

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

### Minutes of the

## NATURAL RESOURCES COMMITTEE

Wednesday, December 13, 2017  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Jay Seibel, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Jay Seibel, Roger Brabandt, Mike Brandenburg, Vernon Laning, Todd Porter, Vicky Steiner, Greg Westlind; Senators Diane Larson, Larry Luick, Merrill Piepkorn

**Members absent:** Representatives Dick Anderson, Tom Kading, Alisa Mitskog; Senator Bill L. Bowman

**Others present:** See [Appendix A](#)

**It was moved by Representative Laning, seconded by Representative Brandenburg, and carried on a voice vote that the minutes of the September 20, 2017, meeting be approved as distributed.**

### WIND ENERGY DEVELOPMENT

Chairman Seibel called on Ms. Julie Fedorchak, Commissioner, Public Service Commission, for testimony ([Appendix B](#)) regarding wind energy jurisdiction, wind energy development in North Dakota, siting requirements, and the rules governing decommissioning of commercial wind energy conversion facilities.

In response to a question from Representative Porter, Ms. Fedorchak said state law requires wind facilities to report to the Public Service Commission (PSC) progress toward meeting the 10 percent objective for renewable consumption.

In response to a question from Senator Larson, Ms. Fedorchak said PSC works with wind facility companies during the application process until enough information is received to hold a public hearing. She said the companies invest a lot of money and time into wind energy projects, and are therefore very committed to ensuring PSC receives all requested information during the application process. She said it is very unlikely a company is denied a public hearing based on an incomplete application.

In response to a question from Representative Laning, Ms. Fedorchak said PSC has specific decommissioning rules and plans for wind facilities.

In response to questions from Representative Porter, Ms. Fedorchak said North Dakota's siting process and the laws and rules associated with the siting process are thorough, fair, and adequate. She said she does not see any defects or inefficiencies in what PSC is authorized to consider determining the merits of a siting project permit. She said when PSC receives a noise complaint, an attempt is made by PSC to contact the wind facility operator to address and resolve the complaint. She said if the noise complaint cannot be addressed or resolved, the complainant may file a formal complaint with PSC, including the submission of evidence and a study of the noise. She said if a noise violation is determined to have occurred, PSC may fine the wind facility or, in severe cases, withdraw the permit.

In response to a question from Chairman Seibel, Ms. Fedorchak said prior to the issuance of a permit, wind facilities provide PSC with financial resource assurances, such as self-bonding, in the event decommissioning or bankruptcy occurs.

Chairman Seibel called on Ms. Lacey Bjork Anderson, Odney Public Affairs, representing MDU Resources Group, Inc., for testimony ([Appendix C](#)) regarding a retrospective overview of 2017 legislation relating to wind energy development.

In response to a question from Senator Luick, Ms. Bjork Anderson said she would guess that no aircraft has been lost or has crashed flying over North Dakota, or nationwide, due to a wind facility lacking a lighting system.

Chairman Seibel called on Mr. Jason Utton, Executive Director, Renewable Development, NextEra Energy Resources, for testimony ([Appendix D](#)) regarding the economic benefits of wind projects, wind energy development and marketing, federal production tax credits, and an overview of NextEra Energy.

In response to a question from Representative Porter, Mr. Utton said each contract is different, but NextEra wants to price negative all the way down to the value of the production tax credits.

In response to a question from Representative Laning, Mr. Utton said in some contracts the price is fixed for a term of 20, 25, or 30 years, while in other contracts the price may be escalating. He said the contractual pricing circumstances are dependent on customer preference.

In response to a question from Senator Piepkorn, Mr. Utton said NextEra built its first wind turbine in North Dakota in 2003. He said when NextEra started in the wind industry in California during the 1980s, wind turbines were 500 to 750 kilowatt machines. He said wind turbines now are significantly bigger, which allows for fewer wind turbines to be put in the footprint. He said wind turbines also are much quieter due to technological advancements in manufacturing and operation. He said nearly all turbines used by NextEra are General Electric turbines, and the domestic content of the turbines are between 80 and 90 percent. He said NextEra procures the wind turbine blades and towers from as close as possible to the site because the closer the equipment can get acquired to the site, the cheaper the equipment will be. He said it is an extremely competitive process for power companies to submit a request for proposal.

Chairman Seibel called on Dr. Christopher Ollson, Senior Environmental Health Scientist, Ollson Environmental Health Management, for testimony ([Appendix E](#)) regarding public health and safety practices for siting wind turbine projects.

In response to a question from Representative Porter, Dr. Ollson said out of the 50,000 wind turbines located across the nation, the majority of which are on agricultural, grazing, and cattle land, he is not aware of any report indicating cattle or livestock being struck by ice falling off the wind turbines. He said if cattle or livestock were struck, the company would be liable to compensate the participating landowner for the loss or damage to cattle or livestock. He said a contract between the company and a participating landowner contains compensation and reparation clauses and provisions.

Chairman Seibel called on Dr. Kimberly Suedkamp Wells, Manager, Environmental Services, NextEra Energy Resources, for testimony ([Appendix F](#)) regarding environmental considerations for wind siting in North Dakota.

In response to a question from Senator Larson, Dr. Suedkamp Wells said she is not aware of any fatalities of a federal or state protected species caused by NextEra wind farms located in North Dakota.

In response to a question from Senator Luick, Dr. Suedkamp Wells said most literature shows fatalities are typically songbirds or other migrating passerine birds.

In response to a question from Representative Steiner, Dr. Suedkamp Wells said because rivers can be a migratory corridor for some birds, there are concerns regarding the proximity of wind farms to rivers. She said there are fatalities to nonprotected bird species caused by wind farms, and any new wind farm built undergoes a 1-year systematic postconstruction mortality monitoring. She said a third party does the 1-year monitoring and when the monitoring concludes, NextEra uses a procedure called the wildlife response and rehabilitation system wherein operational staff document and record all animal fatalities and injuries discovered within the close vicinity of wind turbines. She said the duration of the wildlife response and rehabilitation system is for the life of all wind farm projects.

In response to a question from Representative Laning, Dr. Suedkamp Wells said the Federal Aviation Administration approved aircraft detection systems for wind farms.

In response to a question from Senator Luick, Dr. Suedkamp Wells said she is unaware of the specific number of aircraft that have hit wind towers nationwide, but it is a rare occurrence.

Chairman Seibel called on Ms. Kayla Pulvermacher, Member Advocacy Director, North Dakota Farmers Union, for testimony ([Appendix G](#)) regarding the impact of wind energy development on farmers and ranchers.

In response to a question from Senator Piepkorn, Ms. Pulvermacher said ice falling off wind turbines and striking cattle or livestock has not been a concern she has heard from North Dakota Farmers Union members.

Representative Porter said a bill was introduced in 2007 or 2009 which would have required compensation for nonparticipating landowners whose land or property would be affected by the placement of a wind turbine on an adjacent participating landowner's property. He said the proposal was negatively received because the legislation would take away nonparticipating landowners' right to represent their own property in their own fashion.

Chairman Seibel called on Mr. Pete Hanebutt, Director of Public Policy, North Dakota Farm Bureau, for testimony ([Appendix H](#)) regarding the impact of wind energy development on agriculture and rural communities.

Chairman Seibel called on Mr. Aaron Birst, Legal Counsel, North Dakota Association of Counties, for testimony ([Appendix I](#)) regarding local-level perspective and input on wind energy development.

In response to a question from Representative Laning, Mr. Birst said the North Dakota Association of Counties does not have a policy on what the taxation rate should be. However, he said, a stable taxation rate wherein the revenues remain local is preferred.

### ENERGY CONVERSION FACILITIES

Chairman Seibel called on the Legislative Council staff to review bill draft [\[19.0018.01000\]](#) regarding energy conversion facilities and correction of the codification issues caused by the conflict between 2017 House Bill No. 1144 and Senate Bill No. 2286. The Legislative Council staff said House Bill No. 1144 and Senate Bill No. 2286 were passed by the 65<sup>th</sup> Legislative Assembly and address siting requirements for gas and liquid transmission facilities. He said Senate Bill No. 2286 expanded the guidelines governing gas or liquid transmission facility siting, required a gas or liquid transmission facility to be in compliance with the road use agreements of the impacted political subdivision prior to receiving a certificate of site compatibility or a route permit from PSC, and provided any local regulations not filed at least 10 days before the hearing are deemed superseded and preempted. He said House Bill No. 1144 separated the siting requirements for electric energy facilities and the gas or liquid facilities into two separate chapters in North Dakota Century Code Title 49. He said the bill created Chapter 49-22.1 to address gas or liquid transmission facilities and gas or liquid energy conversion facilities while amending Chapter 49-22 to pertain only to electric transmission and electric energy conversion facilities. He said some of the new items addressing gas or liquid transmission facilities landed in Section 49-22-16 when those items should have been incorporated in the newly created Chapter 49-22.1, which governs gas or liquid facility siting. He said because of the harmonization issues between the two bills caused by the order of passage, there are now two different sections in Century Code, in two different chapters, which give different processes and rules for the same area of law. He said this bill draft is a technical cleanup bill to address and correct the statutory result of the codification conflict between House Bill No. 1144 and Senate Bill No. 2286.

**It was moved by Representative Porter, seconded by Representative Westlind, and carried on a roll call vote that the bill draft [\[19.0018.01000\]](#) relating to energy conversion facilities and correction of the codification issues caused by the conflict between 2017 House Bill No. 1144 and Senate Bill No. 2286 be approved and recommended to the Legislative Management.** Representatives Seibel, Brabandt, Brandenburg, Laning, Porter, Steiner, and Westlind and Senators Larson, Luick, and Piepkorn voted "aye." No negative votes were cast.

### HIGH-LEVEL RADIOACTIVE WASTE DISPOSAL

Chairman Seibel called on Mr. Edward C. Murphy, State Geologist, North Dakota Geological Survey, Department of Mineral Resources, for testimony ([Appendix J](#)) regarding a bill draft [\[19.0038.03000\]](#) relating to regulating the disposal and storage of high-level radioactive waste, permitting the Industrial Commission to issue a notice of disapproval in regard to high-level radioactive waste disposal, and regulating subsurface storage and retrieval of nonhydrocarbons.

In response to a question from Representative Laning, Mr. Murphy said the permit fee would be deposited into the high-level radioactive waste fund and remain in the fund. He said the high-level radioactive waste fund would be used by the Industrial Commission to carry out the duties and powers granted to the commission under the new chapter.

In response to a question from Senator Piepkorn, Mr. Murphy said there are nuclear power plants in Minnesota and Nebraska and also to the southwest of North Dakota from which radioactive waste could be produced and delivered to North Dakota for disposal or storage.

Chairman Seibel said the language on page 9, lines 8 and 9 of the bill draft authorizes the Industrial Commission to issue a notice of disapproval whenever the Legislative Assembly does not issue a notice of disapproval. He said the Legislative Assembly could potentially want to approve a radioactive disposal or storage site and therefore decide not to issue a notice of disapproval. He said in such a case, the bill draft would grant unauthorized legislative authority to the Industrial Commission to issue a notice of disapproval.

Representative Brandenburg said to maintain legislative authority, the Legislative Assembly should be required to make a decision on whether to approve or disapprove a radioactive disposal or storage site. He said the Legislative Assembly should not set a precedent wherein legislative authority is delegated to the Industrial Commission.

Representative Porter said because the state has a part-time Legislative Assembly, the authority to approve or disapprove a radioactive disposal or storage site should belong exclusively to the Legislative Assembly during the legislative session. He said when the Legislative Assembly is not in session, the authority to approve or disapprove a radioactive disposal or storage site on behalf of the Legislative Assembly has to be delegated somewhere. He said the Industrial Commission was chosen because it was a commission composed of three elected statewide officials--the Governor, the Attorney General, and the Agriculture Commissioner. He said these three officials will stand accountable to the state at election.

**It was moved by Senator Luick, seconded by Senator Larson, and carried on a voice vote that the bill draft [19.0038.03000] be revised to authorize the Industrial Commission to issue a notice of disapproval regarding a proposed high-level radioactive waste facility only when the Legislative Assembly is not in session or when the Legislative Assembly does not approve or disapprove a proposed high-level radioactive waste facility.**

No further business appearing, Chairman Seibel adjourned the meeting at 2:10 p.m.

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Christopher S. Joseph  
Counsel

ATTACH:10