

February 6, 2025

Chairman Luick and Members of the Senate Agriculture and Veteran Affairs Committee,

I am writing on behalf of Basin Electric Power Cooperative (BEPC) to express our opposition to SB 2325 and its potential impact on electric transmission development in North Dakota. This bill introduces significant financial and operational burdens that could delay critical infrastructure projects.

SB 2325 requires that the Department of Water Resources (DWR) or an appropriate federal agency determine the Ordinary High Water Mark (OHWM) before an easement can be granted within a wetland. In practice, this determination may fall on entities like BEPC to complete and submit for approval by DWR or appropriate agencies, adding months of delay. The cost of additional surveying and documentation preparation for this is estimated at approximately \$10,000 per landowner/parcel, significantly increasing project expenses.

Transmission line routing is already constrained necessitating placement over less inhabited areas, often containing small prairie potholes. Requiring OHWM determinations for each of these wetlands would further complicate routing and prolong project timelines. Given that determinations are limited to warmer months, the bill could cause delays in energization schedules, impacting reliability and service.

Another major concern is the retroactive application of this requirement to previously executed easements. The bill mandates that all easement holders obtain an OHWM determination for easements granted before August 1, 2025. This requirement would impose additional administrative and financial burdens on existing projects, creating unnecessary uncertainty for both utilities and landowners.

The nature of OHWM determinations also creates a risk of legal disputes between landowners and regulatory agencies, potentially implicating BEPC despite being a neutral party. Additionally, fluctuating water levels due to seasonal precipitation could expose utilities to civil liability for damages, despite minimal ground impact from transmission infrastructure.

SB 2325 presents significant practical challenges. The added costs, regulatory uncertainty, and project delays could hinder North Dakota's ability to expand and modernize its transmission network efficiently. Due to these concerns, we cannot support this bill in its current form.

Thank you for your time and consideration.

Ryan Norrell  
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