

**2021 HOUSE ENERGY AND NATURAL RESOURCES**

**HB 1095**

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee

Coteau AB Room, State Capitol

HB 1095

1/14/2021

Relating to the siting of a repowered wind conversion facility that has not previously been issued a certificate of site compatibility

Chairman Porter opened the hearing on HB 1095 at 10:33 AM. Roll Call: Members present: Representatives Porter, Damschen, Anderson, Bosch, Devlin, Heinert, Keiser, Lefor, Marschall, Roers Jones, M Ruby, Zubke, Guggisberg, and Ista.

### Discussion Topics:

- Siting of repowered facilities
- Larger new wind facilities

Julie Fedorchak, Public Service Commissioner, PSC #787

Levi Andrist, lobbyist, WIND Industry of ND #744

Carlee McLeod, USND #757

Rep Anderson moved a Do Pass, seconded by Rep Ruby. Roll call vote.

Representatives	Vote
Representative Todd Porter	Y
Representative Chuck Damschen	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	N
Representative Bill Devlin	Y
Representative Ron Guggisberg	N
Representative Pat D. Heinert	Y
Representative Zachary Ista	Y
Representative George Keiser	Y
Representative Mike Lefor	N
Representative Andrew Marschall	Y
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	Y
Representative Denton Zubke	Y

Motion carried 10-4-0. Rep Anderson is carrier.

**Additional Written Testimony:** Jean Schafer, Basin Electric Power Company #775

Zachery Smith, NDRECs #862

Chairman Porter closed the hearing at 10:55 AM.

*Kathleen Davis, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**HB 1095: Energy and Natural Resources Committee (Rep. Porter, Chairman)**  
recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB  
1095 was placed on the Eleventh order on the calendar.

## House Bill 1095

**Presented by:** Julie Fedorchak, Public Service Commissioner  
Public Service Commission

**Before:** House Energy and Natural Resources Committee  
The Honorable Todd Porter, Chairman

**Date:** January 14, 2021

### TESTIMONY

Mr. Chairman and committee members, I'm Commissioner Julie Fedorchak, Chair of the Public Service Commission. I am here to testify on HB 1095, which relates to the siting of repowered wind energy conversion facilities and the implementation of light mitigation technology on wind turbines.

#### Siting of Repowered Facilities

Due to the changes in the threshold necessary to apply for a site certificate for wind farms over the years, a handful of wind facilities in operation today were not permitted through the state siting process. These facilities include:

- NextEra
  - North Dakota Wind Energy Center in LaMoure County (40.5 MW)
  - North Dakota Wind II Energy Center in LaMoure County (21 MW)
  - Oliver Wind I Energy Center in Oliver County (50.6 MW)
  - Oliver Wind II Energy Center in Oliver County (48 MW)
  - Wilton Wind I Energy Center in Burleigh County (49.5 MW)
  - Wilton Wind II Energy Center in Burleigh County (49.5 MW)
- Acciona
  - Tatanka Wind Farm in Dickey/McIntosh County (90 MW in ND, 90 MW in SD)
  - Velve Wind Farm in McHenry County (11.9 MW)
- MDU
  - Cedar Hills, near Rhome in Bowman County (19.5 MW)

The Commission's amendments to 49-22-03 and 49-22-07 provide that an older facility being repowered that was not previously sited must obtain a site certificate. This would also subsequently require a repowered wind farm to be subject to the laws regarding light mitigation technology.

The Commission recognizes that many of these wind farms were constructed prior to the current setbacks and regulations established by the legislature. Because of this, Section 2 provides that the Commission may provide a variance from exclusions and avoidance areas if good cause is shown and if the company complies with local land use, zoning, building rules, regulations, and ordinances.

#### Light-Mitigation Technology

In the 2017 session, the legislature in HB 1378 established requirements for new and existing wind generation facilities to implement light-mitigation technology. 49-22-16.4(3) provides that a wind farm that received a certificate of site compatibility before June 5, 2016, may be granted a time extension for implementing the light mitigation technology based on technical or economic feasibility concerns. However, the law passed did not expressly provide an extension for newly sited facilities. Furthermore, the law didn't provide the Commission the ability to waive the light-mitigation requirements for either the new or older sited facilities.

In our experience since this law was passed, we have learned that the light mitigation technology currently approved by the FAA, which is the Aircraft Detection Lighting system (ADLS), is not feasible in all locations. For example, the

Ruso Wind farm, which is planned in an area just east of Max, could not receive FAA approval for ADLS because of its proximity to military infrastructure.

Although the Commission did not believe this was intended when the Legislature passed the law, my colleagues determined that, as written, the statute does not allow the Commission to wave requirements for light mitigation technology. Although I disagreed with their reading of the law, I support the clarification this bill provides because it expresses what I believe was the original intent of this legislation.

The amendments in HB 1095 provide that the Commission may grant a waiver or extension of light mitigation technology requirements for new and existing wind generation facilities based upon technical or economic feasibility considerations.

Mr. Chairman, this concludes my testimony. I will stand for your questions.



## House Energy & Natural Resources Committee

Thursday, January 14, 2021 – 11 a.m.

### Testimony in Support of House Bill No. 1095

Wind Industry of North Dakota (WIND) supports the Public Service Commission's efforts codified in HB 1095 to clarify the lighting law for wind projects. WIND is a coalition of wind industry members who believe North Dakota should harness its abundance of wind for the continued benefit of its communities and residents. WIND's members include American Clean Power Association (formerly the American Wind Energy Association), Apex Clean Energy, Capital Power, EDF Renewables, Enel North America, Invenergy, NextEra Energy Resources, and Orsted.

In 2017, the legislature enacted this law, which gives older projects more time to comply with the law than with newer projects. Additionally, the law provides inconsistent processes depending on when the PSC issued a permit for the wind project.

This bill harmonizes the process for both older and newer projects, making clear that for both types, after a public hearing, the PSC "may grant a waiver or extension of time based on technical or economic feasibility considerations." WIND has worked collaboratively for months with the PSC, its staff, and the utility community to allow for the same process to apply to both types of projects. WIND supports the consistency this bill brings, especially given the limited technologies available and approved by the Federal Aviation Administration (FAA). The bill could also help account for situations where there may be potential conflicts between state law and FAA regulations. FAA guidance on lighting provides that light mitigation systems may not be approved for all projects or for all turbines in a project.

WIND respectfully urges a DO PASS recommendation.



Wind Industry of North Dakota

**Please feel free to contact any of us for continued discussion.**

#### **American Clean Power Association**

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#### **Capital Power**

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#### **NextEra Energy Resources**

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#### **Orsted**

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**House Bill 1095** Testimony by Carlee McLeod in **Support**

House Energy and Natural Resources Committee, Representative Porter, Chair

January 14, 2021

Chairman Porter, members of the committee, USND supports this bill on behalf of its members which include ALLETE, Montana-Dakota Utilities, Otter Tail Power, and Xcel Energy. We come before you today to support HB 1095.

We appreciate the Public Service Commission's work to develop HB 1095. In a time when in-person meetings were not possible, the Commission and its staff afforded the public ways to participate in multiple discussions regarding this and other PSC bills. We are happy with the resulting language.

In particular, we support language on page 5, lines 21-22, and 26-27 regarding light mitigation technology. When this area of law was first proposed, we had concerns regarding the newness and availability of light mitigation technology. The companies developing this technology were few and only a handful of projects had been installed worldwide. In the US, only one or two projects had been approved by the FAA at the time, and we were concerned about requiring relatively untested technology with installation deadlines when we were at the mercy of the FAA for project-specific approval. In committee discussions, we were made a bit more comfortable with the understanding that the PSC would promulgate rules for the requirement consistent with the FAA requirements and dependent on FAA approval, meaning if the FAA didn't approve the technology, it wouldn't be required. Over the past four years, there has been a difference in interpretation of the language of the law, prompting this clarification. This language clarifies that the PSC has the authority to determine the appropriate project-specific action based on technical or economic feasibility considerations.

We fully support this clarification and ask for a DO PASS recommendation.

Thank you.



**HB 1095**  
**Jean Schafer - Basin Electric Power Cooperative, January 14, 2021**  
**House Energy and Natural Resources**

Chairman Porter and members of the House Energy and Natural Resources Committee:

Basin Electric Power Cooperative (**Basin Electric**) is a regional, consumer-owned, generation and transmission cooperative formed in 1961 to supply supplemental power to a consortium of rural electric distribution cooperatives. Basin Electric's core business is generating and delivering electricity to wholesale customers, primarily our member systems. As of the end of 2020, Basin Electric owns 4,208 megawatts (**MW**) and operates 5,189 MW of electric generating capacity including coal, wind, natural gas, and nuclear. Basin Electric supplies 140 rural electric member cooperative systems with wholesale electric power who in turn serve approximately 3 million consumers in a nine-state area.

We would like to submit testimony in support of HB 1095 from the Public Service Commission, specifically Section 3, although we have no issues with Sections 1 and 2 contained in this bill.

Section 3 of this bill would allow the Public Service Commission (PSC) the option to provide a waiver, as opposed to only an extension, to the PrairieWinds ND 1 project owned by Basin Electric located south of Minot. This project went online in late 2009 and consists of 77 turbines that generate approximately 120 MW of wind energy.

Further complicating the FAA approval process for light mitigation at PrairieWinds ND 1 is the fact that the project surrounds a ballistic missile base that includes a helicopter pad, and is within close proximity to the Minot Air Force Base, therefore changing the lighting system on this project also requires approval from the U.S. Air Force. (USAF)

In recent months our communications with the USAF Global Strike Command, 20<sup>th</sup> Air Force, indicate that they will deny our request for light mitigation at the site due to security and flight safety concerns. Therefore, if the USAF won't allow the technology, it won't receive approval from the Federal Aviation Administration (FAA). Basin Electric could perpetually file for extensions on the light mitigation requirement, but it would be more efficient for industry and the state if the PSC would have the option to provide a waiver due to the lack of USAF and FAA approval due to the location of this project.

Safety is our number one priority for all of our facilities, and we are highly supportive and respect the guidance of the USAF on this issue.



North Dakota Association of Rural Electric Cooperatives  
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ND  
Living

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January 14, 2021

To: House Energy and Natural Resources Committee

RE: Support of House Bill 1095


From: Zac Smith, communications and government relations director, NDAREC

Chairman Porter and members of the House Energy and Natural Resources committee, the North Dakota Association of Rural Electric Cooperatives (NDAREC) represents sixteen electric distribution cooperatives and five generation and transmission cooperatives that generate, transmit, and distribute electricity across the state of North Dakota. NDAREC and supports HB 1095 on behalf of its members.

This bill provides uniformity to the process for projects regardless of when the project went into service and allows that the Public Service Commission (PSC) "may grant a waiver or extension of time based on technical or economic feasibility considerations." The ability to grant a waiver is particularly important to areas around air force bases, which are members of cooperatives. The national security and safety concerns expressed by these members are important and this bill gives the PSC the authority to determine the appropriate actions for a specific project based on technical and economic feasibility.

NDAREC fully supports this clarification and asks for a DO PASS recommendation.

*This institution is an equal opportunity provider and employer*

Your Touchstone Energy® Cooperative 

**2021 SENATE ENERGY AND NATURAL RESOURCES**

**HB 1095**

# 2021 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1095  
3/4/2021

A BILL for an Act to create and enact a new subsection to section 49-22-07 of the North Dakota Century Code, relating to the siting of a repowered wind conversion facility that has not previously been issued a certificate of site compatibility; and to amend and reenact sections 49-22-03 and 49-22-16.4 of the North Dakota Century Code, relating to the definition of repower for a wind facility and waivers or extensions for light mitigation technology systems.

Hearing called to order, all Senators Present: **Schaible, Bell, Roers, Patten, Piepkorn, and Kreun** [9:15]

### Discussion Topics:

- Wind farm regulation
- Government waiver programs

**Julie Fedorchak**, Public Service Commissionaire provided testimony in favor #7331

[9:15] **Levi Andrist**, GA Group on behalf of WIND Energy, provided testimony in favor

[9:32]

### Additional Written Testimony:

**Amy Cleary**, WIND Industry of ND, provided testimony in Favor #7259

**Carlee McLeon**, Utility Shareholders provided testimony in Favor #7304

**Jean Schaefer**, Basin Electric, provided Testimony in Favor #7378

**Scott Skokos**, Dakota Resource Council, Provided Testimony in Opposition #7371

Hearing Adjourned [9:35]

*Sheila Froehlich, Committee Clerk*

## House Bill 1095

**Presented by:** Julie Fedorchak, Public Service Commissioner  
Public Service Commission

**Before:** Senate Energy and Natural Resources Committee  
The Honorable Curt Kreun, Chairman

**Date:** March 4, 2021

### TESTIMONY

Mr. Chairman and committee members, I'm Commissioner Julie Fedorchak, Chair of the Public Service Commission. I am here to testify on HB 1095, which relates to the siting of repowered wind energy conversion facilities and the implementation of light mitigation technology on wind turbines.

#### Siting of Repowered Facilities

Due to the changes in the threshold necessary to apply for a site certificate for wind farms over the years, a handful of wind facilities in operation today were not permitted through the state siting process. These facilities include:

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  - North Dakota Wind Energy Center in LaMoure County (40.5 MW)
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The Commission's amendments to 49-22-03 and 49-22-07 provide that an older facility being repowered that was not previously sited must obtain a site certificate. This would also subsequently require a repowered wind farm to be subject to the laws regarding light mitigation technology.

The Commission recognizes that many of these wind farms were constructed prior to the current setbacks and regulations established by the legislature. Because of this, Section 2 provides that the Commission may provide a variance from exclusions and avoidance areas if good cause is shown and if the company complies with local land use, zoning, building rules, regulations, and ordinances.

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In our experience since this law was passed, we have learned that the light mitigation technology currently approved by the FAA, which is the Aircraft Detection Lighting system (ADLS), is not feasible in all locations. For example, the

Ruso Wind farm, which is planned in an area just east of Max, could not receive FAA approval for ADLS because of its proximity to military infrastructure.

Although the Commission did not believe this was intended when the Legislature passed the law, my colleagues determined that, as written, the statute does not allow the Commission to wave requirements for light mitigation technology. Although I disagreed with their reading of the law, I support the clarification this bill provides because it expresses what I believe was the original intent of this legislation.

The amendments in HB 1095 provide that the Commission may grant a waiver or extension of light mitigation technology requirements for new and existing wind generation facilities based upon technical or economic feasibility considerations.

Mr. Chairman, this concludes my testimony. I will stand for your questions.



## Senate Energy & Natural Resources Committee

Thursday, March 4, 2021 – 9 a.m.

### Testimony in Support of House Bill No. 1095

Wind Industry of North Dakota (WIND) supports the Public Service Commission's efforts codified in HB 1095 to clarify the lighting law for wind projects. WIND is a coalition of wind industry members who believe North Dakota should harness its abundance of wind for the continued benefit of its communities and residents. WIND's members include American Clean Power Association (formerly the American Wind Energy Association), Apex Clean Energy, Capital Power, EDF Renewables, Enel North America, Invenergy, NextEra Energy Resources, and Orsted.

In 2017, the legislature enacted this law, which gives older projects more time to comply with the law than with newer projects. Additionally, the law provides inconsistent processes depending on when the PSC issued a permit for the wind project.

This bill harmonizes the process for both older and newer projects, making clear that for both types, after a public hearing, the PSC "may grant a waiver or extension of time based on technical or economic feasibility considerations." WIND has worked collaboratively for months with the PSC, its staff, and the utility community to allow for the same process to apply to both types of projects. WIND supports the consistency this bill brings, especially given the limited technologies available and approved by the Federal Aviation Administration (FAA). The bill could also help account for situations where there may be potential conflicts between state law and FAA regulations. FAA guidance on lighting provides that light mitigation systems may not be approved for all projects or for all turbines in a project.

WIND respectfully urges a DO PASS recommendation.



Wind Industry of North Dakota

**Please feel free to contact any of us for continued discussion.**

#### **American Clean Power Association**

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### **House Bill 1095 Testimony in Support**

Senate Energy and Natural Resources Committee, Senator Kreun, Chair

March 4, 2021

Chairman Kreun, members of the committee, I am Carlee McLeod, president of the Utility Shareholders of North Dakota. USND supports this bill on behalf of its members which include ALLETE, Montana-Dakota Utilities, Otter Tail Power, and Xcel Energy. We come before you today to support HB 1095.

We appreciate the Public Service Commission's work to develop HB 1095. In a time when in-person meetings were not possible, the Commission and its staff afforded the public ways to participate in multiple discussions regarding this and other PSC bills. We are happy with the resulting language.

In particular, we support language on page 5, lines 21-22, and 26-27 regarding light mitigation technology. When this area of law was first proposed, we had concerns regarding the newness and availability of light mitigation technology. The companies developing this technology were few and only a handful of projects had been installed worldwide. In the US, only one or two projects had been approved by the FAA at the time, and we were concerned about requiring relatively untested technology with installation deadlines when we were at the mercy of the FAA for project-specific approval. In committee discussions, we were made a bit more comfortable with the understanding that the PSC would promulgate rules for the requirement consistent with the FAA requirements and dependent on FAA approval, meaning if the FAA didn't approve the technology, it wouldn't be required. Over the past four years, there has been a difference in interpretation of the language of the law, prompting this clarification. This language clarifies that the PSC has the authority to determine the appropriate project-specific action based on technical or economic feasibility considerations.

We fully support this clarification and ask for a DO PASS recommendation.

Thank you.

**HB 1095**  
**Jean Schafer - Basin Electric Power Cooperative, March 4, 2021**  
**Senate Energy and Natural Resources**

Chairman Kreun and members of the Senate Energy and Natural Resources Committee:

Basin Electric Power Cooperative (**Basin Electric**) is a regional, consumer-owned, generation and transmission cooperative formed in 1961 to supply supplemental power to a consortium of rural electric distribution cooperatives. Basin Electric's core business is generating and delivering electricity to wholesale customers, primarily our member systems. As of the end of 2020, Basin Electric owns 4,208 megawatts (**MW**) and operates 5,189 MW of electric generating capacity including coal, wind, natural gas, and nuclear. Basin Electric supplies 140 rural electric member cooperative systems with wholesale electric power who in turn serve approximately 3 million consumers in a nine-state area.

We would like to submit testimony in support of HB 1095 from the Public Service Commission, specifically Section 3, although we have no issues with Sections 1 and 2 contained in this bill.

Section 3 of this bill would allow the Public Service Commission (PSC) the option to provide a waiver, as opposed to only an extension, to the PrairieWinds ND 1 project owned by Basin Electric located south of Minot. This project went online in late 2009 and consists of 77 turbines that generate approximately 120 MW of wind energy.

Further complicating the FAA approval process for light mitigation at PrairieWinds ND 1 is the fact that the project surrounds a ballistic missile base that includes a helicopter pad, and is within close proximity to the Minot Air Force Base, therefore changing the lighting system on this project also requires approval from the U.S. Air Force. (USAF)

On Jan. 20, 2021 the USAF Global Strike Command, 20<sup>th</sup> Air Force provided Basin Electric with written verification denying our request for light mitigation at the site due to security and flight safety concerns. Therefore, if the USAF won't allow the technology, it won't receive approval from the Federal Aviation Administration (FAA). Basin Electric could perpetually file for extensions on the light mitigation requirement, but it would be more efficient for industry and the state if the PSC would have the option to provide a waiver due to the lack of USAF and FAA approval due to the location of this project.

Safety is our number one priority for all of our facilities, and we are highly supportive and respect the guidance of the USAF on this issue.

Testimony of Dakota Resource Council  
House Bill 1095  
February 18<sup>th</sup>, 2021

1 Chairman Curt Kreun & members of the committee, my name is Scott Skokos and I am  
2 testifying on behalf of Dakota Resource Council and our members. Thank you for allowing me  
3 to submit written testimony in opposition of HB 1095.

4 Dakota Resource Council (DRC) is a non-partisan grassroots group of landowners, ranchers,  
5 farmers, and other citizens. A key part of our mission is to promote the sustainable use of North  
6 Dakota's natural resources. We also help our members address concerns that they may have  
7 about the proper regulations for energy production that impact them, which includes the wind  
8 industry.

9 From our reading of HB 1095, it seeks to create the opportunity for extensions or waivers due to  
10 technical or economic feasibility. Unfortunately, while we agree with extensions and fully  
11 understand working with a company for economic feasibility. We do not think waivers should be  
12 commonplace. Light mitigation of wind towers is important for people living in rural North  
13 Dakota.

14 In our conversations and surveys with ND farmers, ranchers, and other landowners, many people  
15 express that one of their biggest concerns or issues with wind is the light pollution. One of the  
16 many reasons people enjoy living in rural North Dakota is because of the beautiful night sky.  
17 The flashing red lights from wind towers detract from that experience. However, technological  
18 advances in light mitigation for wind towers is helping to address this issue. Companies should  
19 be required to implement this technology and be allowed to apply for an extension only. On page  
20 5, line 21-22 it states that "the commission may grant a waiver or an extension of time". We  
21 propose an amendment "the commission may grant an extension of time".

22 I urge the committee to oppose or amend HB 1095 because light mitigation technology is  
23 important to preserve the rural landscape we all know and love from light pollution, so we  
24 recommend a **DO NOT PASS** or the proposed amendment on HB 1095.

# 2021 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1095  
3/5/2021

A BILL for an Act to create and enact a new subsection to section 49-22-07 of the North Dakota Century Code, relating to the siting of a repowered wind conversion facility that has not previously been issued a certificate of site compatibility; and to amend and reenact sections 49-22-03 and 49-22-16.4 of the North Dakota Century Code, relating to the definition of repower for a wind facility and waivers or extensions for light mitigation technology systems.

Hearing called to order all Senators Present: **Roers, Bell, Schaible, Piepkorn, Patten, and Kreun.** [10:25]

### Discussion Topics:

- Wind Turbine Regulations
- FAA legal opinions and authority

**Senator Bell** moved a DO PASS [10:25]

Senator Roers Seconded the Motion [10:25]

Vote Passed 6-0-0

Senator Bell Carried the Bill

DO PASS ON HB 1095	Vote
Senator Curt Kreun	Y
Senator Jim P. Roers	Y
Senator Dale Patten	Y
Senator Merrill Piepkorn	Y
Senator Donald Schaible	Y
Senator Jessica Unruh Bell	Y

Hearing Adjourned [10:26]

*Dave Owen, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**HB 1095: Energy and Natural Resources Committee (Sen. Kreun, Chairman)**  
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB  
1095 was placed on the Fourteenth order on the calendar.