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ROLL NUMBER

DESCRIPTION

1315

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1315

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1315

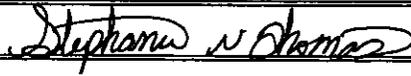
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 16, 2007

Recorder Job Number: 1179

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on HB 1315.

Rep. Mike Brandenburg, District 28: This is a bill that deals with electrical generation and transmission safety, and is involved in the Electrical Board and the commission. There are a number of amendments being drafted for this bill, so I ask that we wait for those amendments to come forward.

Rep. Kasper: Does the word commission in the bill mean the Public Service Commission?

Rep. Brandenburg: Yes, it is the Public Service Commission who will be involved with this oversight.

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1315

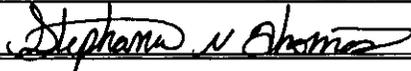
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 22, 2007

Recorder Job Number: 1492

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on HB 1315.

Rep. Mike Brandenburg, District 28: Overview of proposed amendment.

Don Offerdahl, State Electrical Board: This bill is the result of wind farms that are developed in ND. We've inspected wind generators on farms for years. When it's privately owned, that's when it becomes under the jurisdiction of the ND State Electrical Board. There's areas in there where facilities are not covered under that, it's generating plants, facilities that operate generating plants. Who determines what a utility is, and what is not? The generating is done by a government entity, such as the PSC that we have in ND so, at that time we contacted the PSC at our meeting, and they said that they didn't have authority over the wind farms. For the protection of the installers, and the electrical contractors, the State Electrical Board in this state of ND wanted to make sure that they complied and were safe. We'll get evaluations by each engineer on how they do that. When this came up, it's more of a fit for utilities for the PSC then it is for the electrical board. They have underground transformers, overhead mines 13 miles, that is generally seen and is a utility, so what we want is to have some legislation in there to take responsibility away from the electrical board, and have it

where it's a jurisdictional issue, but we do not want to put a burden on the rest of the utilities by adding line 8.

Rep. Johnson: You said that the facilities that were not covered were utilities, and what other group?

Don: There's a long list. We have communication companies, the telephone companies, and all the generating plants are not covered by us. Most facilities have engineers on staff all the time monitoring the electrical wiring and equipment. When it's privately owned, those people get it designed once, and use minimum standards.

Harlan Fuglesten, ND Association of Rural Electric Cooperatives: I just want to make some comments about the bill. I have some hesitation in standing up, because I really don't know what the unintended consequences of this bill might be. Certainly, our electric cooperatives operate under the National Electric Safety Codes, which is a volunteered industry standard. They also operate under OCEA regulations, and under engineering standards of the rural utility service. We're very much in favor of safety, the concern I have is we're dealing with somewhat of an isolated problem with a solution that is quite broad. A number of states have adopted the National Electric Safety Code in some form or another, as the standard in the state legislatively, and that may be appropriate here. I think we should do some investigation however, of what impact that may have. The National Electric Safety code itself is a fairly large and detailed document that has many different versions. I'm not against this bill per say, I'm just raising some questions.

Rep. Keiser: Do you have any idea of what might be the problem that you would want to check through your investigation?

Harlan: One issue would be whether or not this language is sufficient to grandfather in facilities constructed under a prior addition of the code. Some attorney's might try to make the

argument that we're adopting a current addition of the code for all facilities that are currently in place without any grandfathering, although I believe that the code itself probably has some grandfathering provisions. Some states have adopted the code wholesale legislatively, and I'd be interested in knowing how they did it, and what impact, if any, it had on operations.

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1315**

House Industry, Business and Labor

Check here for Conference Committee

Hearing Date: **6 February 2007**

Recorder Job Number: **2883**

Committee Clerk Signature *Jan Prindle*

Minutes:

Chairman Kaiser opened discussion of HB 1315. We have before us three sets of amendments and the first set was handed out by the Public Service Commission. It is a technical amendment.

Ilona Jeffcoat Sacca, PSC: The first change removes reference to facility--if you use facility it brings in the 100 megawatt threshold. The second distinguishes people who are producing electricity for resale versus their own use. The third cleans up the language a little bit. The amendments were a result of people in our office. I don't think any of these changes the original theory of the original bill. The PSC approved these changes. They also saw the amendment that Brian has and those were acceptable as well. Now the Harlan amendment has one problem and that is the ability to use the valuation. That is missing from Harlan's amendments.

Chairman Kaiser: Are either Brian's amendment or Harlan's amendment in conflict with this amendment?

Sacca: I don't think any of them are really in conflict except for the part that takes away the ability to use the money.

Vice Chairman Johnson: I move we adopt the amendment prepared by PSC.

Representative Dosch: I second.

Member of the Audience: I think the way the Committee ought to look at these are three

alternatives that say the same thing. I think you need to consider all three or you will confuse the issue.

Vice Chairman Johnson and Representative Dosch withdrew their motion and second.

Ryan Bornstein, legal counsel for the Governor, gave an overview of his amendment. This is also a technical change that has been worked with some members.

Harlan Fugelsten, ND Association of Rural Electric Cooperatives, gave an overview of his amendment. Our amendment simplifies this statute even further. It's very similar to Mr. Bornstein's amendment. The primary difference we have the language of the national electric safety codes in effect at the time of the construction. They get changed every several years and new standards come out. That would be a good idea. The other difference is it takes out the ability of the PSC to assess costs of investigation back to the utility.

Representative Ruby: You mention we have to follow this national code anyway. Do we really need this?

Fugelsten: The utilities do follow the national safety code. The PSC does have an administrative rule that adopts this. I don't know why it would be necessary here.

Vice Chairman Johnson: Currently if there is violation, who pays for the investigation.

Fugelsten: I'm not aware of any violations that have been brought to the attention of the PSC. I'm not aware that this is a problem. I don't know that we have to create a situation of hiring consultants to go out and monitor what other engineers and others have already done.

Curtis Jeffs, (?) Basin Electric Power: I would support Harlan's amendment. I think what we are trying to do is give the state electrical board assurances that everybody was following the national electric safety code. His amendment does that.

Scott Poresberg, special assistant attorney general for the electrical board: For years the board has been inspecting small windfarms and then these big utility owned windfarms started

coming in. It was quickly determined that this is outside of the scope of what the electrical

board should be doing. There are two codes at issue; the national electrical code which is worked with by electricians and the national electric safety code which is used by electrical engineers. When the national electric safety code is used the electrical board doesn't get involved. The purpose of this bill is to give clarity to the inspectors out in the field. Either of the amendments presented do that. Our purposes are satisfied by either of them. The important thing to us is that we do get a place so that jurisdiction is clear.

Sacca: There is one additional point I need you to recognize. The windfarm, or other generation, are not under the PSC jurisdiction. They are not industrial utilities, they are not public utilities like the cooperatives where we have safety jurisdiction and they are not cited under the citing act. We have other ways of getting these companies to do what needs to be done. When they want a citing certificate from us a condition of that certificate for the next 50 years is they follow the code. We don't have any other jurisdiction. If the bill passes without the safety jurisdiction over this group, we won't have any other means of carrying out our duties should the need arise. Hopefully, it never will. We're not trying to have an open pocket; we just wanted one additional way of trying to convince them to the right thing if the need arises. The resource issue is an issue. If we are going to have an inspection program, we have to another FTE. We decided that if we had a big problem we wanted some way to pay for that.

Chairman Kaiser: What is the job description of the PSC? Shouldn't they be doing this? Why do we need extra FTEs to do the job that I think they are supposed to be doing?

Sacca: Where this would fall we have two engineers, one half time accountant, my time half time, and another analyst. There is no way that this division could be doing safety inspections unless we have additional people or contract it out.

Vice Chairman: I move we adopt the amendment that Mr. Bornstein provided. (#2)

Representative Thorpe: Just looking at the two amendments, the amendment brought in by Harlan is to me clearer.

Representative Boe: I too have some problems to the broad scope of just coming in and charging them for it. I like the idea of having some control. If it's an unfounded investigation they don't have to pay. If they actually do find something, they have to pay. I'd like to see something like that in there rather than an open checkbook.

A roll call vote was taken on the amendment: Yes: 2, No: 12, Absent: 0.

The amendment failed.

Representative Thorpe: I move we adopt the amendments that Harlan brought in. (#3)

Representative Gruchalla: I second.

A roll call vote was taken: Yes: 12, No: 2, Absent: 0 The amendment was accepted.

Representative Dosch: I move to further amend to add the language that if an investigation is conducted and they are found to be in violation they would be assessed the charges for the investigation.

Representative Nottestad: I second.

Representative Thorpe: I'm wondering if how we are doing this, does PSC put on more staff.

Chairman Kaiser: They may put on a fiscal note. That is there prerogative.

A roll call vote was taken: Yes: 9, No: 5, Absent: 0

The motion to further amend carried.

Representative Johnson: I move Do Pass as Amended.

Representative Dosch: I second.

A roll call vote was taken: Yes: 11, No: 3, Absent: 0

Representative Johnson will carry the bill.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1315

Page 1, line 6, remove "that owns or operates a facility"

Page 1, line 6, replace "for generating" with "that generates electricity for the primary purpose of resale"

Page 1, line 7, replace "transmitting" with "transmits"

Renumber accordingly

HB 1315

“Every utility that owns or operates electric generation of any size for the primary purpose of resale shall comply with the standards of the National Electric Safety Code and any corresponding rules adopted by the commission. The commission may order that expenses associated with investigating an alleged violation under this section be paid by the utility in accordance with section 49-02-02.”

Date: 2-6-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. AB 1315

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt Amendment #2

Motion Made By Rep Johnson Seconded By Rep Dosch

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		X	Rep. Amerman		X
Vice Chairman Johnson	X		Rep. Boe		X
Rep. Clark		X	Rep. Gruchalla		X
Rep. Dietrich		X	Rep. Thorpe		X
Rep. Dosch	X		Rep. Zaiser		X
Rep. Kasper		X			
Rep. Nottestad		X			
Rep. Ruby		X			
Rep. Vigesaa		X			

Total Yes 2 No 12

Absent 0

Floor Assignment Rep. Johnson

If the vote is on an amendment, briefly indicate intent:

#3

PROPOSED AMENDMENT TO HB 1315

Page 1, line 6, replace "a facility" with "electric generation", replace "generating or" with "the primary purpose of resale"

Page 1, line 7, remove "transmitting electricity", after "the" insert "standards of the", after "Code" insert "in effect at the time of construction of the generation.", remove "and an"

Page 1, remove lines 8 through 10

Renumber accordingly

PROPOSED AMENDMENT IN CONTEXT

Section 1. A new section to chapter 49-22 of the North Dakota Century Code is created and enacted as follows:

Safety. Every utility that owns or operates electric generation of any size for the primary purpose of resale shall comply with the standards of the National Electric Safety Code in effect at the time of construction of the generation.

Date: 2-6-07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1315

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt Amendment #3

Motion Made By Rep Thorpe Seconded By Rep. Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson		X	Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby		X			
Rep. Vigesaa	X				

Total Yes 12 No 2

Absent 0

Floor Assignment Rep Johnson

If the vote is on an amendment, briefly indicate intent:

February 6, 2007

**House Amendments to HB 1315 (78273.0101) - Industry, Business and Labor
Committee 02/06/2007**

Page 1, line 6, replace "a facility" with "electric generation" and replace "generating or" with "the primary purpose of resale"

Page 1, line 7, remove "transmitting electricity", after "the" insert "standards of the", and replace "and any" with "in effect at the time of construction of the generation. If a utility is found to be in violation of this section, the"

Page 1, line 8, remove "corresponding rules adopted by the commission. The"

Renumber accordingly

Date: 2-6-07
Roll Call Vote #: 3

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1315

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Further Amend

Motion Made By Rep Dosch Seconded By Rep Nottestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman		X
Vice Chairman Johnson	X		Rep. Boe		X
Rep. Clark		X	Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe		X
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa		X			

Total Yes 9 No 5

Absent 0

Floor Assignment Rep. Johnson

If the vote is on an amendment, briefly indicate intent:

Date: 2-6-07
Roll Call Vote #: 4

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1315

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass, AS Amended

Motion Made By Rep Johnson Seconded By Rep Dosch

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman		X
Vice Chairman Johnson	X		Rep. Boe		X
Rep. Clark	X		Rep. Gruchalla	X	X
Rep. Dietrich	X		Rep. Thorpe		X
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 11 No 3

Absent 0

Floor Assignment Rep. Johnson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1315: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1315 was placed on the Sixth order on the calendar.

Page 1, line 6, replace "a facility" with "electric generation" and replace "generating or" with "the primary purpose of resale"

Page 1, line 7, remove "transmitting electricity", after "the" insert "standards of the", and replace "and any" with "in effect at the time of construction of the generation. If a utility is found to be in violation of this section, the"

Page 1, line 8, remove "corresponding rules adopted by the commission. The"

Renumber accordingly

2007 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1315

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1315**

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **March 6, 2007**

Recorder Job Number: **4425**

Committee Clerk Signature



Electrical Generation and Transmission Safety:

Rep. Brandenburg – District # 28 - In Favor

In District 28 we have an abundance of wind energy. HB 1315 is here because, I don't like it, the coops don't like it, the PSC doesn't like it, the electrical board doesn't like it, nobody likes it, so we're here to get it figured out. This is a new issue that everyone is trying to figure out how to deal with it because of the wind generation, we have a new industry in the state. This industry has created some interests have been created from different parties on how we're going to handle the qualifying of the electrical parts within the wind tower. Through this hearing you can hear what they have to say and get it worked out. It is an important industry and we need a resolve.

S Klein: So this is still a work in progress. We haven't seen the last amendment to get it right?

Brandenburg: I was hoping it was right. To be fair, let us vent our concerns and talk about it and it will be resolved in the end.

Scott Porsborg – special assistant to the Attorney General for ND State Elec Board - In Favor

Will explain the bill and what it's ultimate purpose is. The electrical board for years has been inspecting electrical installations around the state, including wind generating facilities. Such as

the Richardton Sisters have a small wind farm on their properties. That was inspected by the state electrical board and certified by them. Farmers that have wind generators on their farm, the electrical board has approved and inspected them for safety. When the large wind farms started coming in, the electrical board inspected some and it became apparent that they really weren't the electrical boards work, they were more utility-like. The purpose of this bill and the PSC drafted it, is to put large wind farms whose sole purpose is to generate electricity for resale, like a utility, under the jurisdiction of the PSC. That will impose the requirements of the National Electrical Safety Code on these wind farms. There are 2 codes that apply in ND.

1. National Electrical Code (NEC) – the ballywork of electricians
2. National Electrical Safety Code (NESC) – ballywork of electrical engineers & utilities

What this bill does, first sentence, imposes the requirements of the NESC on any utility that generates power for the purpose of resale. It doesn't pose that requirement on farmer or the Sisters in Richardton, only on facilities that generate only for resale.

The Electrical Board ask that you vote a DO PASS, so it is taken out of the realm of the Electrical Board. The NEC just doesn't apply to these facilities and not our area of expertise. It should be under the PSC.

S Klein: So this group wants to pass the buck.

Scott P: It's not passing the buck, so much as making applicable the right code to what these things really are.

S Hacker: I'm confused. You have two: NEC and NESC. The one that's in the legislation is NESC and the other is NEC. You're saying that the SAFETY code is more applicable to resale companies.

Scott P: Yes NEC is generally considered to be the standard of electricians. That's what they consult when they wire your house and what the board's inspectors apply when they

inspect residences and commercial property. The NESC is considered to be the ballywork of engineers. It's different and considered to be applicable to utilities.

S Klein: It's beyond putting up a couple of outlets in your house, it's putting a little more juice in this thing.

S Potter: I see a loophole here. What if the utility utilized the power themselves? They're a utility, but they're using it for their own purposes, rather than resale, then whose going to regulate them?

Scott P: That's why we put "primary purpose" for the purpose of resale in there. The reason was because the question was raised, because it DID say "of any size" period. We did add "primary purpose" to avoid that loophole.

S Potter: Point is, there could be uses that not only are trying to get around this, but that they are actually using it in another generating facility. Who then regulates it, inspects it at that time?

Scott P: If it's not enough power and nothing available for resale, just to power a facility, that would be the NEC. If just lights in buildings, even factories. NEC has jurisdiction over that.

S Wanzek: So the intent of the bill is to clarify with entities are over regulations.

Scott P: That's correct.

S Klein: You "grew out" – initially you thought it was your purview and now it's gotten too big, or from the get-go of wind towers, when you have a wind tower at Richardton it's one issue, but when you have Edgely-Kulm example with 41 towers, that is beyond what we can do and need to step.

Scott P: Yes. If it becomes more utility like, it becomes more complicated. Don can tell you more details why the NEC doesn't apply to these wind farms.

John Olson, Ottertail Power Co. - In Favor

This still has a lot of work on it. Thank you to Illona Jeffcoat Sacco for her participation in drafting the bill. She's in favor of everything here if I can speak for her EXCEPT one little part, and that is the COST that they think they need to recover for doing inspection.

There was a lot of heartburn in the House side about how this bill was drafted and a lot of heartburn of the payment for the investigation. The compromise was that the House split the baby in ½. There were no costs on one proponents side, and the PSC and wanted all of it's costs no matter if there was a violation established or not. But all the costs for investigation. The House came up with the alternative here to establish costs only in a case where there is a violation established. I think this is reasonable. The PSC has jurisdiction over safety of ALL generating facilities, whether coal-powered plants, wind towers or what have you. The requirement is to make sure right now is to make sure that these generating facilities comply with the NESC. The PSC doesn't have a batch of electrical engineers that inspect, they need to have that jurisdiction and ability to do so, but if there are routine inspections done on these wind facilities it causes some concerns with the utilities and the RECs on wind generators. We believe "good faith" efforts that take complaints based on facts and circumstances that suggest that there is a violation, that those rate investigation costs against utilities. For frivolous complaints, the PSC has to weigh those to see if they want to go forward.

S Klein: Are their national inspectors who come to these facilities just like we have the state inspectors come after the completion of the project? Or do we rely on the PSC to send Commissioner Wefald to take a look at those?

John O: I don't believe we rely on the Commissioners to go out. There are consultants and experts that are involved.

S Klein: There are experts in the National....

John O: Can't speak for every company. I know there are professional engineers that are involved in the projects. Whether they are licensed or not licensed in ND, they are there.

S Potter: As an attorney, if your client was a utility, you'd suggest that they comply with these safety requirements so they're not sued, right?

John O: That is correct. And we have a concern about safety. We're not trying to avoid the safety issue. We want safety established, we believe that this does it.

S Klein: We certainly don't want one of those blades flying through Kulm some afternoon when kids are going home from school.

John O: Lot of people even in the Governor's office that participated in working out this draft that you have before you.

Harlan Fuglesten, NDAREC - In Favor

We were a number of people that worked on the bill, for a 2 sentence bill, it got worked over pretty well. We supported the first sentence of the bill originally passed by the House and then an amendment was added because we had concerns about the second sentence of the bill which I think the House in it's wisdom came up with a compromise that has satisfied the vast majority of interest. Has not been a problem with respect to safety. If the PSC finds a violation, there needs to be a fair compromise.

S Hacker: Who's been paying for this before?

Harlan F: Been no provisions on payment. This is going on the citing provision of the code, the PSC has jurisdiction over the size of the site and is presumably part of the regulatory process in approving that sighting.

S Hacker: Is it easy to violate the code?

Harlan F: I have a copy of the code, that's "this big" and written by engineers and there are LOTS of provisions that would be judgments or circumstances in which you can avoid standards on emergency conditions, short answer, there are ways that you can violate.

S Hacker: Since we have not expected a lot of the wind towers out there, would you expect that we have wind towers out there that would have to pay if inspections come around?

Harlan F: I don't claim any expertise in electrical engineering. These are large commercial operations, standardized. I would be confident that they are building them to national acceptance standards. Obviously there are inspections from OSHA and federal agencies.

S Klein: I don't think they can turn on the juice before the inspection? Don't think they start up without inspection, rather than coming back a year later and saying, "shut that one down and that one down."

Harlan F: I'm not certain that there is a Federal electrical inspector.

S Wanzek: If we don't properly fund their abilities to investigate, if an investigation is initiated, the way it's worded, wouldn't there be a little incentive TO FIND a violation? Because if they do, they get paid.

Harlan F: That would be a risk. I wouldn't incur that. They'd take a look at in on the front end. Everybody has a responsibility to comply with the NESC. I think they would be forthcoming with information even before you watch an investigation if there were a complaint.

S Wanzek: It might be the NEXT Commissioner, certainly not this one.

Harlan F: That's what concerns us, it's a broad charge of authority to the PSC to charge costs back to the utilities, but not concerned about how the current Commissioner's operating, but this law could be in effect for 20 years from now, may be an entirely different aspect.

S Behm: I can't get heartburn over this, to me it seems like if there is a violation it should be paid for by the utility.

Harlan F: We're OK with this language AS IS. We're suggesting passing it as it is.

Dale Niezwaap – Basin Electric - In Favor

Support the bill as written and ask for your support.

S Hacker: Would you support this even more if there was a line missing on the second half of the bill?

Dale N: The first sentence we didn't have a problem with. We hit a problem with the second sentence, but we can live with the bill as written.

Don Offerdahl – ND State Electrical Board - In Favor

Want to clarify some of the questions that came up. Between the difference of NEC and NESC, NEC is for premise wiring. People who own the wiring, and at that time things are inspected at one time. Usually conductor sizes, availability of protection is available for people.

Where you see the difference here is that wind generators, the protection of the transformers and those sorts of things are not accessible to the general public, they are left to a qualified person or lineman to come and open up the transformer and do their protection. The way we've done the wind generators, we had a problem when they became "wind farms."

Taking power from one to another and setting them up through transformers and then into substations. Then It's definitely NESC.

S Klein: So you don't do the substations either.

Don O: Up to this point, we are the ones responsible for this because they are privately owned generators. This bill would take it off the ND NEC authority. It's inspected by the Utility Engineers, installing, the linemen out there are putting the things in required, then the company's engineers are making sure they are done that way.

S Heitkamp: The individual farmer who does something like this. Is it easy to track back, insurance wise it has to be a concern to them if something goes wrong. You end up with a fire,

damage, you end up with something you deem as insurable. Is it easy to track back if they didn't use the proper method of how those should work?

Don O: There would be engineers coming in because if they have a problem, they don't want to relocate their facilities, so they will come back and find what was the weakest link.

S Heitkamp: You don't have to be Dick Tracy to figure out what went wrong on one of these things.

Don O: No

Illona A Jeffcoat Sacco - PSC - In Neutral position

TESTIMONY # 1 *Didn't read, just passed it out.*

Our issue is, if the legislature gives us this jurisdiction, "gives", because today the wind farm that are not investor owned and not sited are under nobody's jurisdiction. So if you give us the jurisdiction and don't have the resources to implement responsibility.

We have an amendment that puts it back the way it was.

S Potter: There is no fiscal note. Did you have one in the House?

Illona JS: Fund recovery would be \$125,000, don't expect a lot of alleged violations.

S Potter: Seems to me that if there is a concern about this, appropriations committee that should be dealing with this. It is good public policy to have this. If you need the resources to do it, that's where you get it.

Illona JS: We discussed that at our meeting, we discussed whether we should ask for this right to do a Fiscal note, and asked for a position and resources that would go with it.

S Hacker: How much do you think this would cost?

Illona JS: If we are to implement an inspection plan, we do not go out and inspect generators, the plants cited for Basin or MDU. If we have a complaint, we investigate it. If we were to institute an inspection plan we would need one person, and need another engineer, not use

them 100%, maybe 35% and then that person would be available on siting cases as well. Don has some of these and would know how long it would take and what costs would be. We would need a reasonable engineer's salary.

CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1315 B**

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **March 6, 2007**

Recorder Job Number: **4498**

Committee Clerk Signature

Sheila Hunkel

Electrical generation and transmission safety:

S Klein: Representative Brandenburg, in the hallway, I said, "why would you say that everybody hated it?" I think what we had was pretty much everyone on board, one question, was the PSC thinking and S Potter made a point to that, "would it cost any money?" to do this.

S Wanzek: I move a DO PASS

S Potter: My question is if S Hacker wants to move his amendment or not.

S Hacker: I drafted an amendment to remove the second sentence of the bill, maybe this is for discussion. The problem is, we don't state, I think we leave the PSC the ability to charge the whole cost out to those companies. Any thoughts?

S Potter: I'm in agreement, they've got a booklet this long of the rules, pretty easy to find a violation and then charge the utility the cost of the investigation. If it's their JOB, I'm not sure it's necessary to have the company pay for it, seems like state's business to regulate this and do it and go through appropriations process. They need an FTE, they should put in a fiscal note.

S Klein: In visiting with the industry and the sponsors of the bill, they were hoping we could hold it without falling apart, because they worked really hard. They were comfortable with what they reached.

S Wanzek: I would be more inclined to do something with the last sentence too, but the industries that are going to be invested, said they've reached this agreement and were comfortable with it.

S Heitkamp: If you're a utility that owns or operates electrical generation of any size, to resell, obviously, you don't have the NOW comply with national electrical safety code?

S Potter: You're complying with the National Electrical Code today as to the National Electrical Safety Code.

S Klein: Richardton was used as an example, the Sisters have one tower, we were able to regulate that under the ND the Don Offerdahl group, but when putting up 41 towers, that goes beyond what they do, not the same rules apply.

S Behm: I talked to the guys out in the hall, and they are very comfortable with this bill.

If they're comfortable with it, I don't know why we have to throw a money wrench into it.

S Klein: It's their job to really get down into the knitty gritty.

S Hacker: My thought on this legislation is that I'm not sure we regulate them at all, their insurance on those towers need to abide by the electric code. The insurance won't cover them, the big push is Florida Light & Power. They will not do the investment if you don't follow the code.

S Potter: That never came out in the hearing, did it?

S Heitkamp: Well, you just convinced me.

S Behm: The way they brought it over here now, they were very satisfied with it, but the way it was introduced in the House, they fought it like tooth and nail.

S Klein: Did this come as a result of our own electrical board having some concerns and trying to get off the hook?

S Heitkamp: It isn't Don's bill. He's got another bill coming at us, you see them all.

S Potter: They hedged on your question about that Mr. Chairman. I think you're on to something there, the electrical board is saying, "it's over our heads. We don't want to be doing this for 60 MWatt facilities," and their looking for someone to take them off the hook. Is there NO regulation today of Coyote? Leland Olds, in regard to safety.

S Hacker: They still are regulated and they are able to do it through transmission.

S Heitkamp: If you're Florida Power and Light, and you're in District 28 and building 100 wind towers, 50 On each side of the boarder and you want them to meet this code, why couldn't you? We're not taking over for it unless you meet this code. Why are we putting more regulation in to meet a standard that a private company wants when they're the purchaser?

S Behm: If they're going through this much expense, they're not cheap, they will certainly abide by the code, it's stupid if they don't. So much more to change something after you have it built than to not do it right to start with. To me it just makes good sense to do it the right way, do it to what the code says.

S Heitkamp: Did anyone testify against the bill?

S Klein: The PSC testified neutral, but no. I guess in support since Rep. Brandenburg generally carries the flag for the wind power companies. There is something in here that they were looking for.

S Hacker: You will not find anyone, [*engineer*] that is more talented than those people that they are already sending out to make sure that the wind power is put together right.

S Behm: Yeh, that's what I think.

S Hacker: Not matter who we hire, they're doing duplicate work. The power lines put these together and build the towers, the transmission, etc. Then the engineers check the specs and they develop the plan on how they're going to build this, the guys build it and go through this to make sure it's all up to code. How do you get an insurance policy that's not to code?

S Behm: Right

S Hacker: So there's no reason to this legislation. I move a **DO NOT PASS** on the whole bill.

S Klein: We're going to hold off overnight.

S Heitkamp: I would have seconded that. I think you're making the right move, because right now I find myself in agreement with Nick, but it seems to me that the senator from the area where it affects the most, I think you should go talk to him and find out.

S Wanzek: I'm not prepared to vote on a DO NOT PASS.

S Klein: We were moving for a DO PASS a few moments ago. You are a sponsor, so I'd like for you to know for sure that this is what you want.

S Wanzek: They had seemed to work out an understanding and those that will be regulated by it, I talked to Harlin and Dennis out there and they said, "this is fine."

S Heitkamp: The only thing I sensed in Don's voice was "it's out of our hands anyway, put it with the PSC." Do we need this legislation for that transfer to happen? If we don't need this legislation for that transfer to fall under the auspice of PSC, then I agree with S Hacker, then I'd vote for the bill.

S Potter: If anybody is investigating this, the question I'd like to have answered is, "so what?" If you take out the second sentence, we're just saying that they have to meet these standards. We're not suggesting that the PSC investigate to find out if they are meeting those standards. Is there any penalty provision? Aren't we just making a statement that says, "we're building a wind tower – it has to be safe." What's the penalty for violation and what's the requirement in for the PSC to actually do the investigation?

CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1315 C

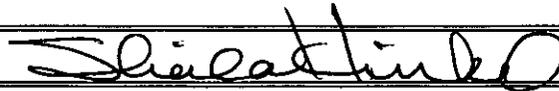
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **March 7, 2007**

Recorder Job Number: **4570**

Committee Clerk Signature



Minutes:

S Hacker: I'll rescind my DO NOT PASS motion. I don't believe there was a second.

S Behm: We weren't too serious about that.

S Hacker: *Presented an Amendment to bill.* I'd like to remove the second sentence of the bill, so the bill states that the utilities shall abide by the national safety code at the time of the construction.

This would remove the oversight by the PSC authority as well as the need in the PSC to come up with funds, as appropriation to get ¾ time engineer that it's eluding to.

Second by S Potter

S Heitkamp: Strictly fear I'm going to oppose the amendment and reason isn't because it's probably worthwhile, but because Don's paid, and Don looked at me and said, "this bill needs to pass just the way it is," and I trust him, he's been a pretty good man. I'm not sure they don't have the best compromise that they could out of the engrossment out of the House. He told me in the hallway, "Pass the bill the way it is."

S Behm: He also told me the same thing.

S Potter: I'd argue for an opportunity to remove just an unnecessary regulation. I don't believe the commission needs to do this. The energy companies are going to comply with these

standards, you tell them they're going to comply with these standards and you leave it at that. They'll get sued if they don't. Their lawyers will take care of making sure that they're going to do this and don't see any reason for PSC to run around and regulate this safety matter here.

S Hacker: Part of my thoughts, S Potter and I agree, that the PSC is out to protect the public and I don't see why regulating these wind towers, I don't know what type of protection they're trying to provide.

S Potter: We've been told they've got better engineers than the PSC does. I think we're asking some lesser-qualified people to do the work of the highly-qualified folks. I don't see a reason for that section of it. I asked several people who were here, "are you happy with this, or would you rather have it the other way?" They're only happy with it because they're afraid of what the House action will be. Will have our opportunity to weigh in on that again. Let's just make it the best bill we can.

S Klein: Is there any skin off the electrical board's nose by taking that off, or are they concerned that; I can't envision Susan going out there and looking at all the towers, or what expertise they would bring.

S Heitkamp: That was kind of the point that Don was making. Just the pure logic of it. Now, does it get confusing in code? I think it always was, that's why we're sitting here having the discussion. I'm not so rock solid that I couldn't go with the amendment, just to go ahead, it's going to be one more conference committee, you can be on that, maybe they go with it. Just don't want to be on the conference committee, Mr. Chairman.

S Wanzek: Sounds like they put a lot of work into it, all players seem to think that this should be passed as it is, and I'm going to trust their judgment, feel they know more about it than I do.

S Hacker: Of course Allana's not going to be out there looking at wind turbines, but her ¾ time engineer she stood up there and said she was going to have to hire, IS, and if we do send

them out there and start looking at wind towers and the code is THAT THICK, I'm not much of a bettin' man, but I would bet on this one that said, "you know what, they'll recover their cost because they're going to find something." If we don't have the makeup of PSC to review, it changes in time and somebody has a nick against the turbines, they'll send an engineer out and he'll find problems.

S Heitkamp: So your amendment takes out the second line of the bill.

S Klein: And the down side to this, would be what?

S Heitkamp: That you're taking away whatever power the commissioner had.

S Klein: That's what Section 4902 relates to.

S Potter: The downside from the commissioner's point of view, is they feel they would have to do this work and it would be expensive, but I would say if you take this out, they don't have to do this work. There is no cost associated. Some will then be concerned that the bill won't pass, they want the bill to pass and they're afraid with the amendment it won't pass. Let's give it a shot, send it over, the worst we will end up is, agreeing with them in conference committee and going back to this.

S Klein: I sense the committee is going to support this bill, question is if it will be an amended version and that's where, I don't know that the PSC has the ultimate power in the chambers.

I'm not so sure that this was not just this commissioner, maybe others who worked on this to get it massaged into a fair compromise.

John Olson – Ottertail Power was asked to take Podium

S Klein: You probably worked on this in the House, you hear what we're wrestling with, tell us what you think.

John O: I thought as representing a public utility, we're used to paying costs to the PSC where REC's were not. They did not like the bill with payment of all the costs whether they

were alleged or established. The compromise in the House to chop it in ½ and let the PSC recover the cost if they find a violation. I don't have a problem getting rid of it entirely, I agree with the comments that the informed engineers are from the company, not from the PSC. We want the bill passed as we want the Electrical Board OUT of the business of inspecting the utility wind towers. We want them IN the business of inspecting the Ma-N-Pa operations so we wrote that "resale" into the bill. But if Don is comfortable that without the cost, and I don't know why he wouldn't be, then I don't have a problem with it.

S Klein: By eliminating the last sentence, the REC's wouldn't be happy?

John O: They'd be happy. They don't want any cost. They'd even be happier. We don't have a problem as we're used to paying the PSC. Want to make sure that by applying the electrical board OUT of it.

S Klein: My call would be that it will pass the Senate, either version, but, would we struggle again? Was it a struggle in the House?

John O: It wasn't a big struggle, except that compromise came up.

S Heitkamp: I'd like to run it by them again and see if they go ahead and concur.

Motion on the Amendments which would eliminate from the word "if" on line 8 through line 10.

Roll Call on the Amendments HB 1315 – 4-2-1 Passed

Motion for DO PASS AS AMENDED by S Heitkamp

Second by S Hacker

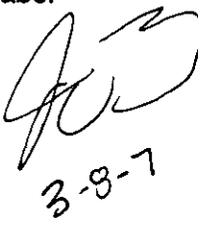
Roll call on the DO PASS AS AMENDED on HB 1315 – 6-0-1 Passed

Carrier: S Hacker

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Adopted by the Industry, Business and Labor
Committee

March 7, 2007



Handwritten signature and date: 3-8-7

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1315

Page 1, line 8, remove "If a utility is found to be in violation"

Page 1, remove lines 9 and 10

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1315, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1315 was placed on the Sixth order on the calendar.

Page 1, line 8, remove "If a utility is found to be in violation"

Page 1, remove lines 9 and 10

Renumber accordingly

2007 TESTIMONY

HB 1315

H. B. 1315

Presented by: Illona Jeffcoat-Sacco
Public Service Commission

Before: Senate Industry Business & Labor Committee
Honorable Jerry Klein, Chairman

Date: March 6, 2007

TESTIMONY

Chairman Klein and committee members, my name is Illona Jeffcoat-Sacco. I am the Executive Director of the Public Service Commission. I also serve as Public Utilities Director. The Commission asked me to appear here today to bring to your attention a major concern we have Engrossed House Bill 1315 in its present form.

The Commission has been involved in the discussions on this bill and its numerous iterations for several months. We appreciate all the time and attention the stakeholders have given this bill during that time.

While the Commission is neutral on the main objective of the bill, we have substantial concerns about whether we can carry out the responsibilities imposed by the bill with our current resources, specifically whether we have sufficient resources to investigate when necessary. The net effect of the current language in the engrossed bill is to give the Commission additional responsibilities without any fiscal means of carrying them out. If the Utility Valuation Fund is not available to us to investigate alleged violations, we would have to acquire additional resources to carry out the responsibilities imposed by the bill.

#1
1315

The Utility Valuation Fund should be available to the Commission to *investigate alleged violations*, whether or not the investigation results in a violation. If Engrossed H.B. 1315 is revised to accomplish this, we project that bill would continue to impose no fiscal impact. If the bill is not so amended, it would fiscally impact on the Commission. We propose an amendment, attached, to revise the last sentence of the bill so that it reads: *The commission may order that expenses associated with investigating an alleged violation under this section be paid by the utility in accordance with section 49-02-02.*

This completes my testimony. I would be happy to answer any questions you may have.

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1315

Page 1, line 8, remove "If a utility is found to be in violation"

Page 1, line 9, remove "of this section."

Page 1, line 9, replace "the" with "The"

Page 1, line 9, replace "a utility" with "an alleged violation"

Renumber accordingly

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