

## **House Bill 1096**

**Presented by:** John Schuh, Staff Attorney  
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 am John Schuh, appearing on behalf of the Public Service Commission. HB 1096 provides a number of corrections to the Siting Act, clarifications regarding siting jurisdiction to CO2 lines and distribution lines, provides for the authority to hold remote hearings, authority to ensure protection of cultural sites, and allows for temporary operations and variances from certain construction practices and operations.

Section 1, Pg. 1, Line 19 corrects in incorrect subsection reference that resulted from the splitting of the Siting Act between electrical, and petroleum and hydrocarbon during the 2017 legislative session (HB 1144).

Section 2, Pg. 3, Line 28 through Pg. 4, Line 1, provides a clarification that the Commission may provide a waiver of any procedures and time schedules upon a finding that the proposed facility is of such length, design, location, or purpose that it will produce minimal adverse effects, and that the Commission may provide the waiver upon a finding that a demonstrable emergency exists. As the Siting Act currently provides under a separate section, 49-22-13(2), "the Commission shall not be required to hold a public hearing on . . . an application for a waiver of procedures and time schedules, but shall publish a notice of opportunity for public

hearing . . .” The conflict in language has caused confusion for companies and the Commission believes that the amendments will provide additional clarity.

Section 3, Pg. 4, provides that the Commission may hold a remote hearing in the event that an emergency exists that would prevent an in-person hearing in the county of a project. It also provides that if there are no adequate facilities to conduct a public hearing within the county, the hearing must be held in the nearest adequate location.

Section 3, Pg. 4, Line 27, provides a minor clarification that this section applies to applications for amendments to certificates and permits just as it does for other applications under the Siting Act.

Section 4, Pg. 5, Line 13, provides the same clarification.

Section 4, Pg. 5, Line 21, provides that in the event that an application fee is less than \$25,000, an *applicant may agree* to pay additional fees that are reasonably necessary for completion of the process. The reason for this amendment is that due to the calculation of the fees, and the \$10,000 minimum, there are unique instances where the amount provided may not be enough to cover the travel, venue, technology, administrative law judge, notices, construction inspections, and sound system costs for the hearing. The Commission works to be thrifty with the fees provided, but there have been many times where funds barely covered the costs.

In the event there is not enough money to process the case, this would require the Commission to gain emergency commission approval for additional fees. Waiting to present to the emergency commission may slow down the

application process. This amendment would allow the company to speed up the process by avoiding the emergency commission.

I would like to emphasize that the additional fees are provided only if the applicant agrees to pay the amount and the commission anticipates its use to cover small shortfalls.

Section 5, Pg. 5, Line 26, provides an amendment for approval for temporary operation or variance of facilities. During this past year, the Commission recognized that there were a number of instances where companies needed flexibility from existing operations to transport product to market on a temporary basis, or there were instances where minor alterations to infrastructure would trigger siting jurisdiction. This amendment would allow the Commission to evaluate the circumstances and provide for temporary approval of operations subject to an application and full review of the project, or short-term variances from existing operations if the Commission deems that there would be no adverse impacts upon the welfare of the citizens of the state or the environment.

Section 6, Pg. 6, Line 6, provides that the Commission may limit access to, and release of, information that contains data related to cultural, archaeological, historical, or paleontological sites. A main benefit of this amendment is that, by allowing the PSC to protect this data, the state archeologists will be more amenable to having this information shared so that cultural resources may be better protected during facility construction. There have been concerns in the past that, due to the open records laws and the manner in which companies provide this sensitive information to the Commission, certain resources of the state may

be at risk of required disclosure. We have worked with the State Historic Preservation Office (SHPO) to protect this as best as possible, but like SHPO, we are requesting that we be allowed to protect this data as well.

Sections 7 through 12 are largely the same for 49-22 and 49-22.1 so I will only address the difference.

Section 7, Pg. 8, Line 21-23, provide that a natural gas distribution system and carbon dioxide storage facility underground equipment, including flow lines subject to 38-22, which is regulated by the Industrial Commission, do not fall under the definition of "Gas or liquid transmission facility", and therefore are not subject to the PSC's siting process.

Section 13, provides for a repeal of a remaining section that did not move correctly during the splitting of the Siting Act into two chapters.

Mr. Chairman, this concludes my testimony. Thank you for the opportunity to present this information. I will be happy to answer any questions.