dakota Parks and Recreation Department (NDPRD); the North Dakota Department of Health (NDDOH);

the North Dakota Department of Agriculture; the North Dakota Office of the State Engineer; the North Dakota Department of Trust Lands (NDDTL); the North Dakota Game and Fish Department (NDGFD); the North Dakota State Historic Preservation Office (NDSHPO); the North Dakota State Soil Conservation Committee; the Mountrail County Water Resource District; the Williams County Water Resource District; the McKenzie County Water Resource District; the Dunn County Water Resource District; the Mercer County Water Resource District; the Morton County Water Resource District; the Emmons County Water Resource District; the Mountrail County Weed Control Board; the Williams County Weed Board; the McKenzie County Weed Board; the Dunn County Weed Board; the Mercer County Weed Board; the Morton County Weed Board; and the Emmons County Weed Board.

18. In a response dated November 12, 2014, the USFWS indicated that the route will avoid all USFWS easement interests in Emmons County, North Dakota.

19. In a response dated October 31, 2014, the USBOR requested additional information relating to the crossing of the Buford-Trenton Irrigation District (Buford-Trenton) canal and drainage works, a federally constructed facility, and further indicated that both the USBOR and Buford-Trenton must approve the crossing request.

20. In a response dated November 17, 2014, the NRCS indicated that there will be no impact to NRCS easements in North Dakota. In a response dated November 21, 2014, the NRCS indicated that crossing private land enrolled in the Conservation Reserve Program (CRP) may not take place between April 15 and August 1 annually without a waiver granted by the NRCS.

21. In a response dated November 18, 2014, the USAF indicated that while the Project will not intersect restrictive easements surrounding intercontinental ballistic missile facilities, buried USAF cable will be crossed three times. In a response dated November 19, 2014, the USAF indicated that USAF personnel must be present during excavation that may impact buried USAF cable at the three crossings.

22. In a response dated December 10, 2014, the NDPRD indicated that the Project will not affect state park lands managed by the NDPRD. The NDPRD further indicated that Land and Water Conservation Fund and federally funded recreation trail projects coordinated by the NDPRD are present within the Study Area, and that species of concern and significant ecological communities have been documented within and adjacent to the Study Area. The NDPRD recommended construction be completed in a manner that minimizes visual impact to scenic byways and that impacted areas be revegetated with species native to the Project area.

23. In a response dated December 4, 2014, the Dunn County Weed Board recommended that any areas to be excavated as part of the Project be inspected prior to excavation and for three years post-construction, and also that any noxious or invasive weeds present be chemically treated.

Siting Criteria

24. The Commission has established criteria pursuant to North Dakota Century Code section 49-22-05.1 to guide the Commission in evaluating the suitability of granting a certificate of corridor compatibility and route permit. The criteria, as set forth in North Dakota Administrative Code section 69-06-08-02, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria. Dakota Access evaluated the Project with respect to the Exclusion, Avoidance, Selection, and Policy criteria of the Commission.

25. An Exclusion Area may not encompass more than fifty percent of a corridor width unless there is no reasonable alternative. An Exclusion Area must be excluded in the consideration of a route for a transmission facility. A buffer zone to protect the integrity of the Exclusion Area must be included. A transmission facility route must not be sited within an Exclusion Area.

26. Dakota Access testified that 509 cultural resource sites were identified during the Class III field survey on those areas where survey access was obtained. Dakota Access further testified that survey results will be provided to NDSHPO for review as information becomes available, and that Dakota Access will work with NDSHPO to avoid and mitigate impacts to cultural resources.

27. Areas critical to the life stages of threatened or endangered animal or plant species are considered to be Exclusion Areas. The Missouri River in North Dakota has been designated by the USFWS as critical habitat for both the interior least tern, an endangered avian species, and the piping plover, a threatened avian species. Dakota Access testified that the Project will be bored beneath the Missouri River and its adjacent uplands in order to protect the integrity of this Exclusion Area.

28. No other Exclusion Areas are present within the Survey Area.

29. An Avoidance Area is a geographical area that may not be considered in the routing of a transmission facility unless the applicant shows that, under the circumstances, there is no reasonable alternative. In determining whether an Avoidance Area should be designated for a transmission facility, the Commission may consider, among other things, the proposed management of adverse impacts, the orderly siting of facilities, system reliability and integrity, the efficient use of resources, and alternative routes.

30. A transmission facility route may not be sited within an Avoidance Area unless the applicant demonstrates that under the circumstances there is no reasonable alternative. Economic considerations alone are not sufficient to establish no reasonable alternative.

31. The route will cross the Little Missouri River, which has been designated a State Scenic River. Dakota Access testified that the crossing will be bored in order to protect the integrity of this Avoidance Area. The Little Missouri River stretches from near the southwest corner of North Dakota's border with South Dakota to Lake Sakakawea. The Commission finds there is no reasonable alternative to the proposed route crossing this Avoidance Area.

32. The route will cross the City of Williston's wellhead protection area at an extension along its northern edge for a distance of approximately 1.5 miles. Dakota Access indicated that isolating valves will be installed along the route in this high consequence as required by PHMSA in order to minimize potential impacts. In order to reach the proposed Trenton Tank Terminal site while circumventing the majority of the wellhead protection area, the Commission finds there is no reasonable alternative to the proposed route crossing this Avoidance Area.

33. Two North Dakota-designated scenic byways, North Dakota Highway 22 and United States Highway 10, will be crossed by the route. Both crossings will be bored, and Dakota Access indicated that visual impacts will be temporary and related only to Project construction, as no permanent above-ground structures will be installed at either scenic byway crossing. Because of the extensive nature of these scenic byways, the Commission finds no reasonable alternative to the proposed route crossing these Avoidance Areas.

34. Dakota Access indicated that there are four businesses and eight rural residences located within 500 feet of the route. Dakota Access has obtained waivers from all property owners of these businesses and rural residences and has provided copies of the waivers in this proceeding.

35. In accordance with the Commission's Selection Criteria, a transmission facility route shall be designated if it is demonstrated that any significant adverse effects resulting from the location, construction, and maintenance of the transmission facility will be at an acceptable minimum, or will be managed and maintained at an acceptable minimum.

36. Federally jurisdictional wetland and waterbody crossings will be subject to oversight through the USACE's Nationwide 12 and Section 10 permitting processes.

37. Dakota Access testified that it will work with landowners to minimize impacts to irrigated lands, and will compensate landowners for any associated losses.

38. Dakota Access has analyzed the impacts of the Project in relation to all of the relevant Selection Criteria. No significant adverse impact will result from the location, construction, and operation of the Project.

Measures to Minimize Impact

39. Dakota Access testified that a supervisory control and data acquisition system (SCADA) will be installed as part of the Project, and operations will be continuously monitored by a control center located in Houston, Texas.
40. Dakota Access testified that all valves will be installed with remote actuators to allow them to be closed remotely from the control center in the event of an emergency.
41. Dakota Access testified that 100% of all field welds will be tested.
42. Dakota Access testified that pumps will be located at pump terminals within enclosed and insulated buildings to minimize noise.
43. Dakota Access indicated that emergency response equipment will be located in Epping, Williston, Watford City, and Bismarck, North Dakota.
44. Dakota Access testified that it will participate in the North Dakota One-Call notification system.
45. Dakota Access testified that it will contract with a third-party inspection firm to ensure regulatory and environmental compliance.
46. Dakota Access testified that one USFWS grassland easement will be crossed by the route, and that this area will be bored to protect its integrity.
47. Dakota Access testified that the Missouri River will be bored at both locations where it is crossed by the route. The estimated depth of the bore beneath the river bed is 35 feet at its northern crossing and 64 feet at its southern crossing. Dakota Access further testified that the Little Missouri River, the Knife River, the Heart River, and both crossings of Cherry Creek will also be bored in order to minimize environmental impacts to those waterbodies.
48. Dakota Access has committed to protecting the integrity of wetlands and waterbodies crossed by the route by using best management practices in order to minimize erosion and to prevent sediment discharge, which will include minimizing the footprint of environmental disturbance by reducing the workspace; maintaining vegetative barriers; and installing sediment barriers, trench plugs, and slope breakers as necessary.
49. Construction activities that may impact federally protected species and critical habitats will be subject to oversight by the USFWS through its Section 7 consultation process.

50. Where colocation of the Project occurs with North Dakota Pipeline Company's (NDPL's) permitted routes, Dakota Access and NDPL have agreed as to pipeline separation distances, the width and restoration of temporary work space buffer zones, and communications protocol, as described in NDPL's January 7, 2016, filing in this proceeding.

51. Dakota Access has agreed to a number of steps to mitigate the impact of the Project as indicated by the Certification Relating to Order Provisions – Transmission Facility Siting with accompanying Tree and Shrub Mitigation Specifications filed in this proceeding, which is incorporated by reference and attached to this Order.

From the foregoing Findings of Fact the Commission makes the following conclusions of law:

Conclusions of Law

1. The Commission has jurisdiction over Dakota Access and the subject matter of these applications under North Dakota Century Code chapter 49-22.
2. Dakota Access is a utility as defined in North Dakota Century Code section 49-22-03(13).
3. The Project is a transmission facility as defined in North Dakota Century Code section 49-22-03(12).
4. The location, construction, and operation of the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
6. The location, construction, and operation of the Project is compatible with the environmental preservation and the efficient use of resources.
7. The Project will 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.
8. The Project is of such design and location that it will produce minimal adverse effects, as defined under North Dakota Century Code section 49-22-07.2.
9. It is appropriate for the Commission to waive those certain procedures and time schedules as requested in the waiver application under North Dakota Century Code section 49-22-07.2.

From the Findings of Fact and Conclusions of Law, the Commission makes the following order:

Order

The Commission orders:

1. Dakota Access' application for a waiver of procedures and time schedules is granted.
2. Certificate of Corridor Compatibility No. 179 is issued to Dakota Access, designating a corridor for the construction, operation, and maintenance of approximately 358 miles of 12-, 20-, 24-, and 30-inch diameter crude oil pipeline and associated facilities in Mountrail, Williams, McKenzie, Dunn, Mercer, Morton, and Emmons Counties; the Stanley Tank Terminal in Mountrail County; the Ramberg Tank Terminal, the Epping Tank Terminal, and the Trenton Tank Terminal in Williams County; and the Watford City Tank Terminal and the Johnsons Corner Tank Terminal in McKenzie County, North Dakota. The Corridor will consist of the tank terminal sites as depicted in Exhibit A of the Application, "Project Aerial Maps", and a 400-wide area centered on the route.
3. Route Permit No. 191 is issued to Dakota Access, designating a route for the construction, operation, and maintenance of approximately 358 miles of 12-, 20-, 24-, and 30-inch diameter crude oil pipeline and associated facilities in Mountrail, Williams, McKenzie, Dunn, Mercer, Morton, and Emmons Counties, North Dakota. The designated route for this purpose is depicted in Exhibit A of the Application, "Project Aerial Maps", as revised by the route adjustments depicted in Dakota Access' September 14, 2015 (Seventeen Adjustments) and December 2, 2015 (Hovde Reroute) filings.
4. The May 20, 2015, Certification Relating to Order Provisions – Transmission Facility Siting (Certification), with accompanying Tree and Shrub Mitigation Specifications, is incorporated by reference and attached to this Order.
5. To the extent that there are any conflicts or inconsistencies between Dakota Access' applications in this proceeding and the Certification, the Certification provisions control.
6. Dakota Access shall file with the Commission documentation from NDSHPO indicating concurrence that no historic properties or sites will be affected prior to beginning construction on any portion of the Project where SHPO concurrence has not yet been received.
7. Dakota Access and NDPL have agreed to pipeline separation distances, the width and restoration of temporary work space buffer zones, and communications protocol concerning the Project and NDPL's permitted routes, as described in NDPL's January 20, 2016, filing in this proceeding.

8. Dakota Access is required to comply with all applicable laws, rules, and/or regulations in the event it desires to construct another or a different transmission facility than was specified in the application within the corridor granted in this proceeding.

9. Dakota Access shall comply with all rules and regulations of all agencies having jurisdiction over any phase of the Project, and shall obtain and file with the Commission prior to beginning construction all necessary licenses and permits for construction of any portion of the Project for which the license or permit is required.

PUBLIC SERVICE COMMISSION

 _____	 _____	 _____
Randy Christmann Commissioner	Julie Fedorchak Chairman	Brian P. Kalk Commissioner

**PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA**

Certificate of Corridor Compatibility Number 179

This is to certify that the Commission has designated a transmission facility corridor to Dakota Access, LLC, for the construction, operation, and maintenance of approximately 358 miles of 12-, 20-, 24-, and 30-inch diameter crude oil pipeline and associated facilities in Mountrail, Williams, McKenzie, Dunn, Mercer, Morton, and Emmons Counties, North Dakota, and terminals near Stanley in Mountrail County, near Tioga in Williams County, near Epping in Williams County, near Trenton in Williams County, near Watford City in McKenzie County, and near Johnsons Corner in McKenzie County, North Dakota.

This certificate is issued in accordance with the Order of the Commission dated January 20, 2016, in Case No. PU-14-842 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, January 20, 2016

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner

**PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA**

Route Permit Number 191

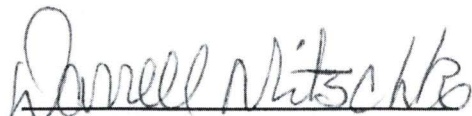
This is to certify that the Commission has designated a transmission facility route for Dakota Access, LLC, for the construction, operation, and maintenance of approximately 358 miles of 12-, 20-, 24-, and 30-inch diameter crude oil pipeline and associated facilities in Mountrail, Williams, McKenzie, Dunn, Mercer, Morton, and Emmons Counties, North Dakota, and terminals near Stanley in Mountrail County, near Tioga in Williams County, near Epping in Williams County, near Trenton in Williams County, near Watford City in McKenzie County, and near Johnsons Corner in McKenzie County, North Dakota.


This permit is issued in accordance with the Order of this Commission dated January 20, 2016, in Case No. PU-14-842 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, January 20, 2016.

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Dakota Access, LLC
Dakota Access Pipeline Project
Siting Application

Case No. PU-14-842

CERTIFICATION RELATING TO ORDER PROVISIONS - TRANSMISSION FACILITY
SITING

I am Jaey Mahmoud, a representative of Dakota Access, LLC ("Company") with authority to bind the Company to requirements to be set forth by the Commission in its Order and I certify the following:

1. Company understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission will be subject to the conditions and criteria set forth in Chapter 49-22 of the North Dakota Century Code and Chapter 69-06-08 of the North Dakota Administrative Code, and that Company shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. Company agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Company representative, its construction supervisor, and a representative of Commission Staff, to ensure that Company fully understands the conditions set forth in the Commission's order.
3. Company agrees to comply with the rules and regulations of all other agencies having jurisdiction over any phase of the transmission facility including all city, township, and county zoning regulations.
4. Company understands and agrees that it shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to construction activity associated with the transmission facility that requires said license or permit.
5. Company agrees to inform the Commission and the Commission's third-party construction inspector of its intent to start construction on the transmission facility prior to the commencement of construction. Once construction has started, Company shall keep the Commission and the Commission's third-party construction inspector updated on construction activities on a monthly basis.
6. Company understands and agrees that the pipeline will be buried to a minimum depth from the ground surface to the top of the pipe of 48 inches in range land, 48

inches for cultivated land, 48 inches at the bottom of the ditch for road crossings, and 72 inches across undeveloped section lines.

7. Company understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission is subject to suspension or revocation and may, in an appropriate and proper case, be suspended or revoked for failure to comply with the Commission's order, the conditions and criteria of the certificate or subsequent modification, or failure to comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.
8. Company agrees to maintain records that will demonstrate that it has complied with the requirements of the Commission's order issuing a Certificate of Corridor Compatibility or Route Permit, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.
9. Company agrees to construct and operate the transmission facility in the manner described in Company's application, in any late filed exhibits, and supplemental materials (Application). To the extent there are any conflicts or inconsistencies between Company's Application and the provisions in this Certification Relating to Order Provisions, the Certification provisions control.
10. Company agrees to report promptly to the Commission the presence in the permit area of any critical habitat or threatened species, endangered species, bald eagles, or golden eagles of which Company becomes aware and which were not previously reported to the Commission.
11. Company understands and agrees that all cultural resource mitigation plans must be submitted to the North Dakota State Historic Preservation Office and approved prior to the start of any fieldwork and construction activity in the affected area.
12. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made and a report of such examination is filed with the Commission and the State Historical Society and clearance to proceed is given by the Commission.
13. Company understands and agrees that all buried facility crossings of graded roads must be bored unless the responsible governing agency specifically permits Company to open cut the road.
14. Company understands and agrees that all pre-existing township and county roads and lanes used during construction must be repaired or restored to a condition that is equal to or better than the condition prior to the construction of the transmission

facility and that will accommodate their previous use, and that areas used as temporary roads or working areas during construction must be restored to their original condition.

15. Company understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures approved by the Commission are taken.
16. Company understands and agrees that all topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas where cuts will be made, must be stripped and segregated from the subsoil. Any area on which excavated subsoil will be placed must also be stripped of topsoil. After backfilling is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must be replaced over areas from which it was stripped only after the subsoil is replaced.
17. Company understands and agrees that reclamation, fertilization, and reseeding is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
18. Company understands and agrees that its obligation for reclamation and maintenance of the right-of-way will continue throughout the life of the transmission facility.
19. Company understands and agrees that its obligation for reclamation and maintenance of the transmission facility, associated facilities, and roadways will continue throughout the life of the transmission facility.
20. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
21. Company understands and agrees that it shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the transmission facility.
22. Company understands and agrees that it shall repair or replace all drainage tile broken or damaged as a result of construction and operation of the transmission facility.
23. Company understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Company unless otherwise negotiated with landowners.

24. Company understands and agrees that it shall remove all waste that is a product of construction and operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.
25. Company understands and agrees that it shall, as soon as practicable upon the completion of the construction of the transmission facility, restore the area affected by the activities to as near as is practicable to the condition as it existed prior to the beginning of construction.
26. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the transmission facility.
27. Company understands and agrees that it shall advise the Commission of any extraordinary events which take place at the site of the transmission facility, including injuries to any person, or the death of any threatened or endangered species on the site within five business days of such event.
28. Company understands and agrees that, prior to beginning construction of the transmission facility at a location, it shall send a letter to each landowner with whom an easement was executed for that location specifying the name and phone number of the company representative who is responsible for receiving and resolving landowner issues for the life of the easement.
29. Company understands and agrees that it will file with the commission the name and phone number of the current company representative who is responsible for receiving and resolving landowner issues for the transmission facility. The company will update this information whenever there is a change to the current company representative for the life of all easements for the transmission facility.
30. Upon request, Company agrees to provide the Commission with engineering design drawings of the transmission facility prior to construction.
31. Company understands and agrees that it shall inform the Commission in writing of any plans to modify the transmission facility or of any plans to modify the site plan for the transmission facility.
32. Company agrees to provide the Commission with both an electronic and a paper copy of the corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of the transmission facility as built, and will provide this information within 3 months of the completion of the construction. Company also agrees to provide an electronic version of the corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of

the transmission facility as built that can be imported into ESRI GIS mapping software within 3 months of the completion of the construction. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.

33. Company understands and agrees that the authorizations granted by any Certificate of Corridor Compatibility or Route Permit issued by the Commission for the transmission facility are subject to modification by order of the Commission if deemed necessary to protect further the public or the environment.
34. Company shall notify the Commission, as soon as reasonably possible, if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground facilities during construction conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, Company shall suspend construction in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century Code Chapter 49-23 has been determined.
35. Company understands and agrees that the corridor certificate and route permit are subject to suspension or revocation and may, after hearing, be suspended or revoked for failure to comply with the Commission's order, requirements of the One-Call Excavation Notice System under North Dakota Century Code Chapter 49-23, the conditions and criteria of the certificate or permit or subsequent modification, or failure to comply with applicable statutes, or rules, regulations, standards, and permits of other state or federal agencies.
36. Company agrees to utilize the following procedures if Company seeks a route adjustment before or during construction of the pipeline, pursuant under N.D.C.C. §49-22-16.3:
37. Company will specifically identify which subsection of NDCC 49-22-16.3 it is requesting the adjustment under. Company will file the name and contact information for a key contact person for the purposes of notice and communication during the adjustment application.
38. **ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before conducting any construction activities for any adjustment to the designated route within the designated corridor under NDCC 49-22-16.3(1), the Company will file:

- a. Certification and supporting documentation affirming that construction activities will be within the designated corridor, will not affect any known exclusion or avoidance areas within the designated corridor;
- b. Certification and supporting documentation, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, route and the route adjustment;
- c. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

39. ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED: Before adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(2), within the designated corridor that may affect an avoidance area, and before conducting any construction activities for any adjustment to the designated route within the designated corridor, the Company will file:

- a. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:
 - i. the designated corridor, route and the route adjustment;
 - ii. all exclusion and avoidance areas within the portion of the designated corridor containing the route adjustment
- b. Certification and supporting documentation affirming:
 - i. That construction activities will be within the designated corridor
 - ii. That construction activities will not affect any known exclusion area
- c. All field studies performed on the portion of the designated corridor containing the route adjustment;
- d. Specific information about any mitigation measures Company will take within the adjustment area;
- e. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment;
- f. Certification that unless the Commission previously authorized the impact to the same avoidance area, that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist;
- g. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

Company acknowledges and agrees that:

- 1. Written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity unless the Commission fails to act within ten working days of receipt of filing a complete adjustment application, in which case the adjustment is deemed approved.
- 2. The initiation of the ten working days begins upon receipt of a complete filing, to include Company's certifications, supporting documentation and

maps. However, Commission may extend the ten working day provision if Company, in the person of the key contact referenced above, is informed of the reason additional time is necessary for extension and has no objection to an extension.

40. **ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(3), outside the designated corridor and not affecting any exclusion and avoidance area, before conducting any construction activities for any adjustment to the designated route outside the designated corridor, the Company will file:

- a. Certification and supporting documentation affirming that construction activities will not affect any known exclusion or avoidance areas,
- b. Certification and supporting documents stating the length of the proposed route outside of the corridor and a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, corridor adjustment, designated route and the route adjustment;
- c. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment; and
- d. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
- e. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route

41. **ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(4), outside the designated corridor that may affect an avoidance area, and before conducting any construction activities for any adjustment to the designated route outside the designated corridor, the Company will file:

- a. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:
 - i. the designated corridor, corridor adjustment, route and the route adjustment;
 - ii. all exclusion and avoidance areas within the adjustment area
- b. Certification that construction activities will not affect any known exclusion area;
- c. Certification that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist within the designated corridor and route;

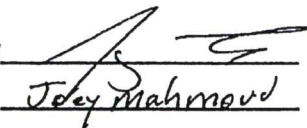
- d. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment;
- e. Provide specific information about any mitigation measures Company will take within the adjustment area;
- f. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
- g. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

Company acknowledges and agrees that:

- 1. Written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity unless the Commission fails to act within ten working days of receipt of filing a complete adjustment application, in which case the adjustment is deemed approved.
 - 2. The initiation of the ten working days begins upon receipt of a complete filing, to include Company's certifications, supporting documentation and maps. However, Commission may extend the ten working day provision if Company, in the person of the key contact referenced above, is informed of the reason additional time is necessary for extension and has no objection to an extension.
42. When applicable, Company may submit the field studies from the original application for the corridor and route provided they cover the adjustment area.

Dated this 20th day of May, 2015.

DAKOTA ACCESS, LLC

By 
Jdey Mahmood

Its VP-Engineering

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Dakota Access, LLC
Dakota Access Pipeline Project
Siting Application

Case No. PU-14-842

Tree and Shrub Mitigation Specifications

Inventory

1. Trees and shrubs anticipated to be cleared, including those that are considered invasive species or noxious weeds (*e.g.*, *Caragana arborescens*, *Elaeagnus angustifolia*, *Rhamnus cathartica*, *Tamarix chinensis*, *T. parviflora*, *T. ramosissima*, *Ulmus pumila*), must be inventoried before cutting. The inventory must record the location, number, and species of trees and shrubs.
2. In windbreaks, shelterbelts and other planted areas, trees or shrubs anticipated to be cleared, regardless of size, must be inventoried for replacement.
3. In native growth areas, trees anticipated to be cleared that are 1 inch diameter at breast height (dbh) or greater must be inventoried for replacement.
4. In native growth areas, shrubs anticipated to be cleared in the permanent right-of-way must be inventoried for replacement.
5. In native growth areas outside the permanent right-of-way, shrubs must be cut flush with the surface of the ground, taking care to leave the naturally occurring seed bank and root stock intact. If soil disturbance is necessary, the native topsoil must be preserved and replaced after construction. Shrubs must be allowed to regenerate naturally where native topsoil is preserved and replaced. Where native topsoil is not preserved and replaced, shrubs anticipated to be cleared must be inventoried for replacement.

6. In native growth areas, trees and shrubs may be inventoried by actual count or by a sampling method that will properly represent the woody vegetation population. A sampling plan developed by the company, filed with the North Dakota Public Service Commission (Commission) and approved prior to the start of construction must define the sampling method to be used for trees, for tall shrubs and for low shrubs. The data from the sample plots must be extrapolated to the total acreage of the wooded area to be cleared to determine the species and quantity of trees and shrubs to be replaced.

Clearing for Construction

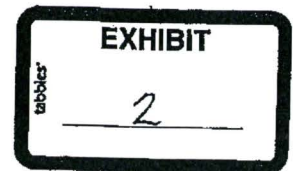
7. Trees and shrubs must be selectively cleared, leaving mature trees and shrubs intact where practical.
8. The maximum width of clear cuts through windbreaks, shelterbelts and all other wooded areas is 50 feet, unless otherwise approved by the Commission.
9. If the area of trees or shrubs actually cleared differs from the area inventoried, the difference in number of trees and shrubs to be replaced must be noted on the inventory.

Replacement

10. Prior to tree and shrub replacement, documentation identifying the number and variety of trees and shrubs removed, as well as the mitigation plan for the proposed number, variety, type, location and date of replacement plantings, must be filed with the Commission for approval.
11. Two 2-year-old saplings must be planted for every one tree removed. Two shrubs (stem cuttings) must be planted for every one shrub removed.
12. Except in the case of invasive or noxious species, trees and shrubs must be replaced by the same species or similar species, suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.

Invasive or noxious species must be replaced by similar non-invasive or non-noxious species suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.

13. Tree and shrub replacement must not be conducted within a 20 to 30 foot wide path over the pipeline to facilitate visual inspections of the right-of-way in accordance with U.S. Department of Transportation safety regulations.
14. Landowners must be given the option of having replacement trees and shrubs planted on the landowner's property, either on or off the right-of-way. The landowner must also be given the opportunity to waive those options in writing in order to have replacement trees and shrubs planted off the landowner's property.
15. At the conclusion of the project, documentation identifying the actual number, variety, type, location and date of the replacement plantings must be filed with the Commission.
16. Tree and shrub replacements must be inspected annually, in September, for three years. The first annual inspection must be at least one year from the anniversary date of the original plantings. A report of each annual inspection must be submitted to the Commission by October 1 of each year, documenting the condition of plantings and any woodlands work completed as of September of each year. If after the third annual report the survival rate is less than 75%, the Commission may order additional planting(s).



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Pipeline, L.L.C.
Pipeline – McKenzle and Dunn Counties
Siting Application

Case No. PU-15-

CERTIFICATION RELATING TO ORDER PROVISIONS
TRANSMISSION FACILITY SITING
NEW FACILITY CONSTRUCTION

I am _____, a representative of _____ Pipeline, L.L.C. ("Company") with authority to bind Company to requirements to be set forth by the Commission in its Order and I certify the following:

1. Company understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission will be subject to the conditions and criteria set forth in Chapter 49-22 of the North Dakota Century Code and Chapter 69-06-08 of the North Dakota Administrative Code, and that Company shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. Company agrees to comply with the rules and regulations of all other agencies having jurisdiction over any phase of the transmission facility including all city, township, and county zoning regulations.
3. Company understands and agrees that it shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to construction activity associated with the transmission facility that requires said license or permit.
4. Company understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission is subject to suspension or revocation and may, in an appropriate and proper case, be suspended or revoked for failure to comply with the Commission's order, the conditions and criteria of the certificate or subsequent modification, or failure to comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.
5. Company agrees to maintain records that will demonstrate that it has complied with the requirements of the Commission's order issuing a Certificate of Corridor Compatibility or Route Permit, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.
6. Company understands and agrees that the authorizations granted by any Certificate of Corridor Compatibility or Route Permit issued by the Commission for

the transmission facility are subject to modification by order of the Commission if deemed necessary to protect further the public or the environment.

Construction:

7. Company agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Company representative, its construction supervisor, and a representative of Commission Staff, to ensure that Company fully understands the conditions set forth in the Commission's order.
8. Company understands and agrees that all cultural resource mitigation plans must be submitted to the North Dakota State Historic Preservation Office and approved prior to the start of any fieldwork and construction activity in the affected area.
9. Company agrees to inform the Commission and the Commission's third-party construction inspector of its intent to start construction on the transmission facility prior to the commencement of construction. Once construction has started, Company shall keep the Commission and the Commission's third-party construction inspector updated on construction activities on a monthly basis.
10. Company understands and agrees that the pipeline will be buried to a minimum depth from the ground surface to the top of the pipe of 48 inches in range land, 48 inches for cultivated land, 48 inches at the bottom of the ditch for road crossings, and 72 inches across undeveloped section lines.
11. Company understands and agrees that all topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas where cuts will be made, must be stripped and segregated from the subsoil. Any area on which excavated subsoil will be placed must also be stripped of topsoil. After backfilling is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must be replaced over areas from which it was stripped only after the subsoil is replaced.
12. Company understands and agrees that all buried facility crossings of graded roads must be bored unless the responsible governing agency specifically permits Company to open cut the road.
13. Company understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Company unless otherwise negotiated with landowners.
14. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a

professional examination can be made and a report of such examination is filed with the Commission and the State Historical Society.

15. Company understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures are taken by Company.

Restoration and Maintenance:

16. Company understands and agrees that it shall, as soon as practicable upon the completion of the construction of the transmission facility, restore the area affected by the activities to as near as is practicable to the condition as it existed prior to the beginning of construction.
17. Company understands and agrees that all pre-existing township and county roads and lanes used during construction must be repaired or restored to a condition that is equal to or better than the condition prior to the construction of the transmission facility and that will accommodate their previous use, and that areas used as temporary roads or working areas during construction must be restored to their original condition.
18. Company understands and agrees that reclamation, fertilization, and reseeding is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
19. Company understands and agrees that its obligation for reclamation and maintenance of the transmission facility right-of-way, transmission facility, associated facilities, fences and gates, drainage tile, and roadways will continue throughout the life of the transmission facility.
20. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
21. Company understands and agrees that it shall remove all waste that is a product of construction and operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.
22. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the transmission facility.

Communication with Landowners and PSC:

23. Company understands and agrees that, prior to beginning construction of the transmission facility at a location, it shall send a letter to each landowner with whom an easement was executed for that location specifying the name and phone number of the company representative who is responsible for receiving and resolving landowner issues for the life of the easement.
24. Company understands and agrees that it will file with the commission the name and phone number of the current company representative who is responsible for receiving and resolving landowner issues for the transmission facility. The company will update this information whenever there is a change to the current company representative for the life of all easements for the transmission facility.
25. Upon request, Company agrees to provide the Commission with engineering design drawings of the transmission facility prior to construction.
26. Company understands and agrees that it shall advise the Commission as soon as reasonably possible of any extraordinary events which take place at the site of the transmission facility, including injuries to any person,.
27. Company agrees to report to the Commission, as soon as reasonably possible, the presence in the permit area of any critical habitat or threatened or endangered species of which Company becomes aware and which were not previously reported to the Commission.
28. Company understands and agrees that it shall inform the Commission in writing of any plans to modify the transmission facility or of any plans to modify the site plan for the transmission facility.
29. Company agrees to provide the Commission with both an electronic and a paper copy of the corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of the transmission facility as built, and will provide this information within 3 months of the completion of the construction. Company also agrees to provide an electronic version of the corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of the transmission facility as built that can be imported into ESRI GIS mapping software within 3 months of the completion of the construction. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.

30. Company shall notify the Commission as soon as reasonably possible if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground facilities during construction conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, Company shall suspend construction in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century Code Chapter 49-23 has been determined.

Route Adjustments Before or During Construction:

31. Company agrees to utilize the following procedures if Company seeks a route adjustment before or during construction of the pipeline, pursuant under N.D.C.C. §49-22-16.3:
32. Company will specifically identify which subsection of NDCC 49-22-16.3 it is requesting the adjustment under. Company will file the name and contact information for a key contact person for the purposes of notice and communication during the adjustment application.
33. **ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before conducting any construction activities for any adjustment to the designated route within the designated corridor under NDCC 49-22-16.3(1), the Company will file:
 - a. Certification and supporting documentation affirming that construction activities will be within the designated corridor, will not affect any known exclusion or avoidance areas within the designated corridor;
 - b. Certification and supporting documentation, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, route and the route adjustment;
 - c. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.
34. **ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(2), within the designated corridor that may affect an avoidance area, and before conducting any construction activities for any adjustment to the designated route within the designated corridor, the Company will file:
 - a. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:
 - i. the designated corridor, route and the route adjustment;

- ii. all exclusion and avoidance areas within the portion of the designated corridor containing the route adjustment
- b. Certification and supporting documentation affirming:
 - i. That construction activities will be within the designated corridor
 - ii. That construction activities will not affect any known exclusion area
- c. All field studies performed on the portion of the designated corridor containing the route adjustment;
- d. Specific information about any mitigation measures Company will take within the adjustment area;
- e. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment;
- f. Certification that unless the Commission previously authorized the impact to the same avoidance area, that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist;
- g. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

Company acknowledges and agrees that:

1. Written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity unless the Commission fails to act within ten working days of receipt of filing a complete adjustment application, in which case the adjustment is deemed approved.
2. The initiation of the ten working days begins upon receipt of a complete filing, to include Company's certifications, supporting documentation and maps. However, Commission may extend the ten working day provision if Company, in the person of the key contact referenced above, is informed of the reason additional time is necessary for extension and has no objection to an extension.

35. **ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(3), outside the designated corridor and not affecting any exclusion and avoidance area, before conducting any construction activities for any adjustment to the designated route outside the designated corridor, the Company will file:

- a. Certification and supporting documentation affirming that construction activities will not affect any known exclusion or avoidance areas,
- b. Certification and supporting documents stating the length of the proposed route outside of the corridor and a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, corridor adjustment, designated route and the route adjustment;

- c. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment; and
- d. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
- e. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route

36. **ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED:** Before adjusting the route of a gas or liquid transmission line under NDCC 49-22-16.3(4), outside the designated corridor that may affect an avoidance area, and before conducting any construction activities for any adjustment to the designated route outside the designated corridor, the Company will file:

- a. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:
 - i. the designated corridor, corridor adjustment, route and the route adjustment;
 - ii. all exclusion and avoidance areas within the adjustment area
- b. Certification that construction activities will not affect any known exclusion area;
- c. Certification that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist within the designated corridor and route;
- d. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment;
- e. Provide specific information about any mitigation measures Company will take within the adjustment area;
- f. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
- g. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

Company acknowledges and agrees that:

1. Written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity unless the Commission fails to act within ten working days of receipt of filing a complete adjustment application, in which case the adjustment is deemed approved.
2. The initiation of the ten working days begins upon receipt of a complete filing, to include Company's certifications, supporting documentation and maps. However, Commission may extend the ten working day provision if if Company, in the person of the key contact referenced above, is informed

of the reason additional time is necessary for extension and has no objection to an extension.

37. When applicable, Company may submit the field studies from the original application for the corridor and route provided they cover the adjustment area.

Dated this 19th day of February, 2016.

PIPELINE, L.L.C.

By _____

Its _____

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**..... Pipeline, L.L.C.
Pipeline - McKenzie and Dunn Counties
Siting Application**

Case No. PU-15

Tree and Shrub Mitigation Specifications

Inventory

1. Trees and shrubs anticipated to be cleared, including those that are considered invasive species or noxious weeds (e.g., *Caragana arborescens*, *Elaeagnus angustifolia*, *Rhamnus cathartica*, *Tamarix chinensis*, *T. parviflora*, *T. ramosissima*, *Ulmus pumila*), must be inventoried before cutting. The inventory must record the location, number, and species of trees and shrubs.
2. In windbreaks, shelterbelts and other planted areas, trees or shrubs anticipated to be cleared, regardless of size, must be inventoried for replacement.
3. In native growth areas, trees anticipated to be cleared that are 1 inch diameter at breast height (dbh) or greater must be inventoried for replacement.
4. In native growth areas, shrubs anticipated to be cleared in the permanent right-of-way must be inventoried for replacement.
5. In native growth areas outside the permanent right-of-way, shrubs must be cut flush with the surface of the ground, taking care to leave the naturally occurring seed bank and root stock intact. If soil disturbance is necessary, the native topsoil must be preserved and replaced after construction. Shrubs must be allowed to regenerate naturally where native topsoil is preserved and replaced. Where native topsoil is not preserved and replaced, shrubs anticipated to be cleared must be inventoried for replacement.

6. In native growth areas, trees and shrubs may be inventoried by actual count or by a sampling method that will properly represent the woody vegetation population. A sampling plan developed by the company, filed with the North Dakota Public Service Commission (Commission) and approved prior to the start of construction must define the sampling method to be used for trees, for tall shrubs and for low shrubs. The data from the sample plots must be extrapolated to the total acreage of the wooded area to be cleared to determine the species and quantity of trees and shrubs to be replaced.

Clearing for Construction

7. Trees and shrubs must be selectively cleared, leaving mature trees and shrubs intact where practical.
8. The maximum width of clear cuts through windbreaks, shelterbelts and all other wooded areas is 50 feet, unless otherwise approved by the Commission.
9. If the area of trees or shrubs actually cleared differs from the area inventoried, the difference in number of trees and shrubs to be replaced must be noted on the inventory.

Replacement

10. Prior to tree and shrub replacement, documentation identifying the number and variety of trees and shrubs removed, as well as the mitigation plan for the proposed number, variety, type, location and date of replacement plantings, must be filed with the Commission for approval.
11. Two 2-year-old saplings must be planted for every one tree removed. Two shrubs (stem cuttings) must be planted for every one shrub removed.
12. Except in the case of invasive or noxious species, trees and shrubs must be replaced by the same species or similar species, suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.

Invasive or noxious species must be replaced by similar non-invasive or non-noxious species suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.

13. Tree and shrub replacement must not be conducted within a 20 to 30 foot wide path over the pipeline to facilitate visual inspections of the right-of-way in accordance with U.S. Department of Transportation safety regulations.
14. Landowners must be given the option of having replacement trees and shrubs planted on the landowner's property, either on or off the right-of-way. The landowner must also be given the opportunity to waive those options in writing in order to have replacement trees and shrubs planted off the landowner's property.
15. At the conclusion of the project, documentation identifying the actual number, variety, type, location and date of the replacement plantings must be filed with the Commission.
16. Tree and shrub replacements must be inspected annually, in September, for three years. The first annual inspection must be at least one year from the anniversary date of the original plantings. A report of each annual inspection must be submitted to the Commission by October 1 of each year, documenting the condition of plantings and any woodlands work completed as of September of each year. If after the third annual report the survival rate is less than 75%, the Commission may order additional planting(s).

**PROPOSED AMENDMENTS TO
ENGROSSED SENATE BILL NO. 2286**

Page 1, line 1, after “Act” insert “to create and enact a new subsection to section 49-22-03 of the North Dakota Century Code, relating to energy conversion and transmission facility siting definitions and”

Page 1, line 3, after “siting” insert “and to provide for a legislative management study”

Page 1, after line 4, insert:

SECTION 1. A new subsection to section 49-22-03 of the North Dakota Century Code is created and enacted as follows:

“Road use agreement” means permits required for extraordinary road use, road access points, approach or road crossings, public right-of-way set backs, building rules, physical addressing, dust control measures or road maintenance and any repair mitigation plans.”

Page 1, line 8, remove the overstrike over “~~may, and is encouraged to~~”

Page 1, line 8, remove “shall”

Page 1, line 10, after “state” insert “government” and replace “a directly impacted political subdivision” with “townships with retained zoning authority, cities or counties within the proposed corridor of a gas or liquid transmission facility.”

Page 1, line 23, replace “approach or road crossings” with “road use agreements”

Page 1, line 24, remove “permits, public right-of-way setbacks, building rules, or physical addressing”

Page 2, line 1, replace “political subdivision” with “townships, cities or counties within the corridor of a gas or liquid transmission facility”

Page 2, line 2, remove “by a preponderance of the evidence”

Page 2, line 5, remove “administrative law” and insert “laws or rules”

Page 2, line 7, replace “provide notice to all” with “notify”

Page 2, line 8, replace “appropriate political subdivisions” with “townships with retained zoning authority, cities or counties within the proposed corridor of a gas or liquid transmission facility”

Page 2, line 8, replace “made” with “filed.”

Page 2, line 9, remove “under this section”

Page 2, line 9, replace “a political subdivision” with “townships with retained zoning authority, cities or counties within a proposed corridor for a gas or liquid transmission facility”

Page 2, line 10, replace “authorized under this section” with “identified in this subsection”

Page 2, line 10, replace “If the political” with “The applicant must comply with the requirements approved by the commission as submitted by the townships with retained zoning authority, cities or counties within the corridor of the gas or liquid transmission facility that are submitted at least ten days prior to the hearing. The requirements may not be more stringent than state or federal law.”

Page 2, remove lines 11 and 12

Page 2, after line 12, insert:

“SECTION 4. LEGISLATIVE MANAGEMENT STUDY. During the 207-18 interim, the legislative management shall study the communication and cooperation between the public service commission and political subdivisions in regards to ensuring that local ordinances and zoning provisions are considered and addressed as part of the application process and the public hearings. The study must also include examination of the impacts to relationships between landowners and the oil and gas industry; effects on the efficiency of the siting process including timelines associated with notification and permitting; impacts to the public input process; and any effects on compliance with, and enforcement of, zoning ordinances of political subdivisions. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Renumber accordingly

SB 2286 with Proposed Amendments Added:

SECTION 1. A new subsection to section 49-22-03 of the North Dakota Century Code is created and enacted as follows:

“Road use agreement” means permits required for extraordinary road use, road access points, approach or road crossings, public right-of-way set backs, building rules, physical addressing, dust control measures or road maintenance and any repair mitigation plans.”

SECTION 2. AMENDMENT. Section 49-22-14.1 of the North Dakota Century Code is amended and reenacted as follows:

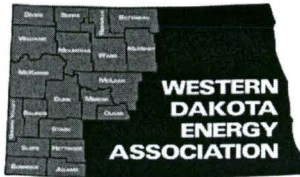
49-22-14.1. Cooperation with state and federal agencies.

The commission may, and is encouraged to, cooperate with and receive and exchange technical information and assistance from and with any department, agency, or officer of any state *government, townships with retained zoning authority, cities or counties within the proposed corridor of a gas or liquid transmission facility*, or of the federal government to eliminate duplication of effort, to establish a common database, or for any other purpose relating to the provisions of this chapter and in furtherance of the statement of policy contained herein.

SECTION 3. AMENDMENT. Subsection 2 of section 49-22-16 of the North Dakota Century Code is amended and reenacted as follows:

- “2. A certificate of site compatibility for an energy conversion facility *may not supersede or pre-empt any local land use, zoning, or building rules, regulations, or ordinances and no site may be designated which violates local land use, zoning, or building rules, regulations, or ordinances. A permit for the construction of a gas or liquid transmission facility within a designated corridor must supersede and pre-empt any local land use or zoning regulations. Before a gas or liquid transmission facility is approved, the commission shall require the applicant to comply with the road use agreements of the townships, cities or counties within the proposed corridor of a gas or liquid transmission facility. The commission may waive the requirements of a political subdivision if the applicant shows the regulations or ordinances are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of their location, or are in direct conflict with state or federal laws or rules. The commission shall notify the townships with retained zoning authority, cities or counties within the proposed corridor of a gas or liquid transmission facility at the time an application for a certificate is filed. Upon notice a townships with retained zoning authority, cities or counties within the proposed corridor of a gas or liquid transmission facility shall provide a listing to the commission of all local requirements identified in the subsection. The applicant must comply with the requirements approved by the commission as submitted by the townships with retained zoning authority, cities or counties within the corridor of the gas or liquid transmission facility that are submitted at least ten days prior to the hearing. The requirements may not be more stringent than state or federal law.*

SECTION 4. LEGISLATIVE MANAGEMENT STUDY. During the 207-18 interim, the legislative management shall study the communication and cooperation between the public service commission and political subdivisions in regards to ensuring that local ordinances and zoning provisions are considered and addressed as part of the application process and the public hearings. The study must also include examination of the impacts to relationships between landowners and the oil and gas industry; effects on the efficiency of the siting process including timelines associated with notification and permitting; impacts to the public input process; and any effects on compliance with, and enforcement of, zoning ordinances of political subdivisions. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.



Geoff Simon, Western Dakota Energy Association
Testimony SB 2286
House Energy & Natural Resources Committee
March 9, 2017

3
3-9-17
SB 2286
Simon

Good afternoon, Chairman Porter and members of the committee. I am Geoff Simon, executive director of the Western Dakota Energy Association. Many of you will remember us as the North Dakota Association of Oil & Gas Producing Counties. Our association changed its name at our annual meeting last fall for two reasons: 1) We represent not only the oil-producing counties, but also the coal-producing counties, and we're seeing increasingly more wind energy development on our turf, and 2) We represent not only counties, but also cities and school districts in the energy-producing counties of western North Dakota.

When Senate Bill 2286 was heard on the Senate side, we testified as an opponent, so I am happy to rise as a proponent before this committee. Our association's support for this bill is an example of the legislative process working as intended. Since that initial Senate committee hearing, we've been part of an ad hoc working group representing the interests of the oil and gas industry and various units of local government. We've been meeting on-and-off for the past month seeking a way to find a compromise. The proposed amendment Mr. Kranda presented is the result of that work.

This legislation represents a big change in the pipeline siting process. Currently a company submits its application to the Public Service Commission, and after it receives its construction permit from the PSC, it goes back to the local level to obtain a conditional use permit to address local concerns. In some cases, the political subdivision may also rezone the land affected by a pipeline project. This bill would take that last step at the local level out of the process, so obviously our concern is loss of local control.

However, the amendments we've agreed upon go a long way toward ensuring the concerns of local government are addressed in the pipeline siting process. I say they go a long way because we're taking a leap of faith that the PSC will essentially fulfill the role of a local planning and zoning board. The language in the bill requires that the PSC notify affected political subdivisions when a pipeline application is filed, that those political subs submit their concerns to the PSC, and it directs the PSC to ensure the pipeline company complies with all local requirements before a construction permit is issued.

This new process will require our association, as well as the ND Petroleum Council, to educate our members. The same can be said for the ND Association of Counties, the League of Cities and the Townships because this legislation affects the entire state, not just the oil-producing counties.

Our members do have some lingering concerns, and I expect a couple of those folks may follow my testimony to share a few details. Those remaining uncertainties are largely encapsulated in the language of the interim study that would be required by this bill. For instance, landowners tend to look to their local elected officials to protect their interests in the local permitting process. Will they be as trusting of the PSC?

In the interest of making government work more efficiently, we're willing to give this process a shot. And it's essential that the results be monitored through the interim study. If there are unresolved issues or problems develop, we can look for ways to resolve them in the 2019 legislative session.

It is the interim study that was the clincher that brought our association on board with this bill. Without it, we would undoubtedly be testifying against the bill. WDEA encourages your support for this legislation.

Thank you for your attention, and I will stand by for any questions.

EMPOWER

North Dakota
LEGENDARY

4
3-9-17
SB2286
FLADELAND

DEPARTMENT OF COMMERCE TESTIMONY ON SENATE BILL 2286

MARCH 9, 2017, 3:00 P.M.

HOUSE ENERGY & NATURAL RESOURCES COMMITTEE

REPRESENTATIVE TODD PORTER, CHAIR

MIKE FLADELAND – MANAGER OF ENERGY BUSINESS DEVELOPMENT, ND DEPARTMENT OF COMMERCE

I'm Mike Fladeland, Manager of Energy Business Development for the North Dakota Department of Commerce. The Commissioner of Commerce serves as chairman of the EmPower North Dakota Commission.

On behalf of the EmPower ND Commission, I am here today to speak in favor of Senate Bill 2286. The EmPower ND Commission has endorsed this bill as being related to a recommendation outlined in their 2016 Policy Updates and Recommendations report. Their full report is available at www.EmPowerND.com.

The EmPower ND Commission recommends the State:

- Provide legislative clarification of state permitting and jurisdictional authority where required. Any required state level permitting process should include input from local political subdivisions as part of the standard permitting process. Local permitting conditions should not be more stringent than state conditions, unless the political subdivision can prove commercially applicable and reasonably prudent.
 - Political subdivisions' input and discussion are valued, but should not duplicate a state permitting process and create jurisdictional uncertainty.
 - The input must follow the prescribed process and preserve the due process designed for state oversight and authorization.
 - The 53 sets of county rules, over 300 city rules, and 1,430 township rules create uncertainty, delays and duplication of efforts, economic development restriction, and limitations on the ability to build critical infrastructure that improves safety, transportation and quality of life.

Senate Bill 2286 provides representatives from political subdivisions the opportunity to provide input to the Public Service Commission as the PSC is considering a permit. The PSC would then be responsible to take into account the political subdivision input as they determine whether or not to grant the permit. This process will allow local governing bodies to have a say, without requiring a duplicative process at the local level.

Mr. Chairman and members of the Energy and Natural Resources Committee, the EmPower ND Commission respectfully request your favorable consideration of Senate Bill 2286. That concludes my testimony and I am happy to entertain any questions.

5
3-9-17
SB 2286
Pierce

SB 2286

North Dakota Planning Association Testimony – presented by Natalie Pierce

If enacted, SB 2286 would create a situation whereby if, after receiving notice, a local government does not provide a listing of local zoning requirements to the Public Service Commission (PSC) 10 days prior to a PSC hearing related to the siting of a liquid or gas energy transmission facility, all local zoning requirements shall be considered waived. The North Dakota Planning Association (NDPA) opposes SB 2286 for the following reasons:

- The existing statute already allows PSC decisions regarding energy transmission facilities to supersede a local zoning determination under specific circumstances. The proposed legislation would further erode the authority granted to local jurisdictions by the state to enforce zoning ordinances.
- The legislation, as written, leaves some questions open:
 - 1) What authority will the PSC have to override local zoning regulations if, for some reason, the PSC fails to provide notice?
 - 2) What constitutes adequate notice?
 - 3) Via what process may a local jurisdiction appeal a siting decision by the PSC?
- While NDPA opposes SB 2286, if the bill moves forward toward adoption, NDPA strongly advocates that the legislation should include specific requirements with regard to timing of the notice sent by the PSC and selection of those representatives who are to receive notice.
 - 1) There is a degree of case-specific evaluation, inherent in many local zoning regulations that does not lend itself to the list format described in SB 2286. Take a local jurisdiction “West Town.” West Town may wish to, or be required to, hold a public hearing regarding the siting of an energy transmission facility. West Town officials would consider the input received at the local public hearing, in the process of making a determination as to whether to approve or deny the proposed energy transmission facility. If the PSC hearing is held before there is time to adequately notice for a public hearing at the local level, West Town officials would not have a thoroughly vetted recommendation to make to the PSC. A reasonable time frame would be for the PSC hearing to take place a minimum of 8 weeks after the local jurisdiction *receives* the notice from the PSC (or **9 weeks from the date the notice is sent by the PSC**).
 - 2) NDPA also strongly advocates that the proposed legislation require the PSC to send notice not just to one representative from the local jurisdiction but specifically the Planning & Zoning Administrator (if the jurisdiction has one), the Auditor, and the chairman/woman of the governing body of the local jurisdiction, at a minimum.

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2286

Introduced by

Senators Schaible, Unruh

Representatives Nathe, Porter

1 A BILL for an Act to amend and reenact ~~section~~sections 49-22-03 and 49-22-14.1 and
2 subsection 2 of section 49-22-16 of the North Dakota Century Code, relating to energy
3 conversion and transmission facility siting; and to provide for a legislative management study.

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

5 **SECTION 1. AMENDMENT.** Section 49-22-03 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **49-22-03. Definitions.**

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

- 9 1. "Certificate" means the certificate of site compatibility or the certificate of corridor
10 compatibility issued under this chapter.
- 11 2. "Commission" means the North Dakota public service commission.
- 12 3. "Construction" includes any clearing of land, excavation, or other action that would
13 affect the environment of the site after April 9, 1975, but does not include activities:
 - 14 a. Conducted wholly within the geographic location for which a utility has previously
15 obtained a certificate or permit under this chapter, or on which a facility was
16 constructed before April 9, 1975, if:
 - 17 (1) The activities are for the construction of the same type of facility as the
18 existing type of facility as identified in a subdivision of subsections 5 or 12 of
19 this section and the activities are:
 - 20 (a) Within the geographic boundaries of a previously issued certificate or
21 permit;
 - 22 (b) For an energy conversion facility constructed before April 9, 1975,
23 within the geographic location on which the facility was built; or

- 1 (c) For a transmission facility constructed before April 9, 1975, within a
2 width of three hundred fifty feet [106.68 meters] on either side of the
3 centerline;
- 4 (2) Except as provided in subdivision b, the activities do not affect any known
5 exclusion or avoidance area;
- 6 (3) The activities are for the construction:
- 7 (a) Of a new energy conversion facility;
- 8 (b) Of a new gas, liquid, or electric transmission facility;
- 9 (c) To improve the existing energy conversion facility or gas, liquid, or
10 electric transmission facility; or
- 11 (d) To increase or decrease the capacity of the existing energy
12 conversion facility or gas, liquid, or electric transmission facility; and
- 13 (4) Before conducting any activities, the utility certifies in writing to the
14 commission that:
- 15 (a) The activities will not affect any known exclusion or avoidance area;
- 16 (b) The activities are for the construction:
- 17 [1] Of a new energy conversion facility;
- 18 [2] Of a new gas, liquid, or electric transmission facility;
- 19 [3] To improve the existing energy conversion or gas, liquid, or
20 electric transmission facility; or
- 21 [4] To increase or decrease the capacity of the existing energy
22 conversion facility or gas, liquid, or electric transmission facility;
23 and
- 24 (c) The utility will comply with all applicable conditions and protections in
25 siting laws and rules and commission orders previously issued for any
26 part of the facility.
- 27 b. Otherwise qualifying for exclusion under subdivision a, except that the activities
28 are expected to affect a known avoidance area and the utility before conducting
29 any activities:
- 30 (1) Certifies in writing to the commission that:
- 31 (a) The activities will not affect any known exclusion area;

- 1 (b) The activities are for the construction:
2 [1] Of a new energy conversion facility;
3 [2] Of a new gas, liquid, or electric transmission facility;
4 [3] To improve the existing energy conversion facility or gas, liquid,
5 or electric transmission facility; or
6 [4] To increase or decrease the capacity of the existing energy
7 conversion facility or gas, liquid, or electric transmission facility;
8 and
9 (c) The utility will comply with all applicable conditions and protections in
10 siting laws and rules and commission orders previously issued for any
11 part of the facility;
- 12 (2) Notifies the commission in writing that the activities are expected to impact
13 an avoidance area and provides information on the specific avoidance area
14 expected to be impacted and the reasons why impact cannot be avoided;
15 and
16 (3) Receives the commission's written approval for the impact to the avoidance
17 area, based on a determination that there is no reasonable alternative to the
18 expected impact. If the commission does not approve impacting the
19 avoidance area, the utility must obtain siting authority under this chapter for
20 the affected portion of the site or route. If the commission fails to act on the
21 notification required by this subdivision within thirty days of the utility's filing
22 the notification, the impact to the avoidance area is deemed approved.
- 23 c. Incident to preliminary engineering or environmental studies.
- 24 4. "Corridor" means the area of land in which a designated route may be established for
25 a transmission facility.
- 26 5. "Energy conversion facility" means any plant, addition, or combination of plant and
27 addition, designed for or capable of:
28 a. Generation by wind energy conversion exceeding one-half megawatt of
29 electricity;
30 b. Generation by any means other than wind energy conversion exceeding fifty
31 megawatts of electricity;

- 1 c. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic
2 meters] or more of gas per day, regardless of the end use of the gas;
- 3 d. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or
4 more of liquid hydrocarbon products per day; or
- 5 e. Enrichment of uranium minerals.
- 6 6. "Facility" means an energy conversion facility, transmission facility, or both.
- 7 7. "Permit" means the permit for the construction of a transmission facility within a
8 designated corridor issued under this chapter.
- 9 8. "Person" includes any individual, firm, association, partnership, cooperative,
10 corporation, limited liability company, or any department, agency, or instrumentality of
11 a state or of the federal government, or any subdivision thereof.
- 12 9. "Power emergency" means an electric transmission line and associated facilities that
13 have been damaged or destroyed by natural or manmade causes resulting in a loss of
14 power supply to consumers of the power.
- 15 10. "Road use agreement" means permits required for extraordinary road use, road
16 access points, approach or road crossings, public right-of-way setbacks, building
17 rules, physical addressing, dust control measures, or road maintenance and any repair
18 mitigation plans.
- 19 11. "Route" means the location of a transmission facility within a designated corridor.
- 20 ~~11.~~12. "Site" means the location of an energy conversion facility.
- 21 ~~12.~~13. "Transmission facility" means any of the following:
- 22 a. An electric transmission line and associated facilities with a design in excess of
23 one hundred fifteen kilovolts. "Transmission facility" does not include:
- 24 (1) A temporary transmission line loop that is:
- 25 (a) Connected and adjacent to an existing transmission facility that was
26 sited under this chapter;
- 27 (b) Within the corridor of the sited facility and does not cross known
28 exclusion or avoidance areas; and
- 29 (c) In place for less than one year; or
- 30 (2) A transmission line that is less than one mile [1.61 kilometers] long.

1 b. A gas or liquid transmission line and associated facilities designed for or capable
2 of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or
3 carbon dioxide. This subdivision does not apply to:

4 (1) An oil or gas pipeline gathering system;

5 (2) A pipeline with an outside diameter of four and one-half inches [11.43
6 centimeters] or less that will not be trenched and will be plowed in with a
7 power mechanism having a vertical knife or horizontally directionally drilled,
8 and its associated facilities; or

9 (3) A pipeline that is less than one mile [1.61 kilometers] long.

10 For purposes of this chapter, a gathering system includes the pipelines and
11 associated facilities used to collect oil from the lease site to the first pipeline
12 storage site where pressure is increased for further transport, or pipelines and
13 associated facilities used to collect gas from the well to the gas processing facility
14 at which end-use consumer-quality gas is produced, with or without the addition
15 of odorant.

16 c. A liquid transmission line and associated facilities designed for or capable of
17 transporting water from or to an energy conversion facility.

18 ~~13.~~ 14. "Utility" means any person engaged in and controlling the generation, manufacture,
19 refinement, or transmission of electric energy, gas, liquid hydrocarbons, or liquid
20 hydrocarbon products, including electric power generation or transmission, coal
21 gasification, coal liquefaction, petroleum refinement, uranium enrichment, and the
22 transmission of coal, gas, liquid hydrocarbons, or liquid hydrocarbon products, or the
23 transmission of water from or to any energy conversion facility.

24 **SECTION 2. AMENDMENT.** Section 49-22-14.1 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **49-22-14.1. Cooperation with state and federal agencies and political subdivisions.**

27 The commission may, and is encouraged to, ~~shall~~ cooperate with and receive and exchange
28 technical information and assistance from and with any department, agency, or officer of any
29 state, ~~a directly impacted political subdivision,~~ or of the federal government to eliminate
30 duplication of effort, to establish a common database, or for any other purpose relating to the
31 provisions of this chapter and in furtherance of the statement of policy contained herein. The

1 commission shall cooperate and exchange technical information with directly impacted political
2 subdivisions as outlined in subsection 2 of 49-22-16.

3 **SECTION 3. AMENDMENT.** Subsection 2 of section 49-22-16 of the North Dakota Century
4 Code is amended and reenacted as follows:

5 2. a. A certificate of site compatibility for an energy conversion facility ~~shall~~may not
6 supersede or pre-empt any local land use, zoning, or building rules, regulations,
7 or ordinances and no site ~~shall~~may be designated which violates local land use,
8 zoning, or building rules, regulations, or ordinances. **A**

9 b. Except as provided in this section, a permit for the construction of a gas or liquid
10 transmission facility within a designated corridor ~~may~~must supersede~~supersedes~~
11 and ~~pre-empt~~preempts any local land use, ~~or zoning, or building rules,~~
12 regulations, or ordinances upon a finding by the commission that such rules,
13 regulations, or ordinances, as applied to the proposed route,.

14 c. Before a gas or liquid transmission facility is approved, the commission shall
15 require the applicant to comply with the ~~approach or road crossing permits, public~~
16 ~~right of way setbacks, building rules, or physical addressing~~road use agreements
17 of the impacted political subdivision. ~~The commission may waive~~A permit may
18 ~~supersede and preempt~~ the requirements of a political subdivision if the applicant
19 shows by a preponderance of the evidence the regulations or ordinances are
20 unreasonably restrictive in view of existing technology, factors of cost or
21 economics, or needs of consumers regardless of their location, ~~or are in direct~~
22 conflict with state or federal ~~administrative law~~laws or rules. ~~Without such a~~
23 finding by the commission, no route shall be designated which violates local land
24 use, zoning, or building rules, regulations, or ordinances. ~~The-~~

25 d. When an application for a certificate for a gas or liquid transmission facility is
26 filed, the commission shall ~~provide notice to all the appropriate political~~
27 ~~subdivisions at the time an application for a certificate is made under this~~
28 ~~section~~notify the townships with retained zoning authority, cities, and counties in
29 which any part of the proposed corridor is located. The commission may not
30 schedule a public hearing sooner than forty-five days from the date notification is
31 sent by mail or electronic mail. Upon ~~notice~~notification, a political subdivision

1 shall provide a listing to the commission of all local requirements
2 ~~authorized~~identified under this ~~section~~subsection. ~~If the political subdivision does~~
3 ~~not submit the~~The requirements must be filed at least ten days before the
4 ~~commission hearing, all requirements are waived~~hearing or the requirements are
5 superseded and preempted.
6 e. An applicant shall comply with all local requirements provided to the commission
7 pursuant to subdivision d, which are not otherwise superseded by the
8 commission.

9 **SECTION 4. LEGISLATIVE MANAGEMENT STUDY - COOPERATION BETWEEN THE**
10 **PUBLIC SERVICE COMMISSION AND POLITICAL SUBDIVISIONS.** During the 2017-18
11 interim, the legislative management shall study cooperation and communication between the
12 public service commission and political subdivisions in regard to ensuring local ordinances and
13 zoning provisions are considered and addressed as part of the application and public hearing
14 process. The study must include examination of the impacts on relationships between
15 landowners and the oil and gas industry; impacts on the efficiency of the siting process,
16 including timelines associated with notification and permitting; impacts on the public input
17 process; and impacts on compliance with, and enforcement of, political subdivision zoning
18 ordinances. The legislative management shall report its findings and recommendations,
19 together with any legislation required to implement the recommendations, to the sixty-sixth
20 legislative assembly.

Summary of PSC Siting Timeline Under SB 2286 As Amended

(Pre-filing activity generally includes several contacts with landowners and local officials regarding the proposed project and corridor/route. Additionally, open house events are scheduled, noticed and held in advance in various communities along the proposed corridor/route for local officials and landowners.)

- Day 1 - Applicant files an application with the PSC
- Day X - PSC notifies townships, cities and counties upon filing
- Day Y - PSC deems an application complete after thorough review of the material

Applicant serves a copy of completed application on the county auditor in each county in which any part of the designated corridor is located

PSC serves notice of filing by mail or electronic mail to the following persons in each county in which any part of the site, corridor, or route is proposed to be located:

- (1) The chairman of the board of county commissioners.
- (2) The county auditor.
- (3) The chief executive officer of each city in the county on an application for a certificate for an energy conversion facility.
- (4) The chief executive officer of each city within a corridor on an application for a certificate or permit for a transmission facility.

PSC serves notice of filing by mail or electronic mail to any state or federal agency listed in section 69-06-01-05 (27 designated agencies /officers) as well as the state senators and representatives of each legislative district in which any part of the site, corridor, or route is proposed to be located

PSC publishes notice of filing in official newspaper of each county with any portion of the proposed corridor is located - publication occurs twice, once at least twenty days prior and once within twenty days of the hearing date

PSC provides a copy of the application upon request by any person or agency within 30 days of service or publication of the notice of filing

- Day X+35 - List of local requirements must be filed with PSC by townships with zoning, cities and counties to build in the local requirements for the PSC to include as part of the siting process
- Day X+45 - Hearings on the application will be held in each county in which any portion of the project is proposed to be located any time after this date; the hearings may be consolidated by the PSC, unless separate hearings are requested by five landowners
- Day Y+3 months PSC must be make a decision on an application re corridor and build in the local requirements, unless superseded
- Day Y+6 months PSC must be make a decision on an application re site or route and build in the local requirements, unless superseded

Note: The term "road use agreements" is defined to include a list of requirements for an applicant to comply with that are supplemental to the list filed with the PSC by the townships, cities and counties. Also, the PSC and the townships, cities and counties share responsibility for oversight, monitoring, and enforcement of the regulations.

3
SB2286
3-23-17

17.0950.03000

Sixty-fifth
Legislative Assembly
of North Dakota

Introduced by

Senators Schaible, Unruh

Representatives Nathe, Porter

A BILL for an Act to amend and reenact sections 49-22-03 and 49-22-14.1 and subsection 2 of section 49-22-16 of the North Dakota Century Code, relating to energy conversion and transmission facility siting; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. A new subsection to section 49-22-03 of the North Dakota Century Code is created and enacted as follows:

“10. Road use agreement” means permits required for extraordinary road use, road access points, approach or road crossings, public right-of-way set-backs, building rules, physical addressing, dust control measures or road maintenance and any repair mitigation plans.”

SECTION 2. AMENDMENT. Section 49-22-14.1 of the North Dakota Century Code is amended and reenacted as follows:

49-22-14.1. Cooperation with state and federal agencies and political subdivisions.

The commission may, and is encouraged to cooperate with and receive and exchange technical information and assistance from and with any department, agency, or officer of any state or of the federal government to eliminate duplication of effort, to establish a common database, or for any other purpose relating to the provisions of this chapter and in furtherance of the statement of policy contained herein. The commission shall cooperate and exchange technical information with the directly impacted political subdivisions as outlined in subsection 2 of 49-22-16.

SECTION 3. AMENDMENT. Subsection 2 of section 49-22-16 of the North Dakota Century Code is amended and reenacted as follows:

2. a. A certificate of site compatibility for an energy conversion facility shall ~~may~~ not supersede or pre-empt any local land use, zoning, or building rules, regulations, or ordinances and no site shall ~~may~~ be designated which violates local land use, zoning, or building rules, regulations, or ordinances.

b. ~~Except as provided in this section, a permit for the construction of a gas or liquid transmission facility within a designated corridor may supersede and pre-empt~~ supersedes and pre-empts any local land use, ~~or zoning, or building rules, regulations, or ordinances upon a finding by the commission that such rules, regulations, or ordinances, as applied to the proposed route,~~

c. Before a permit for a gas or liquid transmission facility is approved, the commission shall require the applicant to comply with the road use agreements of the impacted political subdivision. A permit may supersede and pre-empt the requirements of a political subdivision if the applicant shows by a preponderance of the evidence the regulations or ordinances are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of their location, or are in direct conflict with state or federal laws or rules. ~~Without such a finding by the commission, no route shall be designated which violates local land use, zoning, or building rules, regulations, or ordinances~~

d. When an application for a certificate for a gas or liquid transmission facility is filed, the commission shall notify the townships with retained zoning authority, cities and counties in which any part of the proposed corridor is located. The commission may not schedule a public hearing sooner than forty-five days from the date notification is sent by mail or electronic mail. Upon notification, a political subdivision shall provide a listing to the commission of all local requirements identified under this subsection. The requirements must be filed at least ten days before to the hearing or the requirements are superseded and pre-empted.

e. An applicant shall comply with all local requirements provided to the commission pursuant to subdivision d, which are not otherwise superseded by the commission.

SECTION 4. LEGISLATIVE MANAGEMENT STUDY – COOPERATION BETWEEN THE PUBLIC SERVICE COMMISSION AND POLITICAL SUBDIVISIONS.

During the 2017-18 interim, the legislative management shall study the cooperation and communication between the public service commission and political subdivisions in regard to ensuring local ordinances and zoning provisions are considered and addressed as part of the application and the public hearing process. The study must include examination of the impacts on relationships between landowners and the oil and gas industry; impacts on the efficiency of the siting process, including timelines associated with notification and permitting; impacts on the public input process; and impacts on compliance with, and enforcement of, political subdivision zoning ordinance. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2286

Page 1, line 1, replace the first "section" with "sections 49-22-03 and"

Page 1, line 3, after "siting" insert "; and to provide for a legislative management study"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

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 any clearing of land, excavation, or other action that would affect 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 subsections 5 or 12 of this section and the activities are:
 - (a) Within the geographic boundaries of a previously issued certificate or permit;
 - (b) For an energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
 - (c) For a 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 energy conversion facility;
 - (b) Of a new gas, liquid, or electric transmission facility;
 - (c) To improve the existing energy conversion facility or gas, liquid, or electric transmission facility; or

- (d) To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, 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 any known exclusion or avoidance area;
 - (b) The activities are for the construction:
 - [1] Of a new energy conversion facility;
 - [2] Of a new gas, liquid, or electric transmission facility;
 - [3] To improve the existing energy conversion or gas, liquid, or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, or electric transmission facility; and
 - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
- b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:
 - (1) Certifies in writing to the commission that:
 - (a) The activities will not affect any known exclusion area;
 - (b) The activities are for the construction:
 - [1] Of a new energy conversion facility;
 - [2] Of a new gas, liquid, or electric transmission facility;
 - [3] To improve the existing energy conversion facility or gas, liquid, or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing energy conversion facility or gas, liquid, or electric transmission facility; and
 - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;
 - (2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area expected to be impacted and the reasons why impact cannot be avoided; and
 - (3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission

does not approve impacting the avoidance area, the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.

- c. Incident to preliminary engineering or environmental studies.
- 4. "Corridor" means the area of land in which a designated route may be established for a transmission facility.
- 5. "Energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:
 - a. Generation by wind energy conversion exceeding one-half megawatt of electricity;
 - b. Generation by any means other than wind energy conversion exceeding fifty megawatts of electricity;
 - c. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas per day, regardless of the end use of the gas;
 - d. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
 - e. Enrichment of uranium minerals.
- 6. "Facility" means an energy conversion facility, transmission facility, or both.
- 7. "Permit" means the permit for the construction of a transmission facility within a designated corridor issued under this chapter.
- 8. "Person" includes any individual, firm, association, partnership, cooperative, corporation, limited liability company, or any department, agency, or instrumentality of a state or of the federal government, or any subdivision thereof.
- 9. "Power emergency" means an electric transmission line and associated facilities that have been damaged or destroyed by natural or manmade causes resulting in a loss of power supply to consumers of the power.
- 10. "Road use agreement" means permits required for extraordinary road use, road access points, approach or road crossings, public right-of-way setbacks, building rules, physical addressing, dust control measures, or road maintenance and any repair mitigation plans.
- 11. "Route" means the location of a transmission facility within a designated corridor.
- ~~11.12.~~ "Site" means the location of an energy conversion facility.
- ~~12.13.~~ "Transmission facility" means any of the following:

- a. An electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts. "Transmission facility" does not include:
 - (1) A temporary transmission line loop that is:
 - (a) Connected and adjacent to an existing transmission facility that was sited under this chapter;
 - (b) Within the corridor of the sited facility and does not cross known exclusion or avoidance areas; and
 - (c) In place for less than one year; or
 - (2) A transmission line that is less than one mile [1.61 kilometers] long.
- b. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide. This subdivision does not apply to:
 - (1) An oil or gas pipeline gathering system;
 - (2) A pipeline with an outside diameter of four and one-half inches [11.43 centimeters] or less that will not be trenched and will be plowed in with a power mechanism having a vertical knife or horizontally directionally drilled, and its associated facilities; or
 - (3) A pipeline that is less than one mile [1.61 kilometers] long.

For purposes of this chapter, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport, or pipelines and associated facilities used to collect gas from the well to the gas processing facility at which end-use consumer-quality gas is produced, with or without the addition of odorant.
- c. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.

~~13.14.~~ "Utility" means any person engaged in and controlling the generation, manufacture, refinement, or transmission of electric energy, gas, liquid hydrocarbons, or liquid hydrocarbon products, including electric power generation or transmission, coal gasification, coal liquefaction, petroleum refinement, uranium enrichment, and the transmission of coal, gas, liquid hydrocarbons, or liquid hydrocarbon products, or the transmission of water from or to any energy conversion facility."

Page 1, line 7, after "**agencies**" insert "**and political subdivisions**"

Page 1, line 8, remove the overstrike over "~~may, and is encouraged to,~~"

Page 1, line 8, remove "shall"

Page 1, line 10, remove ", a directly impacted political subdivision,"

Page 1, line 12, after the period insert "The commission shall cooperate and exchange technical information with directly impacted political subdivisions as outlined in subsection 2 of 49-22-16."

Page 1, line 15, after "2." insert "a."

Page 1, line 18, overstrike "A" and insert immediately thereafter:

"b. Except as provided in this section, a"

Page 1, line 19, remove "must"

Page 1, line 19, overstrike "supersede" and insert immediately thereafter "supersedes"

Page 1, line 19, overstrike "pre-"

Page 1, line 20, overstrike "empt" and insert immediately thereafter "preempts"

Page 1, line 22, after the underscored period insert:

"c."

Page 1, line 23, remove "approach or road crossing"

Page 1, line 24, replace "permits, public right-of-way setbacks, building rules, or physical addressing" with "road use agreements"

Page 1, line 24, after "the" insert "impacted"

Page 2, line 1, replace "The commission may waive" with "A permit may supersede and preempt"

Page 2, line 5, replace "administrative law" with "laws or rules"

Page 2, line 7, replace "The" with:

"d. When an application for a certificate for a gas or liquid transmission facility is filed, the"

Page 2, line 7, remove "provide notice to all the"

Page 2, remove line 8

Page 2, line 9, replace "under this section" with "notify the townships with retained zoning authority, cities, and counties in which any part of the proposed corridor is located. The commission may not schedule a public hearing sooner than forty-five days from the date notification is sent by mail or electronic mail"

Page 2, line 9, replace "notice" with "notification"

Page 2, line 10, replace "authorized" with "identified"

Page 2, line 10, replace "section" with "subsection"

Page 2, line 10, remove "If the political"

Page 2, line 11, replace "subdivision does not submit the" with "The"

Page 2, line 11, after "requirements" insert "must be filed"

Page 2, line 11, remove "commission"

Page 2, line 12, replace "hearing, all requirements are waived" with "hearing or the requirements are superseded and preempted"

Page 2, line 12, after the underscored period insert:

"e. An applicant shall comply with all local requirements provided to the commission pursuant to subdivision d, which are not otherwise superseded by the commission.

SECTION 4. LEGISLATIVE MANAGEMENT STUDY - COOPERATION BETWEEN THE PUBLIC SERVICE COMMISSION AND POLITICAL SUBDIVISIONS.

During the 2017-18 interim, the legislative management shall study cooperation and communication between the public service commission and political subdivisions in regard to ensuring local ordinances and zoning provisions are considered and addressed as part of the application and public hearing process. The study must include examination of the impacts on relationships between landowners and the oil and gas industry; impacts on the efficiency of the siting process, including timelines associated with notification and permitting; impacts on the public input process; and impacts on compliance with, and enforcement of, political subdivision zoning ordinances. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly