

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

NATURAL RESOURCES COMMITTEE

Thursday, March 29, 2018
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Larry Luick, Vice Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Dick Anderson, Roger Brabandt, Mike Brandenburg, Vernon Laning, Alisa Mitskog, Todd Porter, Vicky Steiner, Greg Westlind; Senators Diane Larson, Larry Luick, Merrill Piepkorn

Members absent: Representatives Jay Seibel, Tom Kading; Senator Bill L. Bowman

Others present: Representative Corey Mock, Grand Forks, member of the Legislative Management; See [Appendix A](#) for additional persons present.

It was moved by Representative Porter, seconded by Senator Larson, and carried on a voice vote that the minutes of the December 13, 2017, meeting be approved as distributed.

PUBLIC SERVICE COMMISSION AND LOCAL ZONING PROVISIONS

Vice Chairman Luick called on Ms. Julie Fedorchak, Commissioner, Public Service Commission, for testimony ([Appendix B](#)) regarding the cooperation and communication between the Public Service Commission and political subdivisions, and the efficiency of the siting process.

Vice Chairman Luick called on Mr. Daryl Dukart, Dunn County Commissioner, for testimony ([Appendix C](#)) regarding the cooperation and communication among the Public Service Commission, political subdivisions, and landowners.

Vice Chairman Luick called on Mr. Brady Pelton, Government Affairs Manager, North Dakota Petroleum Council, for testimony ([Appendix D](#)) regarding the relationship between landowners and the oil and gas industry, and the impact of 2017 House Bill No. 1144 and Senate Bill No. 2286 on the efficiency of the siting process.

In response to a question from Vice Chairman Luick, Mr. Pelton said the leak prevention technology is a collaborative research and development project between industry members designed to find technologies better at capturing any leaked product and preventive and mitigating any potential leaks. He said the technology is not in reference to any particular spill or leak.

In response to a question from Vice Chairman Luick, Mr. Pelton said industry members generally are comfortable with any associated costs with wetland mitigation.

Vice Chairman Luick called on Mr. Troy Coons, Chairman, Northwest Landowners Association, for testimony ([Appendix E](#)) regarding local-level perspective, input on the cooperation and communication between the Public Service Commission and political subdivisions, and on the relationship between landowners and the oil and gas industry.

In response to a question from Senator Piepkorn, Mr. Coons said, as a property rights organization, the Northwest Landowners Association has had a multitude of people report that the siting process often bypasses the township and county levels, and goes straight to the Public Service Commission. He said the Northwest Landowners Association would like to see the application of local ordinances having more local-level input by local governments.

Representative Brandenburg said he has worked extensively with NextEra Energy Resources and EDF Renewable Energy in his district and these companies came to Dickey County, and met with the county and the organized townships to explore the idea of a wind farm. He said NextEra Energy Resources and EDF Renewable Energy spent between 6 months to a year researching local zoning provisions and receiving county and township input before submitting an application to the Public Service Commission. He said the energy companies collaborated with the Dickey County auditor, county commissioners, and the township supervisors to figure out solutions to siting potential siting issues.

HIGH-LEVEL RADIOACTIVE WASTE DISPOSAL

Vice Chairman Luick called on Mr. Edward C. Murphy, State Geologist, North Dakota Geological Survey, Department of Mineral Resources, for testimony ([Appendix F](#)) regarding a bill draft [19.0038.04000] 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 when the Legislative Assembly is not in session, and regulating subsurface storage and retrieval of nonhydrocarbons.

In response to a question from Vice Chairman Luick, Mr. Murphy said he looked at the quarter-mile radius requirement for oil wells and disposal wells and wanted to go beyond that requirement and provide notice and hearing opportunities to a surface owner and a resident of a permanently occupied dwelling located within 2 miles of a proposed location for the testing, exploration, excavation, drilling, boring, or the operation of a high-level radioactive waste facility before a permit may be granted. He said an argument could be made to base the radius requirement for notice on the size of the repository, making the minimum radius requirement 2 miles, and increasing the distance for a larger repository to 5 or 10 miles.

It was moved by Representative Porter, seconded by Representative Laning, and carried on a roll call vote that the bill draft [19.0038.04000] 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 when the Legislative Assembly is not in session, and regulating subsurface storage and retrieval of nonhydrocarbons be approved and recommended to the Legislative Management. Representatives Anderson, Brabandt, Brandenburg, Laning, Mitskog, Porter, Steiner, and Westlind and Senators Larson, Luick, and Piepkorn voted "aye." No negative votes were cast.

WIND ENERGY DEVELOPMENT

Vice Chairman Luick called on Mr. Greg Link, Chief, Conservation and Communications Division, Game and Fish Department, for testimony ([Appendix G](#)) regarding the role of the Game and Fish Department in Public Service Commission oversight, State Wildlife Action Plan for rare and declining species, conservation of essential habitats, potential impacts, and voluntary guidelines for avoidance, minimization, and offsetting impacts.

In response to a question from Vice Chairman Luick, Mr. Link said shadow flicker is the shadow on the ground caused by the turbines going around. He said it is common for shadow flicker to catch the attention of aerial predators and create stress in animals trying to avoid predation.

In response to a question from Senator Larson, Mr. Link said the Game and Fish Department has been looking at coal reclamation of North Dakota grasslands because the coal industry has been performing reclamation for a long time and has a lot of expertise. He said coal reclamation is a key area to go to, and he is unsure if wind has been looked at as the wind industry does not have much to do for restoration.

In response to a question from Representative Brandenburg, Mr. Link said when it comes to a turbine being developed and put up on a site, there is a bigger area that is disturbed. He said once the turbine is up, an attempt to reclaim that bigger area back to a smaller area for the operational phase occurs, but there is a long-term loss of habitat during the operational duration of the wind turbine.

In response to a question from Vice Chairman Luick, Mr. Link said wind potential is the primary driver of wind turbine placement.

Representative Brandenburg said another primary driver for wind turbine placement is where the buyer of the power wants the turbine located.

In response to a question from Representative Brabandt, Mr. Link said the Game and Fish Department manages over 200,000 acres of land. He said there is federal land located in North Dakota which are managed under a lease for the benefit of hunting and fishing.

In response to a question from Senator Larson, Mr. Link said research shows there is a direct impact of wind turbines on bird and bat fatalities, but when you compare that to the impact of both direct and indirect displacement, displacement has the bigger impact. He said wind turbines will not kill off bald eagles.

In response to a question from Senator Piepkorn, Mr. Link said when looking at wind potential maps in North Dakota, there is a band of high wind potential sweeping down through the Northern Red River Valley. He said the rest of the Red River Valley and drift prairie have somewhat less wind potential than some of the ridges in the Missouri Coteau and other hillier landscapes.

Representative Brandenburg said the Red River Valley may produce 35 percent efficiency, whereas the hillier areas can generate over 50 percent efficiency. He said the driving factor is you can get more power from the turbines in the hills.

Senator Piepkorn said since there are fewer obstacles when it comes to wetlands and native species and wildlife in the eastern part of the state, it may be worth considering placing wind turbines in the east even though the efficiency may be less. He said the benefits to wildlife may balance out the slight decrease in efficiency.

In response to a question from Vice Chairman Luick, Mr. Link said he does not believe that birds see color and colored towers or towers with colored advertising most likely would not have an effect on aerial avoidance or displacement.

Vice Chairman Luick called on Mr. Coons for testimony ([Appendix H](#)) regarding local-level perspective and input on wind energy development.

In response to a question from Representative Porter, Mr. Coons said the Northwest Landowners Association does not inhibit any landowner's independent rights. He said the Northwest Landowners Association attempts to make the developments equitable for the individuals affected.

In response to a question from Senator Piepkorn, Mr. Coons said if there were not a development, the encumbrance would not be sold with the land. He said if the development were in place prior to the sale of the land, it would be a known encumbrance on the property of which the purchaser would be aware, similar to an easement coming with the land.

In response to a question from Representative Brandenburg, Mr. Coons said the Northwest Landowners Association commends the Public Service Commission for hiring an engineering firm to get a better handle on reclamation costs and decommissioning costs.

Representative Brandenburg said the Public Service Commission has to pay environmental and wildlife groups for mitigation costs associated with the impact and development of wind towers. He said these environmental and wildlife groups are in direct competition with landowners. He said he does not believe landowners want mitigation money going to these groups to be their direct competition.

In response to a question from Representative Steiner, Mr. Coons said being an organized group willing to accept wind is an advantage. He said that advantage is an advantage to both the property owner and the wind industry. He said along with that advantage, developers can go into different areas and choose specific landowners willing to sign whatever the proposed contract terms are compared to the Northwest Landowners Association's terms. He said long term it is beneficial to the community and the property owners, so they see it as a benefit but also a concern because the Northwest Landowners Association has some expectations.

Mr. Joshua Gackle provided information regarding his experience with wind farms as a farmer in Kulm, North Dakota. He said the wind farm has been a great thing for the farmers and for the small town. He said the new prospective wind farm project would be a tremendous benefit to the town because of local property taxes, and the school district would see a significant contribution from the wind farm as it's running for the next 25 to 30 years. He said he looks forward to new wind projects.

Mr. Derrick Braaten said his law firm represents farmers, ranchers, and landowners, and most of his practice focuses on agricultural law and landowner rights. He said he spends a lot of time negotiating wind leases on behalf of landowners. He said oil, pipeline and coal companies have a better understanding of landowner concerns and reclamation issues. He said the better understanding likely stems from those companies having more experience than the wind companies. He said he has reclamation concerns when it comes to wind development. He said wind developers have certain provisions in leases that come from lenders, and without those provisions wind developers risk not getting financing for the project. He said protections are needed to ensure landowners are not having wind resources used by a company just because neighbors signed leases and they did not.

In response to a question from Representative Steiner, Mr. Braaten said the expense of decommissioning a wind tower ultimately falls on the farmer unless something is done about it. He said in the wind lease contracts he drafts, he specifically calls out decommissioning, and bonding is primarily one of the protections. He said numerous landowners have ended up with liens on their land because a wind developer did not pay a subcontractor. He said the solution to this would be bonding around the lien by including a provision in the lease saying if a lien is put on the land the developer has to put up a bond to get that lien released.

In response to a question from Representative Brandenburg, Mr. Braaten said in the last 2 years he has specifically dealt with seven or eight wind companies.

In response to a question from Vice Chairman Luick, Mr. Braaten said one thing wind developers have been good about is reimbursing landowners for the cost of having an attorney review the lease. He said requiring developers to bond around a lien is the best protection that can be put in place to protect landowners.

Mr. John Schuh, Legal Counsel, Public Service Commission, provided information regarding wind developer bonds. He said there are bonding requirements in the Public Service Commission's decommissioning rules. He said bond or financial assurances are required to ensure final reclamation actually occurs. He said NextEra Energy filed 20 parental guarantees so NextEra is covering the liability of the smaller LLCs, and within the next 4 or 5 months there will be additional bonding requirements.

No further business appearing, Vice Chairman Luick adjourned the meeting at 1:10 p.m.

Christopher S. Joseph
Counsel

ATTACH:8