

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

### Minutes of the

## ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE

Wednesday, October 23, 2019  
Harvest Room, State Capitol  
Bismarck, North Dakota

Senator Rich Wardner, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Senators Rich Wardner, Kathy Hogan, Ray Holmberg, Merrill Piepkorn, David S. Rust; Representatives Tracy Boe, Mike Brandenburg, Alisa Mitskog, Todd Porter, Don Vigesaa

**Members absent:** Senator Brad Bekkedahl; Representative Dick Anderson

**Others present:** Representative Josh Boschee, Fargo, member of the Legislative Management  
See [Appendix A](#) for additional persons present.

**It was moved by Senator Rust, seconded by Representative Mitskog, and carried on a voice vote that the minutes of the August 14, 2019, meeting be approved as distributed.**

### WIND ENERGY DEVELOPMENT Transmission

Chairman Wardner called on Mr. John DiDonato, Vice President, Renewable Development and Origination, NextEra Energy Resources, LLC, for testimony ([Appendix B](#)) regarding NextEra's role and history within wind energy development and a status update on wind energy transmission.

In response to a question from Chairman Wardner, Mr. DiDonato said the demand for energy is not increasing across the country but the demand for certain types of energy is increasing. He said usage by retail customers is flat to down slightly. He said traditional resources are being displaced by natural gas and renewables.

In response to a question from Representative Boschee, Mr. DiDonato said wind project location determinations always start with where the wind is but there also are opportunities for counties and townships to be more competitive. He said the likelihood of being granted a successful project permit is considered as part of the wind project location determination calculus.

Chairman Wardner called on Mr. Chris Kunkle, Government and Regulatory Affairs Manager, Apex Clean Energy, Inc., for testimony ([Appendix C](#)) regarding wind energy development and transmission throughout North Dakota and wind energy development challenges and opportunities in North Dakota.

In response to a question from Representative Porter, Mr. Kunkle said transmission and interconnection is a tremendous risk for North Dakota. He said Apex Clean Energy, Inc., is not planning new projects in North Dakota or in any other state in the Midcontinent Independent System Operator West region because of the congestion. He said the interconnection costs still would fall on the entity going through the interconnection process.

In response to a question from Chairman Wardner, Mr. Kunkle said commercial customers seek projects that, at a minimum, are in the same regional transmission organization, but are ideally located as closely as possible.

In response to a question from Senator Piepkorn, Mr. Kunkle said Apex Clean Energy, Inc., has yet to see how the newly enacted legislation regarding environmental mitigation has affected the permitting process.

Representative Brandenburg said North Dakota's biggest energy issue is what to do with natural gas and how to transport natural gas out of the state. He said either North Dakota comes up with a solution on how to get rid of the natural gas or companies will build somewhere else.

Chairman Wardner said North Dakota needs to have a balance when it comes to mitigation. He said North Dakota should encourage energy development, but also maintain our quality of life. He said we must not forget some of the real assets of North Dakota, such as wildlife, recreation, and sporting.

In response to a question from Senator Rust, Mr. Kunkle said there is an increasing demand for energy transmission from the commercial industrial sector and a continuous demand from the utilities across this region.

Representative Boe said the energy transmission issue may be an engineering problem and not a policy problem. He said when there is a Midcontinent Independent System Operator that covers several states and Canadian provinces and covers different grids that were built independently to serve the needs we had 50 to 75 years ago, there is a limitation on where the interconnects are and what the interconnects can manage.

Chairman Wardner called on Mr. John Weeda, Director, North Dakota Transmission Authority, for testimony ([Appendix D](#)) regarding a status update on wind energy transmission.

Chairman Wardner said there still is a need to focus on a clean coal project so North Dakota has coal as part of the mix for generating electricity into the future.

Representative Brandenburg said Xcel Energy Inc., has a big solar energy project in the South and Elite Energy LLC. has wind farms in Oklahoma. He said the energy entities in North Dakota are going to other states and starting energy projects in those states. He said people within the energy industry are leaving North Dakota and corporations no longer are considering coming to North Dakota. He said western North Dakota is the only place in the state experiencing energy growth.

In response to a question from Representative Brandenburg, Mr. Weeda said North Dakota has much to offer for those who want a return on energy-related investments. He said neighboring states will not have much energy transmission development either. He said Minnesota is looking longingly at North Dakota's wind profile as part of efforts to set high renewable standards.

Chairman Wardner said when coal development began in North Dakota, everyone was so excited about coal and the construction of generation plants. He said when oil development began in North Dakota, everyone was excited about the extra revenue to the state and we did not worry about the environment. He said this trend continues with wind in that wind companies are coming to North Dakota to build wind farms but part of the vision moving forward with wind is the state must ensure there is an orderly process of reclamation when a wind farm is decommissioned.

Senator Holmberg said in the late 1970s, the battles and discussions about coal, coal taxation, and coal reclamation were vicious. He said the energy struggles North Dakota has today are nothing new when it comes to developing a plan for energy solutions and proper reclamation.

### **Wind Taxation**

Chairman Wardner called on Mr. Ryan Rauschenberger, Tax Commissioner, for testimony ([Appendix E](#)) regarding wind energy taxation and the distribution of tax collections related to wind energy.

In response to a question from Senator Piepkorn, Mr. Rauschenberger said when an item or part is manufactured for resale, the item or part has a resale certificate to avoid double taxation. He said the item or part is not taxed when it is being manufactured, so the materials used to make a wind blade, for example, are exempt from taxation while it is being constructed. He said no sales tax is generated directly from the construction of an item or part for resale until it is installed.

In response to a question from Representative Porter, Mr. Rauschenberger said coal has a specific electrical generation tax and wind has a specific generation and capacity tax. He said all other electrical generation products, such as solar and natural gas, fall within the catch-all generation and capacity energy tax. He said the catch-all tax is slightly different from the specific generation and capacity taxes in that it is higher per kilowatt hour and lower per capacity because the catch-all tax is geared toward the intermittent energy sources. He said the catch-all generation and capacity tax ensures when an entity is not generating electricity the entity is not paying as much. He said under the catch-all generation and capacity tax, an entity pays more when it is generating electricity compared to the wind farm formula. He said 100 percent of the revenue from the catch-all tax is allocated to the local political subdivision.

Representative Brandenburg said every 2 years coal generates \$40 million for the state. He said the oil and gas industry, including natural gas, generates between \$4.5 and \$5 billion. He said it may be more beneficial if the state could generate an additional \$2 billion from the oil and gas industry in revenue for the state and give up the \$20 million coal generates annually.

### Wind Energy Conversion Facilities

Chairman Wardner called on Mr. Brian Kroshus, Chairman, Public Service Commission, for testimony ([Appendix F](#)) regarding Public Service Commission's jurisdiction over wind energy siting and a status update on wind energy conversion facility siting.

In response to a question from Senator Rust, Mr. Kroshus said the Public Service Commission wants to ensure the bond amount required for decommissioning a wind turbine is adequate on a per turbine basis times the number of turbines. He said the bond must represent the final dollar figure in terms of decommissioning costs and decommissioning estimates. He said the Public Service Commission approves the decommissioning plan, which includes approving the decommissioning cost estimate. He said if a decommissioning plan is deemed insufficient, the Public Service Commission may revisit the company. He said companies are required to update their plan every 5 years and the Public Service Commission may accelerate the statutory 5-year update requirement if needed. He said bond amounts are likely to increase over the course of operation of a wind project as the amounts are reviewed and re-evaluated on an ongoing basis, at a minimum every 5 years. He said the decommissioning bond amounts provide an adequate financial assurance as the amounts are not a pool fund, but are individual project bond plans.

In response to a question from Senator Piepkorn, Mr. Kroshus said in accordance with the decommissioning requirements, if a facility ceases operation for 2 years, the facility must be decommissioned. He said a wind facility must be operating and producing power or it must be decommissioned. He said some wind turbines are not spinning because of a maintenance issue or because of how much power the wind turbine is able to put in the grid at that time.

In response to a question from Representative Vigesaa, Mr. Kroshus said he would consult with the Public Service Commission's legal counsel on whether a local zoning authority may change the setback rules after the Public Service Commission has issued a permit to a facility. He said if a project does not receive county approval, the project likely will not receive a permit from the Public Service Commission.

### Comments

Mr. Mark Nisbet, Principal Manager, Xcel Energy Inc., said he is the EmPower member representing wind. He said he appreciates the committee's robust wind energy discussion. He said when wind projects are completed and Xcel Energy Inc., takes ownership, the projects are in good condition and the landowners appreciate Xcel Energy Inc., being there. He said the steps needed to get a wind farm sited are worth the effort in what it brings to the community and minimizes the problems that may arise after the wind farm is in place.

Mr. Dennis Haugen, Director, North Dakota Grain Growers Association, said the association is in full support of wind energy. He said he is a landowner with Ashtabula wind farms and after 10 years with the wind project, he does not have anything negative to say about the project. He said when you have a few bad years like the previous years have been, the wind check is very useful and convenient.

No further business appearing, Chairman Wardner adjourned the meeting at 2:00 p.m.

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Christopher S. Joseph  
Counsel

ATTACH:6