

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

NATURAL RESOURCES COMMITTEE

Wednesday, June 6, 2018
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, Alisa Mitskog, Todd Porter, Vicky Steiner; Senators Diane Larson, Larry Luick, Merrill Piepkorn

Members absent: Representatives Dick Anderson, Tom Kading, Greg Westlind; Senator Bill L. Bowman

Others present: Representative Corey Mock, Grand Forks, and Senator Donald Schaible, Mott, members of the Legislative Management

See [Appendix A](#) for additional persons present.

It was moved by Representative Laning, seconded by Representative Brandenburg, and carried on a voice vote that the minutes of the March 29, 2018, meeting be approved as distributed.

WIND ENERGY DEVELOPMENT

Chairman Seibel called on Dr. Kimberly Suedkamp Wells, Manager, Environmental Services, NextEra Energy Resources, for testimony ([Appendix B](#)) regarding environmental permitting for wind energy facilities.

In response to a question from Representative Laning, Dr. Suedkamp Wells said several wildlife literature sources claim animals, such as deer and elk around national parks, can be influenced by sound. She said she is not aware of any research suggesting acoustics from wind farms being a deterrent to bird impacts. She said NextEra Energy is the largest owner and operator of renewables in the world, having 14 operating facilities in North Dakota, and is neither familiar with nor have had birds impacting wind farms be an issue for wildlife in its operational history.

Representative Brandenburg said the first two pages of NextEra Energy's comment ([Appendix C](#)) to Mr. Terry Steinwand, Director, North Dakota Game and Fish Department, mention collaborative efforts set out with the Game and Fish Department. He said the Game and Fish Department is requiring higher standards than the United States Fish and Wildlife Service. He said NextEra Energy's comment to Mr. Steinwand states NextEra Energy can not support the Game and Fish Department's collaboration effort.

In response to a question from Representative Porter, Dr. Suedkamp Wells said although agencies provide correspondence and recommendations, it is ultimately up to the Public Service Commission to decide what to do with the recommendations. She said the Public Service Commission ensures an applicant provides a complete application packet, addressing the commission's specific siting criteria. She said the role of wildlife agency correspondence is highly influential; however, it is not the deciding factor in the Public Service Commission's siting process. She said in NextEra Energy's experience, the Public Service Commission requests an applicant to demonstrate it has listened to the feedback and addressed it. She said there is no requirement for the Public Service Commission to accept and follow the recommendations provided by the Game and Fish Department.

In response to a question from Senator Larson, Dr. Suedkamp Wells said NextEra Energy supports moving forward on direct impacts, those impacts occurring because of physical contact, because of the proven occurrence of direct impacts. She said NextEra Energy believes in making sound science-backed decisions, supporting forward-moving policies, and adopting a pilot based on direct impacts. She said NextEra Energy does not believe there are adequate facts around indirect impacts to justify the approach recommended in the Game and Fish Department's draft wildlife guidelines.

Chairman Seibel called on Mr. Mike Humann, Surface Division Manager, Department of Trust Lands, for testimony ([Appendix D](#)) regarding the status of wind energy development on school trust lands and the wind energy easement agreement process.

In response to a question from Senator Luick, Mr. Humann said the Department of Trust Lands is required to follow the Public Service Commission's guidelines regarding setbacks on trust lands.

In response to a question from Senator Larson, Mr. Humann said each wind energy easement agreement or lease agreement is specific on reclamation of the property and addresses the condition to which the property will be returned. He said the Department of Trust Lands' agreements require a reclamation bond after a certain time which a company would have to put forward in the form of a surety or a letter of credit. He said the agreement also has requirements for saving topsoil to use in final reclamation and removal of the wind turbine.

In response to a question from Senator Piepkorn, Mr. Humann said in the Bakken area, with the amount of pipelines, roads, and sites present, the consideration payments have to be negotiated. He said the Department of Trust Lands determines the going rate in the area to come to an agreement with the developers.

Chairman Seibel called on Ms. Carlee McLeod, President, Utility Shareholders of North Dakota, and Mr. Zachary Smith, Communications and Government Relations Director, North Dakota Association of Rural Electric Cooperatives, for testimony ([Appendix E](#)) regarding a response to the Game and Fish Department's wind and wildlife collaboration guidelines.

In response to a question from Senator Piepkorn, Ms. McLeod said there have been projects in which turbines have been moved during the planning stage because of the Game and Fish Department's wind and wildlife collaboration guidelines. She said it is affecting projects and energy development.

Representative Brandenburg said he knows a payment of \$500,000 was made directly to Ducks Unlimited as a result of a state agency requirement. He said the payment went to a private organization over which the state has no control or oversight. He said this also occurs in the oil industry, in the coal industry, with the Department of Transportation, and with the counties. He said North Dakota needs to get a handle on where the money is going and how it is being spent.

In response to a question from Representative Porter, Ms. McLeod said the Public Service Commission only uses direct offsets when siting other energy conversion facilities besides wind.

Representative Porter said the Game and Fish Department only did what was asked by the Public Service Commission. He said the Public Service Commission asked the Game and Fish Department for direct and indirect impacts. He said the Game and Fish Department is being unfairly criticized for doing exactly what was requested by an elected body. He said he does not understand why everyone is criticizing the Game and Fish Department.

Senator Piepkorn said the Game and Fish Department is getting a bad reputation based on speculation and conjecture without really taking an in-depth look at the facts. He said blame should not be pointed at the Game and Fish Department for possible ramifications of things that may happen.

Representative Brandenburg said there was not one agricultural group involved with the collaborative effort. He said everything that happens with energy, whether it be oil, wind, or coal, occurs on agricultural land. He said if it is a collaborative effort being presented to the Public Service Commission, the Game and Fish Department should have included comments from the agricultural community. He said he is in agriculture and is completely offended the agricultural community was left out.

Chairman Seibel called on Mr. Randy Christmann, Chairman, Public Service Commission, for testimony ([Appendix F](#)) regarding wind developer bond requirements and the Public Service Commission's role in third-party compensatory mitigation options for unavoidable, direct, or indirect impacts.

In response to a question from Chairman Seibel, Mr. Christmann said the Public Service Commission is the authority for siting and the Game and Fish Department is one of the agencies the Public Service Commission reaches out to for the sake of efficiency. He said the Game and Fish Department does not have veto authority over a siting case. He said the Game and Fish Department provides the Public Service Commission with information in the same manner as any other private or public entity providing input on siting projects. He said the Game and Fish Department is a small piece of a very large puzzle.

Chairman Seibel called on Mr. Greg Link, Division Chief, Conservation and Communications, Game and Fish Department, for testimony ([Appendix G](#)) regarding the development of proposed offsets for wildlife impacts associated with wind projects.

Chairman Seibel called on Ms. Carmen Miller, Director of Public Policy, Great Plains Region, Ducks Unlimited, for testimony ([Appendix H](#)) regarding private wetland mitigation efforts, structure, and process.

In response to a question from Representative Laning, Ms. Miller said the 20 percent decline in breeding pairs within 800 meters of wind towers is attributed to avoidance, not to collision.

In response to a question from Representative Brandenburg, Ms. Miller said Ducks Unlimited was invited to be a part of the collaborative effort and decided to participate. She said Ducks Unlimited does not have any control over which other organizations or entities are invited.

In response to a question from Representative Brandenburg, Ms. Miller said Ducks Unlimited has not purchased land in North Dakota for over 15 years. She said Ducks Unlimited is not allowed to purchase land without approval from the Governor and the county commission. She said Ducks Unlimited owns one parcel of land which was donated.

Chairman Seibel called on Mr. Mark S. Gaydos, Director, Environmental and Transportation Services Division, Department of Transportation, for testimony ([Appendix I](#)) regarding the Department of Transportation's wetland mitigation program.

In response to a question from Representative Brandenburg, Mr. Gaydos said he is unaware how much the Department of Transportation is spending on mitigation, but he can find out and provide that information to the committee.

Chairman Seibel called on Mr. Doug Goehring, Agriculture Commissioner, for testimony ([Appendix J](#)) regarding the unintended consequences to agriculture producers from wind energy mitigation.

In response to a question from Senator Piepkorn, Mr. Goehring said when looking at how farmers and ranchers need to operate their farms, there is not a one-size fits all scenario for any farmer. For example, he said, the land may be grazed differently. He said topography is an element, as well as the types of grass species that exist on the land and the soil production index value. He said every farmer and rancher operates differently, and whenever you have federal or any governmental manipulation of the individual farmer or rancher's unique situation, you lose the farmer or rancher's ability to best utilize the best practices.

Mr. Dennis Haugen, Director, North Dakota Grain Growers Association, said there is no need for buffer strips in Ashtabula. He said it would be a waste of good farm and pasture land and having buffer strips would double the size of the footprint of every wind tower. He said the federal Natural Resources Conservation Service oversees environmental issues on North Dakota's environmental areas and there have not been any environmental issues with Ashtabula wind farms in the last 8 to 10 years. He said when Ashtabula One was put in, there was not any extortion money paid for all the items being proposed and discussed today, and 10 years later Ashtabula does not have any problems.

In response to a question from Representative Steiner, Mr. Haugen said he has yet to find one bird fatality during his 10-year wind project.

Mr. Dwight Wrangham, Landowners Association of North Dakota, said he has not heard a presenter mention farmers, farmers' rights, or farmers' interests during today's meeting. He said the North Dakota farmer is the stakeholder with the most at stake. He said it is the North Dakota farmer and landowner who produces our food and fibers and it is important to keep the farmers, landowners, and their interest in mind while moving forward with today's presentations.

Ms. Kayla Pulvermacher, Legislative and Member Advocacy Supervisor, North Dakota Farmers Union, provided testimony ([Appendix K](#)) regarding North Dakota's guidelines for reducing impacts from wind energy development.

Mr. Pete Hanebutt, Director of Public Policy, North Dakota Farm Bureau, said the North Dakota Farm Bureau has concerns regarding the wind program and mitigation. He said from a private property perspective, it is not transparent when a state agency, knowing the impact, includes certain entities in the collaborative effort but excludes the agricultural community. He said the science involved also should be questioned, as it seems to sometimes be driven by outcome-based initiatives.

PIPELINE LEAK DETECTION STUDY

Chairman Seibel called on Dr. Brian P. Kalk, Director of Energy Systems Development, Energy and Environmental Research Center, for testimony ([Appendix L](#)) regarding the progress and status of the pipeline leak detection study.

In response to a question from Representative Laning, Dr. Kalk said third-party damage is the most common cause of a leak, followed closely by improper installation.

In response to a question from Senator Luick, Dr. Kalk said liquid gathering pipelines in North Dakota typically are operated over a wide range of pressures. He said some pipeline systems are designed to operate at elevated fluid pressures, up to 3,000 pounds per square inch (PSI), while other pipeline systems are designed to operate at intermittent, low pressures of 0 to 30 PSI. He said in the Phase II report (December 2016), the Energy and Environmental Research Center stated many leak detection systems operate more effectively at consistent, elevated pressures. He said where conditions permit, pipeline operators carefully should consider pressurized pipeline operations. However, he said, it is important to note pressurized operations are not achievable in all design situations.

Chairman Seibel requested Dr. Kalk to submit the completed report from the Energy and Environmental Research Center regarding the results and recommendations of the pipeline leak detection study to the Legislative Council staff for distribution to the committee.

It was moved by Representative Porter, seconded by Representative Steiner, and carried on a voice vote that the Chairman and the Legislative Council staff be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Management.

It was moved by Representative Porter, seconded by Senator Luick, and carried on a roll call vote that upon receipt of the report from the Energy and Environmental Research Center regarding the results and recommendations of the pipeline leak detection study, the committee be adjourned sine die. Representatives Seibel, Brabandt, Brandenburg, Laning, Mitskog, Porter, and Steiner and Senators Luick and Larson voted "aye." Senator Piepkorn voted "nay."

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

Christopher S. Joseph
Counsel

ATTACH:12