

**2021 SENATE ENERGY AND NATURAL RESOURCES**

**SB 2313**

# 2021 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2313  
2/18/2021 AM

A BILL for an Act to create and enact a new chapter to title 49 of the North Dakota Century Code, relating to electric power reliability and price transparency; and to repeal chapter 17-01 of the North Dakota Century Code, relating to the 25x'25 initiative.

Chairman Kreun called the hearing to order at 9:01am  
Senators Piepkorn, Patten, Bell, Schaible, Roers, Kreun all present

### Discussion Topics:

- Base Load and Different Energy Types
- Reliability Factor
- Reliability Penalty
- Resilience
- Firming Requirements
- All of the Above Energy
- Texas Blackouts of 2-15-21 → 2-18-21
- Failures of Wind in Texas
- Natural Gas Failures in Texas
- 30% Threshold concerns
- Reason for North Dakota Blackouts
- Family Way of Life if Coal closes
- Coal Plant Closures
- Green New Deal/Federal Policy
- Climate Change and Extreme Weather
- Future of Coal

**Senator Wardner**, District 37, introduced the bill and testified in favor #6901, #6902 (9:01am)

**Representative Pollert**, District 29, testified in favor (9:32am)

**Micahel Nasi**, Life: Powered, Senior Advisor, testified in favor #6893 (9:39am)

**Geoff Simon**, Western Dakota Energy Association, Executive Director, testified in favor #6898 (10:23am)

**Anna Novak**, a Hazen Resident, testified in favor #6947 (10:31am)

**Perry Schaeffer**, Lignite Energy Council, testified in favor (10:40am)

**Ryan Warner**, Lightspring, testified in opposition #6897 (10:42am)



**Additional written testimony:**

**Zac Smith**, NDARCE, Director of Communications and Government Relations, testified in favor #6887

**Mark Bring**, Otter Tail Power Company, Director of Legislative Affairs, testified in favor #6882

**Justin Dever**, MDU Resources Group Inc., Testified in Favor #6899

**Levi Andrist**, WIND, lobbyist, Testified in Favor #6878

**John Weeda**, Director, North Dakota Transmission Authority, Testified in Favor #6836

**Sonja Kaye**, Fargo Resident, Testified Opposed #6875

**Scott Skokos**, Dakota Resource Council, Executive Director, Testified opposed #6871

Chairman Kreun called the hearing to a close at 11:06am

*Dave Owen, Committee Clerk*

**SENATE BILL NO. 2313**

**Senator Rich Wardner**

**SUMMARY**

**Dispatchable Energy** – a source of energy available for use on demand.

|           |                |               |
|-----------|----------------|---------------|
| Examples: | Energy Storage | Hydroelectric |
|           | Coal           | Natural Gas   |
|           | Biomass        | Nuclear       |

**Non-dispatchable Energy** – a source of energy available under certain conditions.

A source of electricity not generally available for use on demand.

|           |      |       |
|-----------|------|-------|
| Examples: | Wind | Solar |
|-----------|------|-------|

**Firming** – (Back Up) constructing or acquiring through a power purchase agreement sufficient dispatchable electric generation to mitigate by half the reliability penalty imposed on the electric system by non-dispatchable generation.

**Reliability penalty** – the difference between a non-dispatchable energy facility’s average capacity factor during five peak electric demand hours in a year and the dispatchable energy reliability factor.

Reliability factor of gas/coal : 75%    Dispatchable Energy

Reliability factor of a 100 MW wind facility: 30%    Non-dispatchable Energy

**Formula**

Dispatchable Energy – Non dispatchable Energy = Reliability Penalty

Reliability Penalty = Firming Requirement

2

75% Coal - 30% Wind = 45% ( Reliability Penalty)

45% (Reliability Penalty) = **22.5% Firming Requirement**

2

**Resilience** – ability to withstand and reduce the magnitude or duration of a disruptive electric supply or rapidly recovering from such an event.

### **Reliability Standard**

All electricity generated within the state must be dispatchable energy or demonstrate backup capacity through the use of firming.

1. An entity found to be noncompliant is:
  - a. Ineligible for siting.
  - b. May not receive grants, loans, or any financial assistance from any political subdivision of the state or the state of North Dakota.
2. Report and coordinate with the appropriate regional transmission operators to ensure local resilience of generation resources within the state or region.
3. Advocate policies at the regional transmission operator boards from the state to ensure market rules and protocols are implemented by the regional transmission operator to implement this section on reliability standards.
4. Encourage research institutes, the transmission authority, and the state's research universities to partner, with industry to implement carbon capture and storage technology.
5. Generation facilities in excess of an aggregate of twenty-five megawatts must report to the Transmission authority a range of forecasts covering the next five years.
6. The plans received in #5 must be updated and received by the transmission authority every two years before September 1, 2022.

21.0748.04006  
Title.

Prepared by the Legislative Council staff for  
Senator Bell

February 16, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2313

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 17-05-05 and 17-05-13 of the North Dakota Century Code, relating to the powers of the transmission authority and the transmission authority's reporting requirements; and to repeal chapter 17-01 of the North Dakota Century Code, relating to the 25x'25 initiative.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 17-05-05 of the North Dakota Century Code is amended and reenacted as follows:

**17-05-05. Powers.**

The authority has all powers necessary to carry out the purposes of this chapter, including the power to:

1. Make grants or loans and to provide other forms of financial assistance as necessary or appropriate for the purposes of this chapter;
2. Make and execute contracts and all other instruments necessary or convenient for the performance of its powers and functions under this chapter;
3. Borrow money and issue evidences of indebtedness as provided in this chapter;
4. Receive and accept aid, grants, or contributions of money or other things of value from any source, including aid, grants, or contributions from any department, agency, or instrumentality of the United States, subject to the conditions upon which the aid, grants, or contributions are made and consistent with the provisions of this chapter;
5. Issue and sell evidences of indebtedness in an amount or amounts as the authority may determine, but not to exceed eight hundred million dollars, plus costs of issuance, credit enhancement, and any reserve funds required by agreements with or for the benefit of holders of the evidences of indebtedness for the purposes for which the authority is created under this chapter, provided that the amount of any refinancing shall not be counted toward such eight hundred million dollar limitation to the extent it does not exceed the outstanding amount of the obligations being refinanced;
6. Refund and refinance its evidences of indebtedness;
7. Make and execute interest rate exchange contracts;
8. Enter lease-sale contracts;

Option 2:  
Transmission  
Authority  
(Weeda)  
NDTA  
Report to  
Leg management  
Industrial  
Commission  
MISO  
SPP

9. Pledge any and all revenues derived by the authority under this chapter or from a transmission facility, service, or activity funded under this chapter to secure payment or redemption of the evidences of indebtedness;
10. To the extent and for the period of time necessary for the accomplishment of the purposes for which the authority was created, plan, finance, develop, acquire, own in whole or in part, lease, rent, and dispose of transmission facilities;
11. Enter contracts to construct, maintain, and operate transmission facilities;
12. Consult with the public service commission, regional organizations, and any other relevant state or federal authority or persons as necessary and establish reasonable fees, rates, tariffs, or other charges for transmission facilities and all services rendered by the authority;
13. Lease, rent, and dispose of transmission facilities owned pursuant to this chapter;
14. Investigate, plan, prioritize, and propose corridors of the transmission of electricity;
15. Participate in and join regional transmission organizations; ~~and~~
16. Participate in studies of transmission options for the purpose of identifying opportunities for private transmission investment or private public investment options in transmission which will increase opportunity for export from the state consistent with maintaining a stable grid for the load serving entities in North Dakota; and
17. Do any and all things necessary or expedient for the purposes of the authority provided in this chapter.

**SECTION 2. AMENDMENT.** Section 17-05-13 of the North Dakota Century Code is amended and reenacted as follows:

**17-05-13. Reporting requirements.**

1. The authority shall deliver a written report on its activities to the legislative council each biennium. Notwithstanding chapter 54-60.1, the authority shall provide an annual report to the industrial commission detailing activities and expenditures incurred during the preceding year.
2. The authority shall deliver a written report on the status of the resilience of the electric grid to the legislative council and the industrial commission by September 1, 2022, and annually thereafter. The report must be forwarded by the industrial commission to the regional transmission operators in the state.
  - a. The information for the report should be collected from publicly available information to the extent possible. If public information is unavailable, the authority shall request a generation facility and a transmission owner to provide the information needed to complete the report.

- b. The report may be a short-term and long-term projection of the following:
- (1) The adequacy of the state's electric grid to meet the demands of load within the state and to continue to export electricity from the state;
  - (2) The resilience of the state's electric grid, including local resilience; and
  - (3) The plans of generation owners, developers, or operators to add or remove generation assets connected to an independent system or regional transmission operator in excess of an aggregate of twenty-five megawatts.

**SECTION 3. REPEAL.** Chapter 17-01 of the North Dakota Century Code is repealed."

Renumber accordingly





# **THE IMPORTANCE OF ELECTRIC RELIABILITY & RESILIENCE –** *Houston, We Have a Problem. . .*

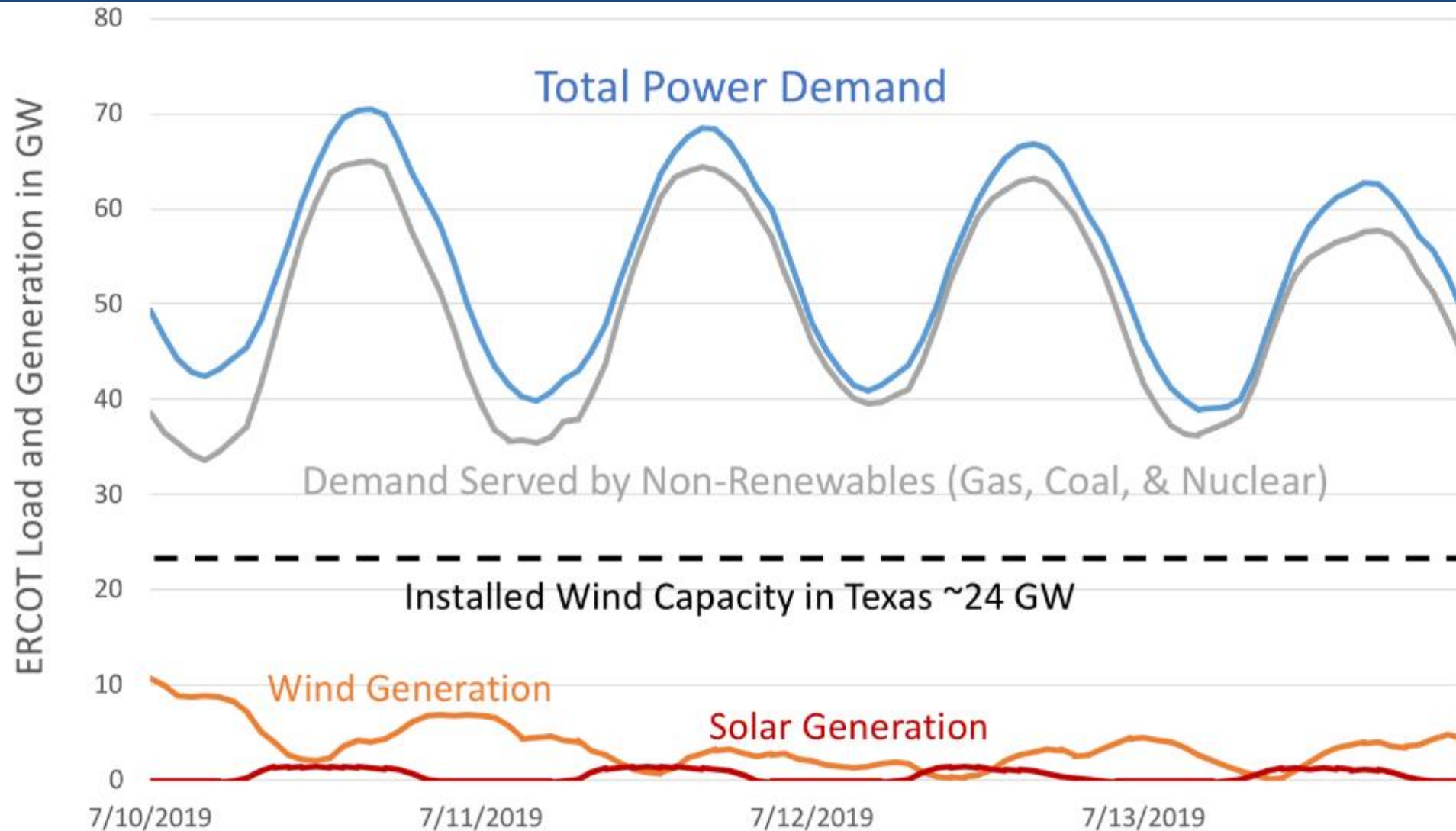
Mike Nasi

Senior Advisor, *Life:Powered*

Testimony Before the North Dakota

February 18, 2021

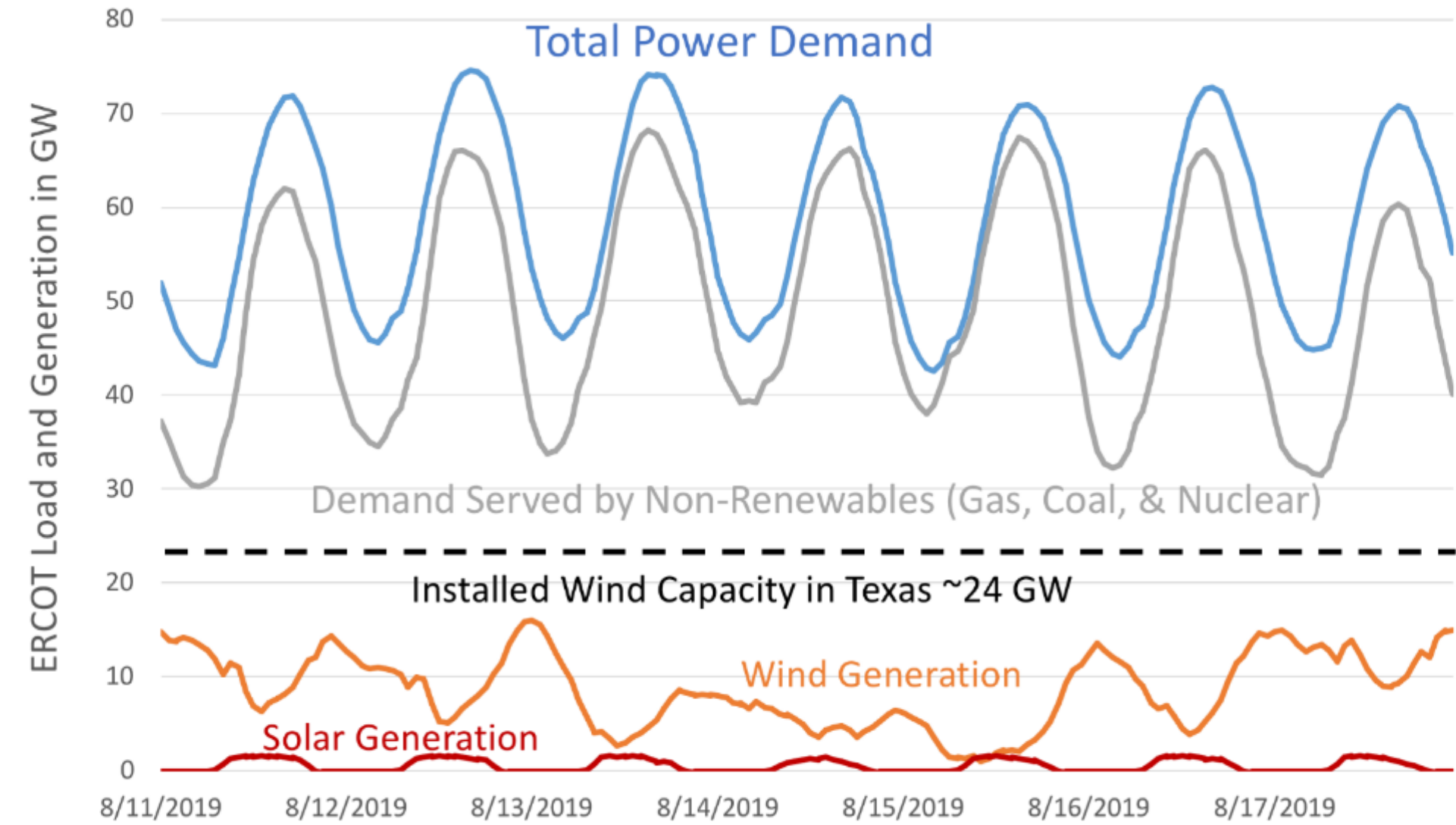
# Off-Peak Exuberance vs. Peak Reality – TX (7/19)



Source: Life:Powered (based on ERCOT market data)(2019)

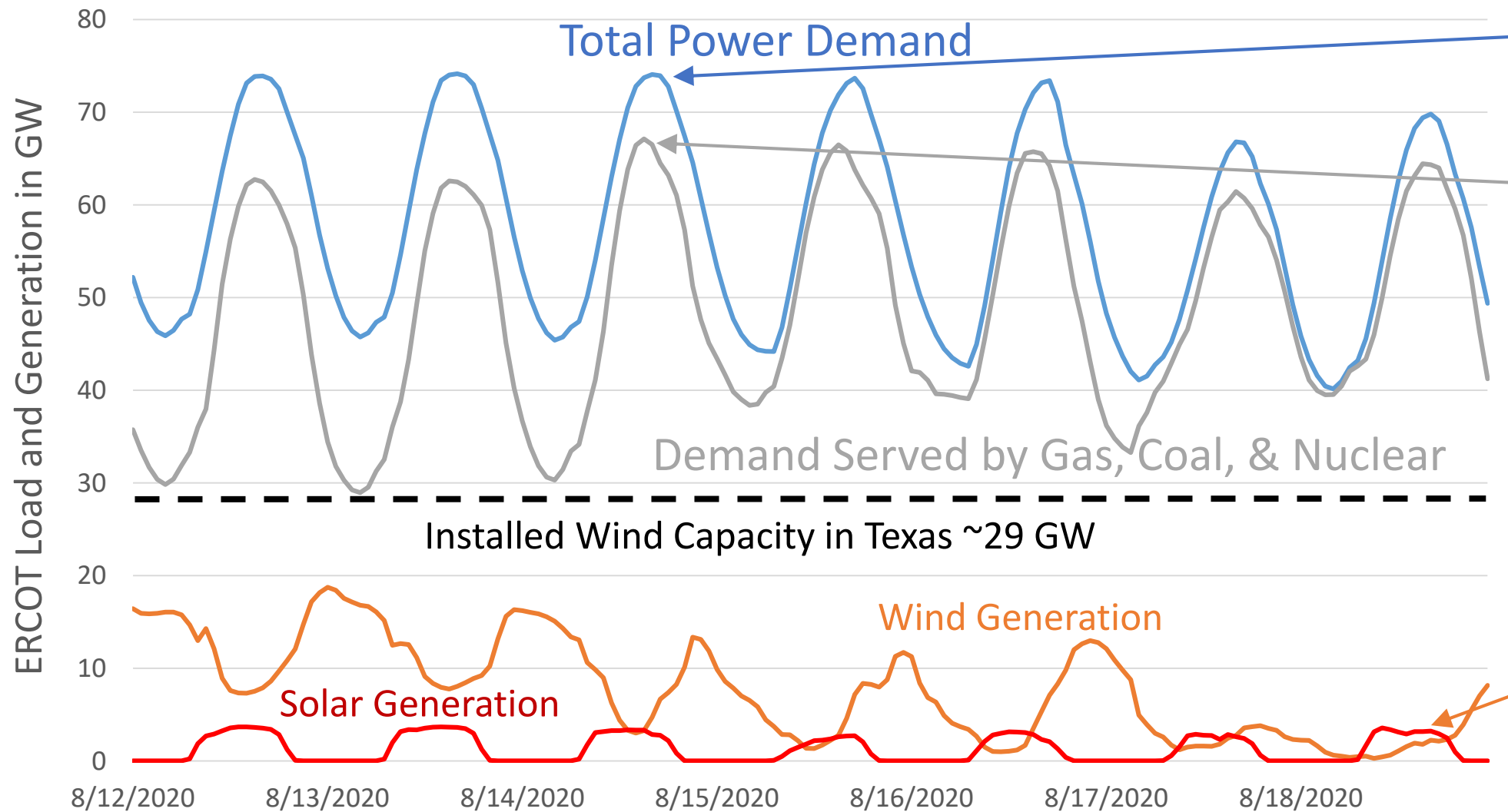


# Off-Peak Exuberance vs. Peak Reality – TX (8/19)



Source: Life:Powered (based on ERCOT market data)(2019)

# Dodging a Bullet Last Summer: August 12 – 18, 2020



Aug. 14: Total demand = 73,740 MW at 4 PM

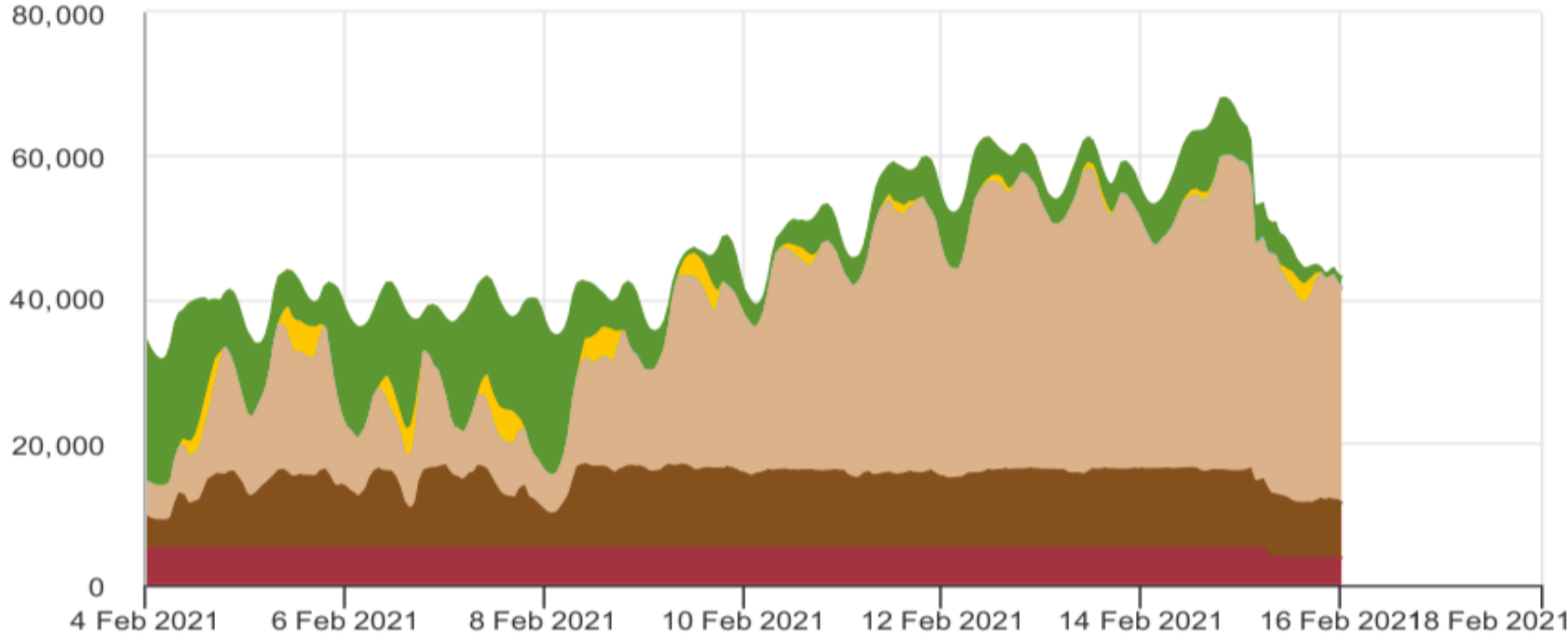
Demand served by gas, coal, and nuclear = 67,129 MW at 4 PM

Compare to Aug. 13, 2019 emergency, where gas, coal, and nuclear served 68,268 MW

Add 2,500 MW of demand (pre-COVID forecast) or 1,500 MW less wind (as on Aug. 18), and TX would have had a major emergency.

# The Bullet Hit This Time: February 15 – 17, 2022

megawatthours

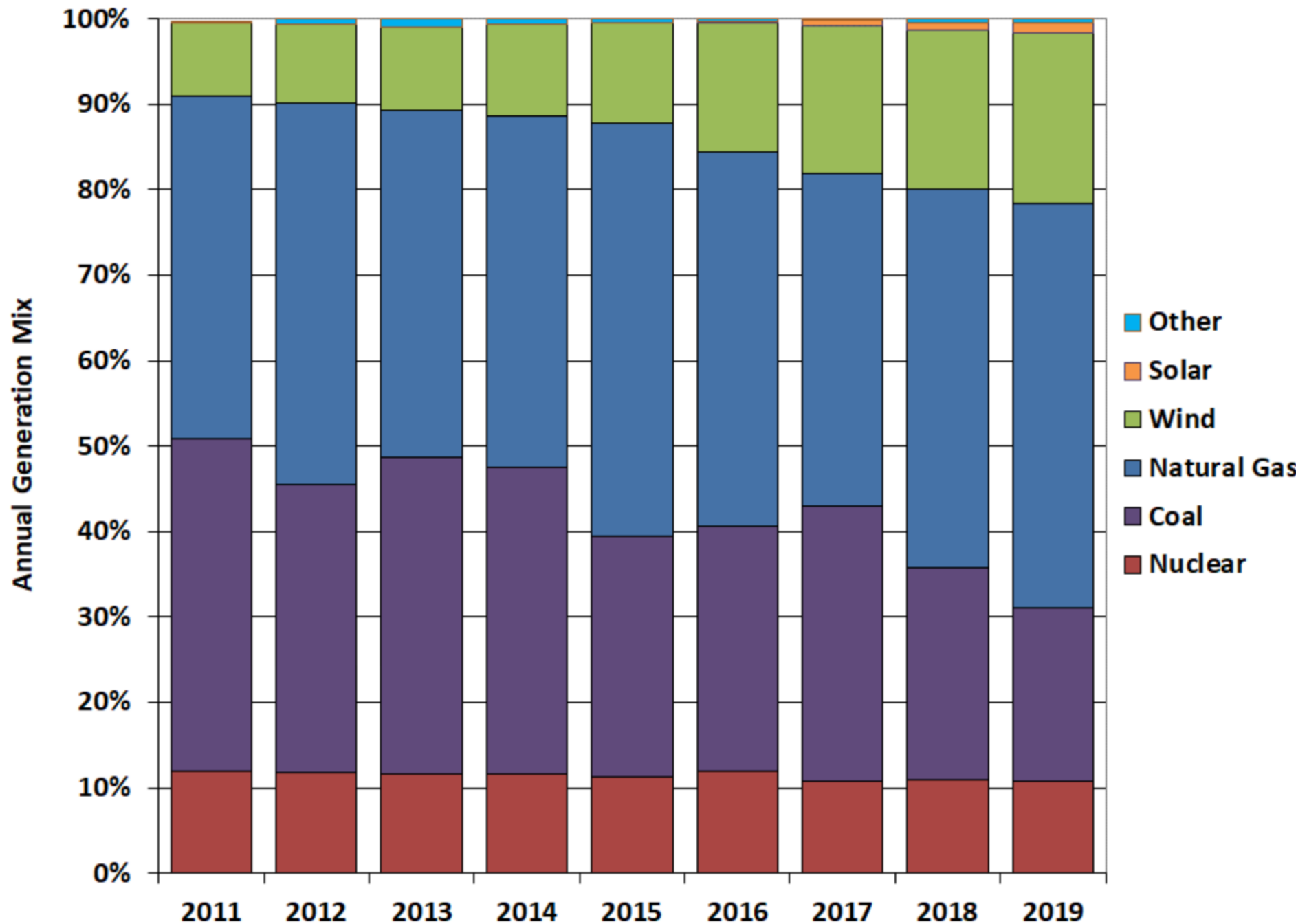


Wind Solar Hydro Other Natural gas Coal Nuclear



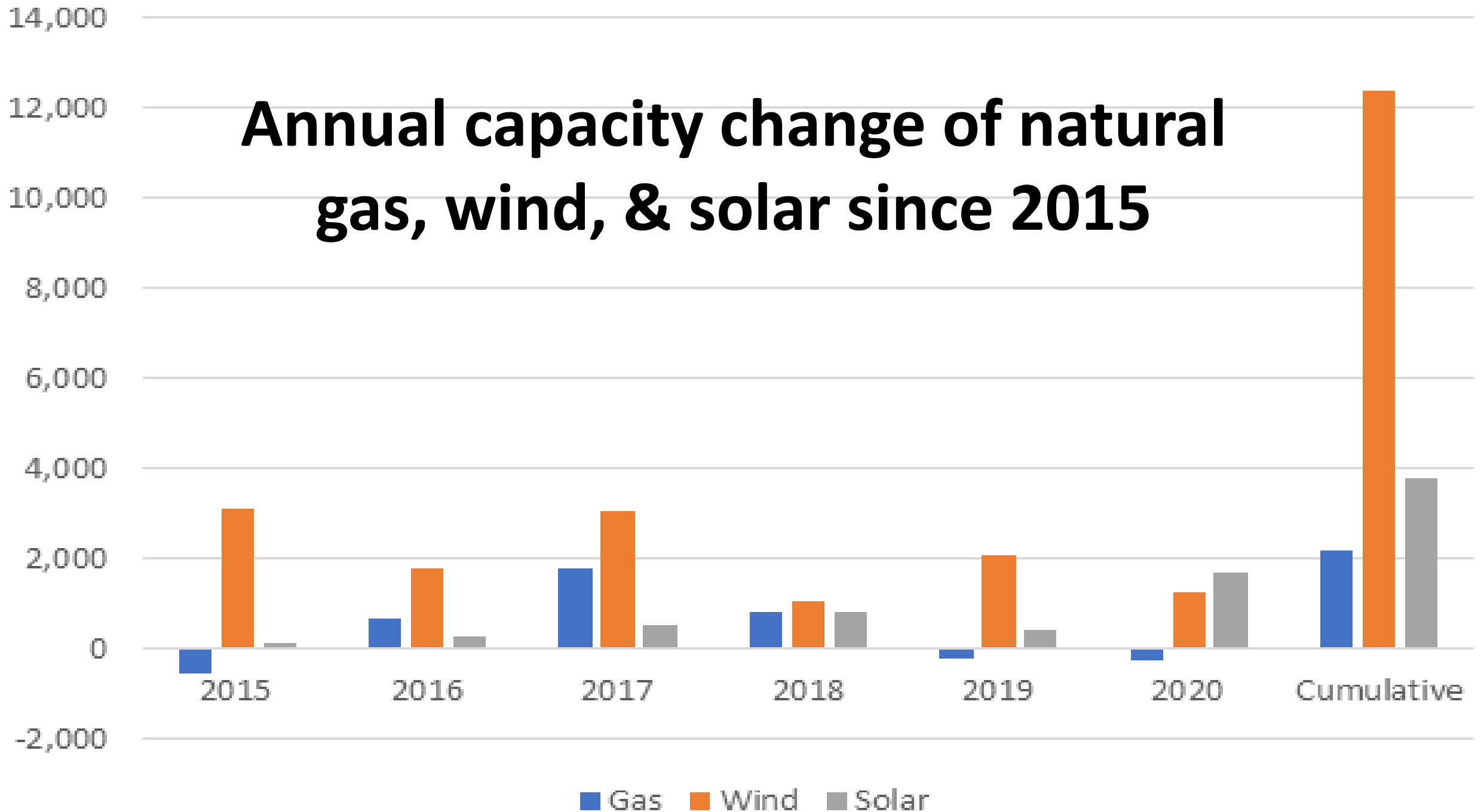
Source: U.S. Energy Information Administration

# How Did the Texas Market Go From The Envy of the World to This Cautionary Tale?



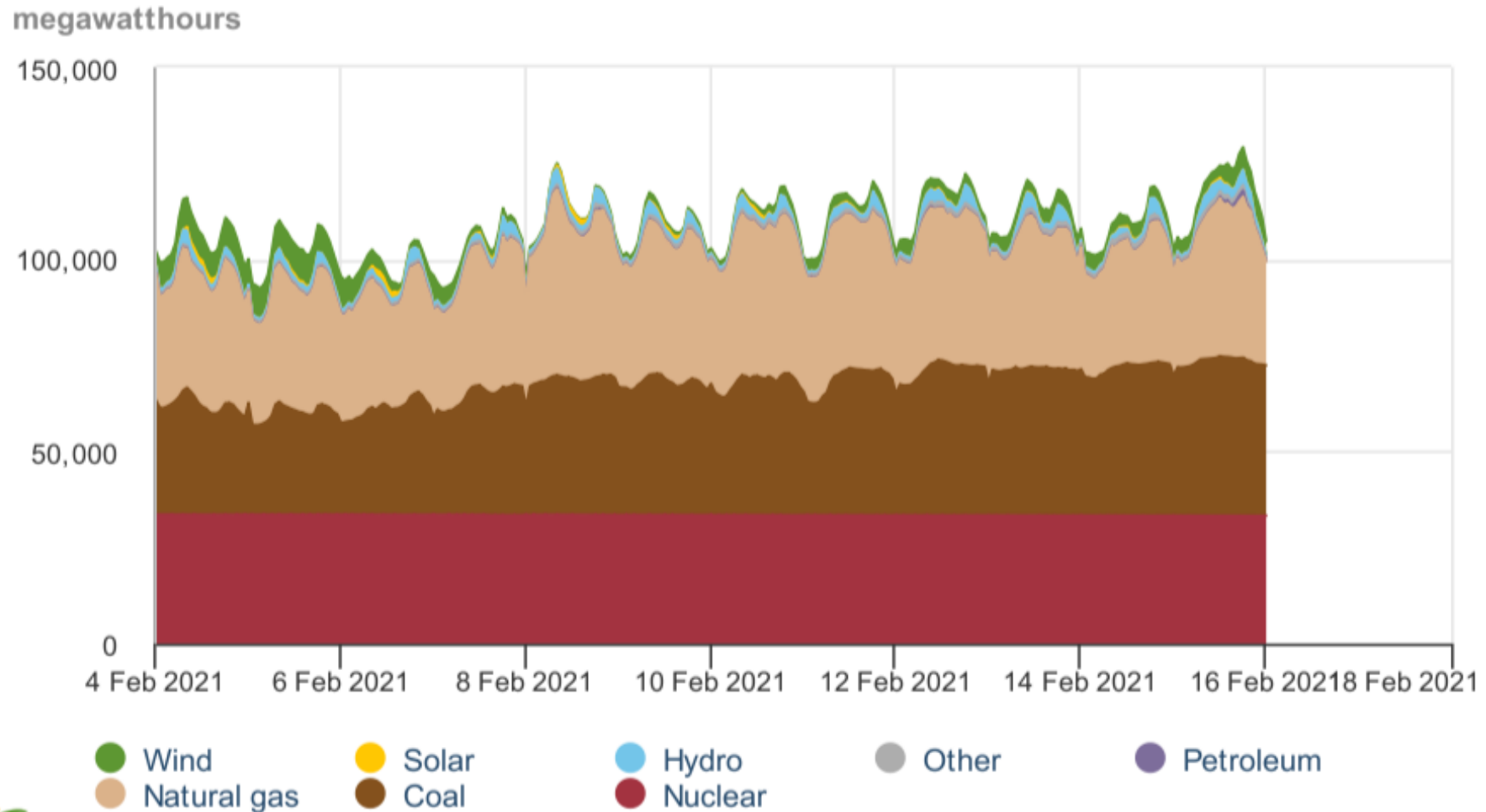
SOURCE: Texas Independent Market Monitor

# Annual capacity change of natural gas, wind, & solar since 2015



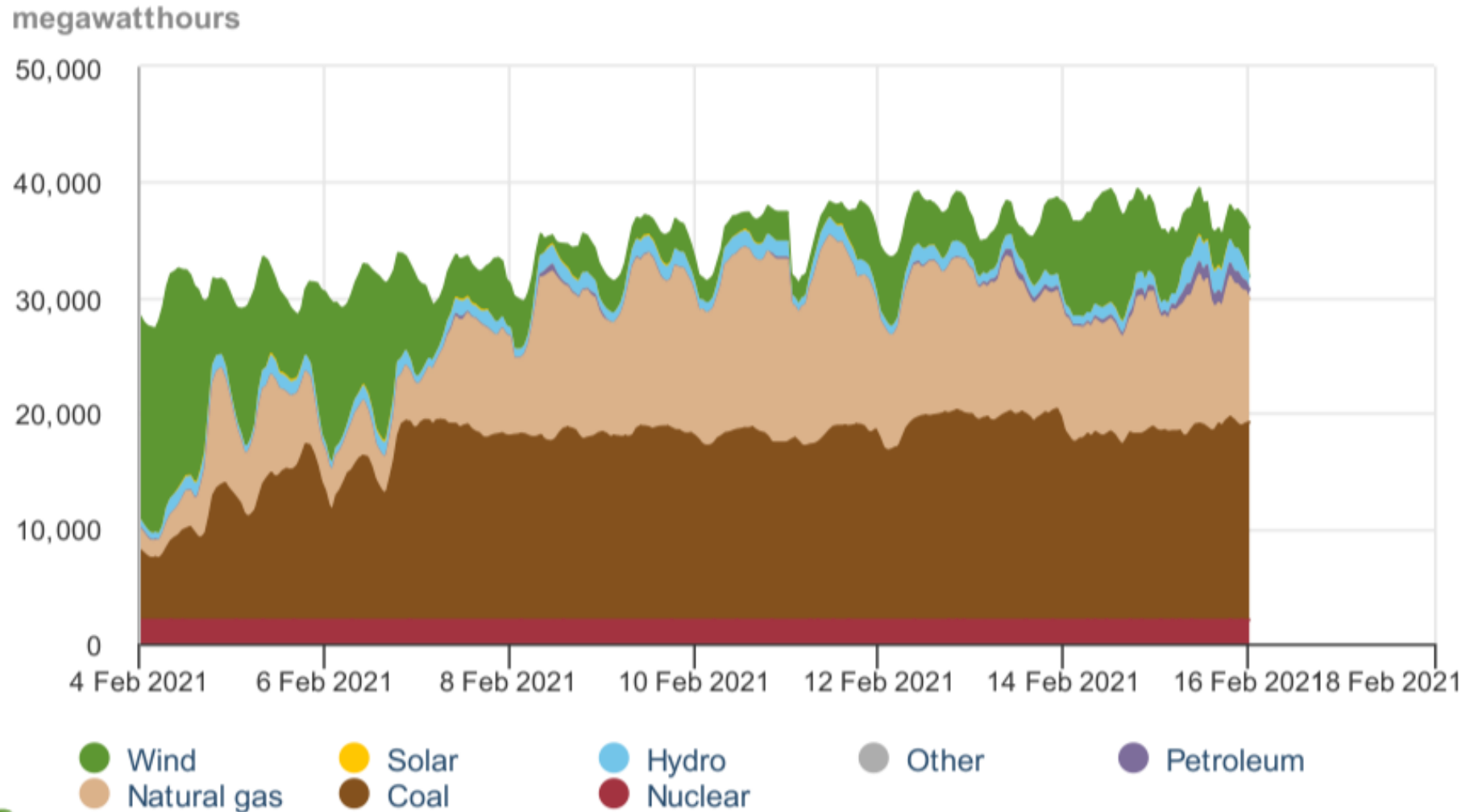
# THE CAUTIONARY TALE IS EVERYWHERE

PJM Interconnection, LLC (PJM) electricity generation by energy source 2/4/2021 – 2/17/2021, Eastern Time



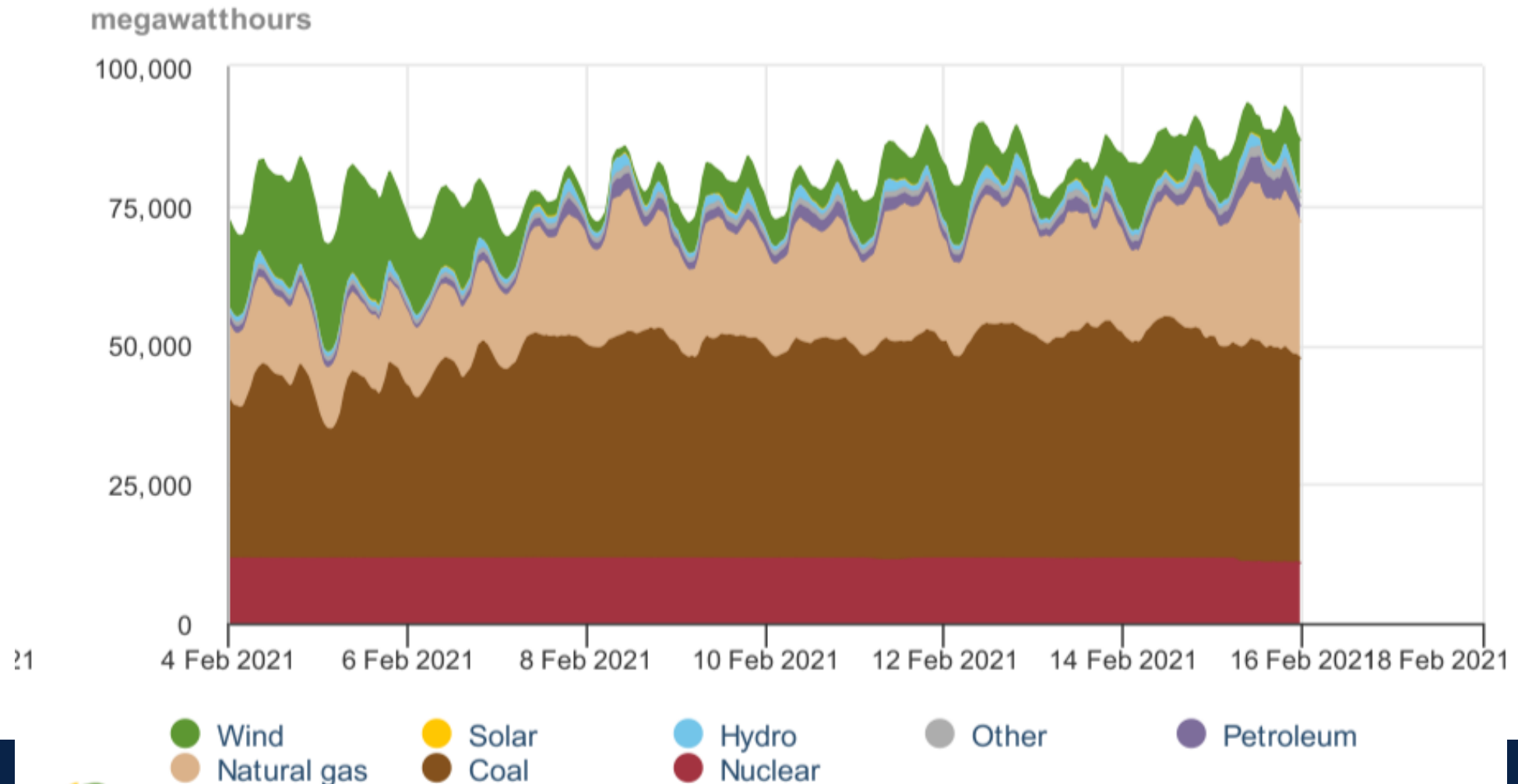
# THE CAUTIONARY TALE IS EVERYWHERE

Southwest Power Pool (SWPP) electricity generation by energy source 2/4/2021 – 2/17/2021, Central Time



# THE CAUTIONARY TALE IS EVERYWHERE

Midcontinent Independent System Operator, Inc. (MISO) electricity generation by energy source 2/4/2021 – 2/17/2021, Central Time

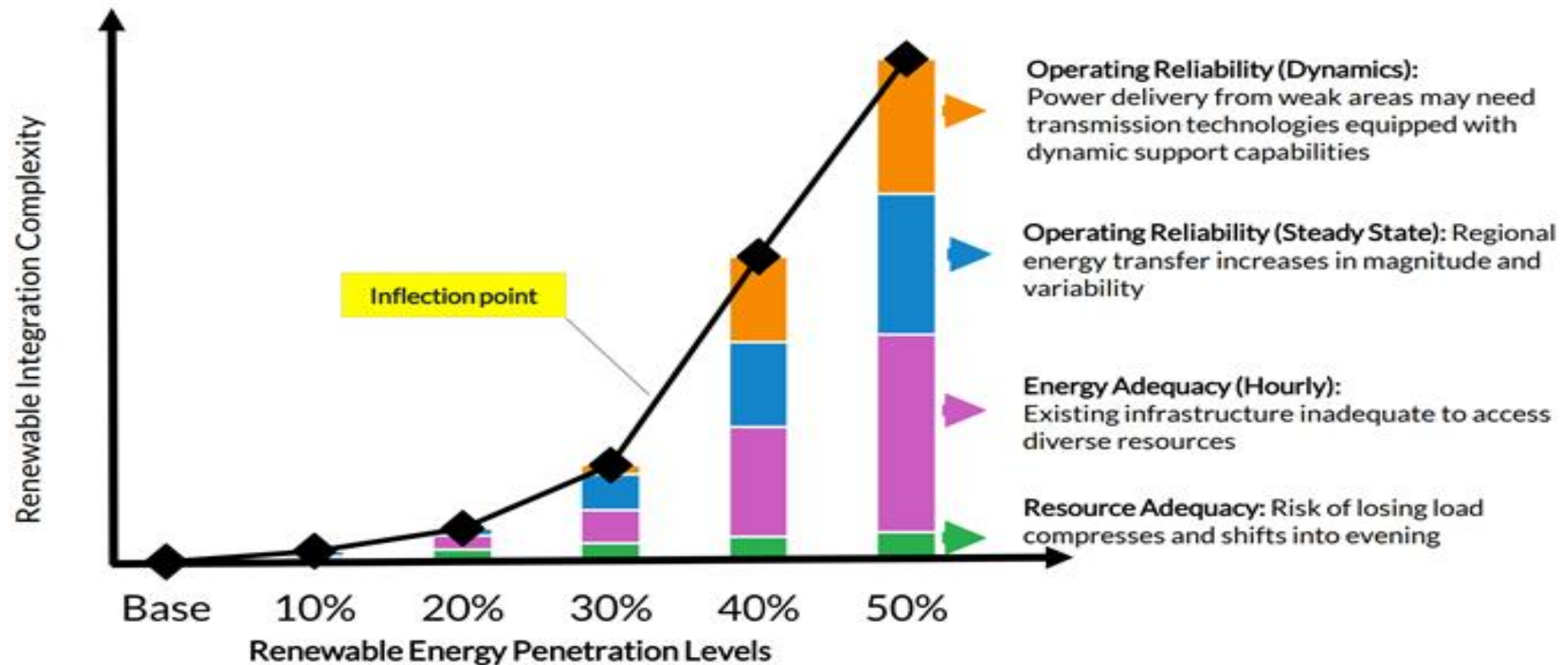


Source: U.S. Energy Information Administration



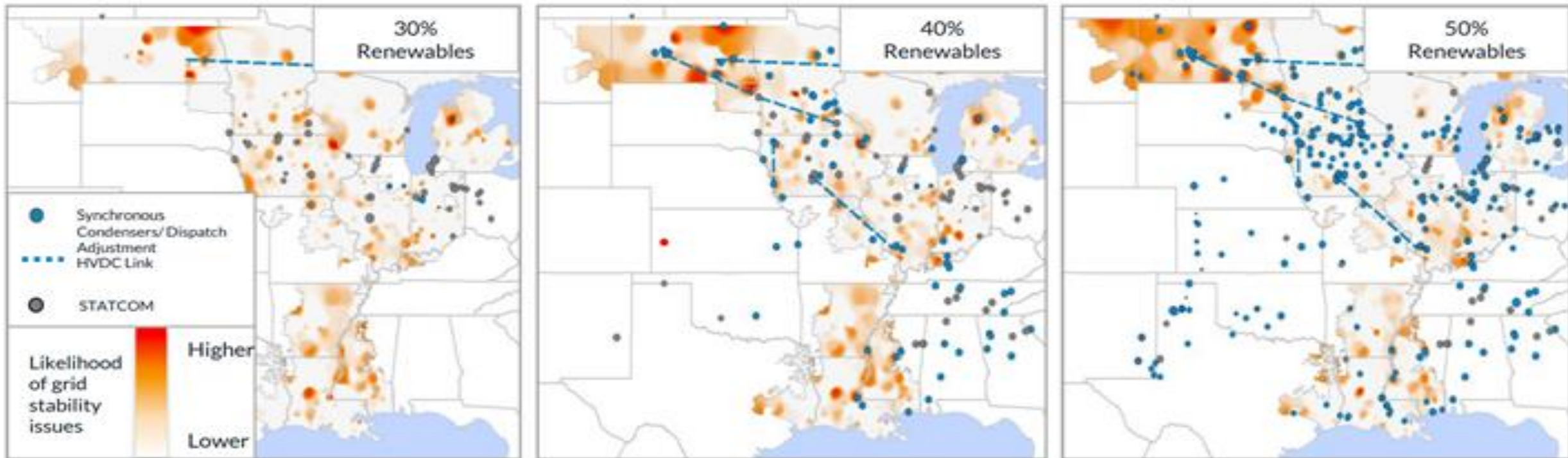
# MISO Warning of System Stability Issues

These resource changes will significantly impact grid performance with complexity increasing sharply after 30% penetration levels



# MISO Warning of System Stability Issues

Beyond 30%, system-wide voltage stability is the main driver of dynamic complexity and requires transmission technologies equipped with dynamic-support capabilities



\* Maps reflect cumulative issues/solutions across milestones

# Okay, Lesson Learned, Now What Do We Do?

## State-Established Reliability (and/or “Firming” Requirements)

- Like renewable portfolio standards, but focused on grid reliability and resilience – must be uplifted to RTOs
  - *(MISO recently confirming that they are “policy takers, not makers”)*
- Non-dispatchable resources could be made to procure dispatchable power to mitigate against the reliability/resilience penalties they impose on the grid
- In states with aggressive low carbon goals, CCUS, nuclear, and batteries can compete on level playing field.



# REMEMBER TO ASK: WHY WOULD WE ENDANGER LIVES & ENERGY SECURITY

## When Domestic Power Sector Carbon Reductions Don't Move the Needle

### 2050 IMPACT OF DECARBONIZING ELECTRICITY:

- NO COAL FLEET = 2.06 ppm (0.4%) reduction in CO<sub>2</sub> concentration.
- NO FOSSIL FLEET = 3.3 ppm (0.7%) reduction in CO<sub>2</sub> concentration.
- Modeled global temperature reduced by a mere 0.016°C.

### 2050 IMPACT OF DECARBONIZING ENTIRE U.S.:

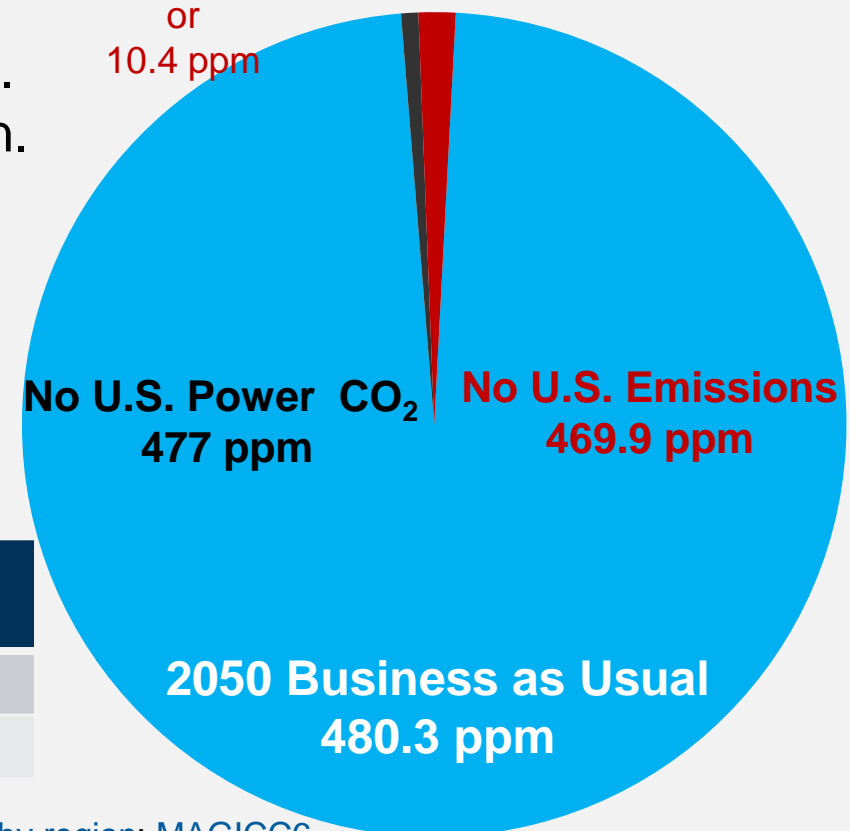
- 10.4 ppm (2.2%) reduction in CO<sub>2</sub> concentration.
- Modeled global temperature reduced by 0.053°C.

Modeled CO<sub>2</sub> Reduction

3.3 ppm

or

10.4 ppm



| CO <sub>2</sub> Emissions | 2010   | 2020   | 2030   | 2040   | 2050   | % Change |
|---------------------------|--------|--------|--------|--------|--------|----------|
| World                     | 30,834 | 34,972 | 36,398 | 39,317 | 42,771 | +38.7%   |
| U.S.                      | 5,571  | 5,260  | 4,839  | 4,867  | 5,071  | -8.9%    |

Sources: Energy Information Administration, International Energy Outlook 2017, [World carbon dioxide emissions by region](#); [MAGICC6 Model](#); Intergovernmental Panel on Climate Change Fifth Assessment Report Working Group I, [Summary for Policymakers](#); National Oceanic and Atmospheric Administration [Global Land and Temperature Anomalies](#).



# NEW ANIMATED EDUCATIONAL VIDEO SERIES ON ELECTRICITY & ENVIRONMENTAL TECHNOLOGY ([www.LifePowered.org](http://www.LifePowered.org))



**VIDEO 1 - Energy 101: Why We Need Electricity**

<https://youtu.be/ZfrBnddgFAU>

**VIDEO 2 - Energy 101: The Electric Grid**

<https://youtu.be/WiMtU6O1SxM>



**VIDEO 3 - Energy 101: Where Electricity Comes From**

<https://youtu.be/AKuoleupGHc>

**VIDEO 4 - Energy 101: Energy Density**

<https://youtu.be/6d-HGzZHPG4>

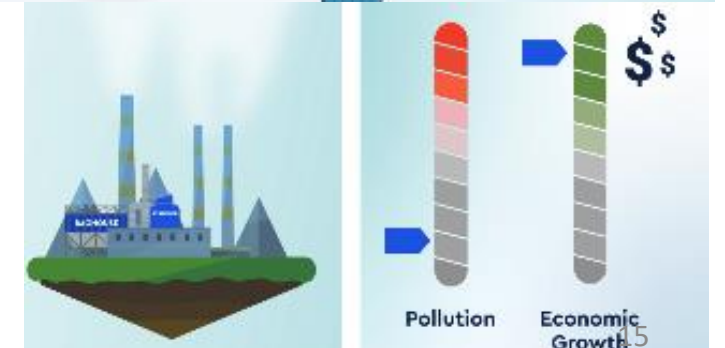


**VIDEO 5 - Energy 101: Mining and Rare Earths**

<https://youtu.be/yu3mkFpiGmo>

**VIDEO 6 - Energy 101: Environmental Technology**

<https://youtu.be/aodsngzbZqA>





# QUESTIONS / FOLLOW-UP?

Mike Nasi

Senior Advisor, *Life:Powered*

[mnasi@jw.com](mailto:mnasi@jw.com)

512-736-9200



# WESTERN DAKOTA ENERGY ASSOCIATION

February 18, 2021

## EXECUTIVE COMMITTEE

Shannon Holter  
President  
City of Bowbells

Trudy Ruland  
Vice President  
Mountrail County

Supt. Leslie Bieber  
Alexander PSD

Daryl Dukart  
Dunn County

Zach Gaaskjolen  
City of Stanley

Supt. Shon Hocker  
Dickinson PSD

Supt. Tim Holte  
Stanley PSD

Lyn James  
City of Bowman

David Montgomery  
Williams County

John Phillips  
Coal Conversion  
Counties

Supt. Brad Rinas  
Washburn PSD  
Coal Conversion  
Counties

Testimony of:

Geoff Simon, Lobbyist #144  
in support of SB 2313  
Senate Energy and Natural Resources Committee

Chairman Kreun and Committee members:

On behalf of the city, county and school district members of the Western Dakota Energy Association (WDEA), we wish to express the urgent need for Senate Bill 2313.

To put it bluntly, energy policy in America is a mess, particularly as it pertains to the electric markets, and again putting it bluntly, it will only get worse under the Biden administration. One would have hoped that the rolling blackouts this past week would be a ringing wake-up call to energy policy makers. But predictably, even though the evidence clearly indicates that over-dependence on so-called renewable resources was the culprit, the White House press secretary yesterday blamed a few coal and natural gas plant outages in Texas. And even worse, rather than pointing the finger at poor energy policy and poor planning where it rightly belongs, we witnessed elements of the mainstream media blaming “climate change” for the blackouts.

Policy makers at the federal level will try to deflect from this very real and serious problem to continue pursuit of their climate agenda. But every North Dakotan should understand this a problem we cannot afford to ignore. WDEA has heard in previous testimony this session that MISO and the Southwest Power Pool have evaluated the problem with the region’s growing penetration of intermittent generation. The grid operators know there are limits to renewable integration, and they will also tell you we need baseload generation to back up the intermittent generation. Therein lies the problem. As more and more wind generation is brought onto the grid, electrons from those wind farms displace electrons that would otherwise be generated by North Dakota’s coal fleet. And that takes money out of the pocket of the utilities that operate the plants. So what are federal policy makers, MISO and SPP doing about compensating coal plants for reliability? Next to nothing.

The Utility Working Group – our state’s cooperative and investor-owned utilities – will tell you they did not ask for this bill, and they are here to either oppose this bill or water it down to an interim study. But those same utilities have testified on other bills aimed at ensuring grid reliability in North Dakota, and told us the ISOs have it under control and we have nothing to be concerned about. But this week we saw rolling blackouts in Bismarck and elsewhere in North Dakota. Capitol Electric customers experienced an outage Tuesday morning when the temperature was 12 below zero. If that’s not a wake-up call that North Dakota needs to take measures to prevent a similar occurrence, we’re not sure what it will take.

WDEA applauds the initiative of Senator Wardner for introducing this important legislation, and urges the committee to support the passage of SB 2313.

Thank you for the opportunity to submit testimony.

Western Dakota Energy Association  
1661 Capitol Way, Bismarck ND 58501  
www.ndenergy.org • 701-527-1832

Mr. Chairman, members of the committee, my name is Anna Novak and I am here today to testify in favor of bill 2313. I would like to state that I am also in favor of Resolution 4012. I'm representing no group, only myself... but I feel like am representing the over 13,000 people employed by the state's lignite industry as well as their families. I'm from Hazen and have lived in Mercer County the vast majority of my life. My husband Loren and I met while I was living in Bismarck after finishing my college education. But after we were married and started a family, he got a job at a coal mine north of Beulah. The 1 ½ hour commute from Bismarck to Beulah proved to be too much for our family so we moved to my old stomping grounds. 8 years later, we have 4 boys, ages 3 to 11. Truly, I am thankful every day that my children get to grow up in a place where their childhoods can still be innocent.

There are 3 coal-fired power plants, 3 coal mines and the Dakota Gasification Synfuels Plant in Mercer County. To say that coal is the lifeblood of our communities is almost minimizing how important it is to all of us back home. And McLean County and Oliver County are no different.

For years, supporters of coal have been warning of blackouts because of overreliance on renewables. With each coal-fired power plant that closed, we would grow more and more concerned about blackouts but we were painted by wind lobbyists and unrealistic environmentalists as people who just didn't care about the earth and "stupid" to not realize how efficient renewables are. But the last two weeks have basically been a promotional piece put together by nature, making us look and feel like prophets. And I have to hand it to our leaders in North Dakota, because you have seen the value of the coal industry, for the jobs and tax revenue, for a long time. A lot has been done to protect the industry. More recently, there has been concern about ensuring our state has reliable, baseload power. This bill is an example of that.

I don't know the inner workings of the Regional Transmission Organizations. But I do know that we are told time and time again that they are reliable and that we don't have to worry about power outages. But California experienced them last fall, Texas is still experiencing them today, after several days of rolling power outages, as have many here across our state in SPP in the past week. That is not reliability! The RTO's use policies enacted by the states they represent, they don't make their own rules. But on the opposite end, we are also told that enacting a Baseload Portfolio Standard isn't constitutional, which is baffling to me considering that the state of California has renewable energy mandates in place since 2016. Aside from having opposite goals, how is bill 2313 any different than the renewable mandates that California put into place?

As you know, MISO and SPP are our local RTO's. On Monday, SPP declared a Level 3 energy emergency alert because of extreme cold across the US. In the SPP, the price is typically around \$30 per megawatt. There were times on Monday and Tuesday that they were charging up to \$47,000 per megawatt, when they were experiencing rolling power outages. What I found interesting about those things in particular was that just 2 days prior to the energy debacle, there was an article in the Fargo Forum, where possible power outages were discussed. The sponsor of this bill, Senator Wardner, was interviewed for the article and warned of the very scenario we are experiencing here in ND. However, Carlee McCloud, President of the Utility Shareholders of North Dakota, said in the article that the state's grid is both adequate and reliable for the time being – and worries of rolling brownouts are baseless. Unfortunately, our state experienced rolling power outages across the state just days after she made



that statement. I wouldn't consider a nearly 1600% increase in electricity prices or rolling brownouts in North Dakota adequate or reliable.

As this worst-case scenario was unfolding before my eyes earlier this week, I really started to become scared. Two of North Dakota's coal-fired power plants are either rumored to be or have announced plans to shut down – 40%. Coal Country remains hopeful discussions continue on a potential purchase of Coal Creek Station. But there is no certainty there. Rumors circled last week about Leland Old's Station closing after an email was sent to the employees at the plant by another employee. The email said Unit 1 would be shut down in 2025 and Unit 2 would be shut down in 2030. Basin Electric later clarified that they had no immediate plans to close the plant, that it was a misunderstanding because at their January board meeting, they made the decision to accelerate the depreciation of its coal assets and that the "end of depreciated life" for units 1 and 2 didn't determine the useful operation of the plant. I hope and pray Leland Olds is open for years to come. But two things struck me when I read their response. The first is that accelerating depreciation of the assets of the plant is exactly what Great River Energy did with Coal Creek Station a few years before they announced their plans to shut the plant down. And the second thing is that the email wasn't sent from a random employee that was a low man on the totem pole...it was the plant manager. After the tough year those in North Dakota's lignite industry have had, it's hard for us to believe that there is zero truth to the email. I guess only time will tell what happens.

The utilities and RTO's are not the enemy here and I am certainly not trying to make them out to be so. I want to be clear in saying that I am thankful for their services and am grateful to have electricity. What is going on with the grid was not intentional. My point is that they ALL have said that there is nothing to worry about in terms of grid reliability and that power outages will not happen. But we have seen evidence just this week that it can and does happen...next time, they can no longer use the word "unprecedented" when talking about power outages. And these will occur more frequently the more baseload power sources go offline. These organizations are driven by government subsidies and profits, because they are businesses...and at the end of the day, they aim to reduce their costs and make money. Their focus is not about keeping good paying jobs in North Dakota, the well-being of our state's economy, and making sure North Dakotans are protected from political decisions made by the boards at the utilities in other states...that is our state legislature's job.

I am here today – a life-long resident of North Dakota, a mother of four choosing to raise my family here, the wife and daughter of a coal miner, and community member that knows my town will be devastated if we don't take action. Please, don't accept business as usual when it comes to how utilities are operating. As the market changes, the regulations must change too. Our policy makers – all of you – need to make clear North Dakota wants to keep our baseload power operational. Don't take away our way of life by inaction. Don't make North Dakotans pay unreasonably high power rates, sacrificing our people, our families and our communities all to serve other states' mandates and federal policies. We need leadership from all of you, standing strong in the face of uncertainty. Please – do what you know is right for our citizens and vote to keep what we've already built – affordable, reliable electricity powered by coal.

And with that, I'll stand for questions.



**February 18th, 2021**

**Re: Testimony in Opposition to SB 2313**

Chairman Kreun, and members of the Committee, my name is Ryan Warner. I am the co-owner of LightSpring, an energy technology company in Bismarck.

This is a very timely bill given the recent grid disruptions we've been experiencing. As such, before we get started I'd like to review what happened this week as a way to frame today's discussion.

As most in this room know, grid operators in Texas and the SPP use sophisticated models that draw from historical weather data and electricity usage patterns to manage and predict demand. However, when an unprecedented weather event strikes - like snow and cold weather in Texas - grid demand can skyrocket<sup>1</sup> at the same time that production grinds to a halt.<sup>2</sup>

Digging deeper into this disruption, we now know that the cold and snow in Texas threw nearly 50% of the grid's natural gas generation sources offline.<sup>3</sup> This was due to gas well freeze offs cutting production, as well as weather-related shutdowns and the prioritization of gas line capacity for home heating use. This loss of natural gas due to extreme weather was the equivalent of nearly 26 gigawatts of capacity.

During this time of crisis, renewable resources like wind and solar performed admirably, with output only briefly dropping below projection for extreme contingency planning scenarios.<sup>4</sup>

Sure, it is also true that some windmills did ice up. This is because windmills in Texas are not outfitted with blade heaters to prevent icing. That said, the ones that did not ice up actually over-performed relative to their projected output. All in all, when rolling blackouts started occurring, wind generation was relatively high and solar production was

---

<sup>1</sup> ERCOT recorded their largest ever winter electric demand peak on February 14th, 2021.

<sup>2</sup> Weather-related outages occurred across all generation sources. According to Dan Woodfin, a senior director for the Electric Reliability Council of Texas, frozen instruments at natural gas, coal and even nuclear facilities, as well as limited supplies of natural gas, are the main reasons behind the blackouts in Texas. See

<https://finance.yahoo.com/news/texas-grid-official-expects-power-142722753.html>

<sup>3</sup> <https://twitter.com/JesseJenkins/status/1361348544154664961>

<sup>4</sup> <https://energycentral.com/c/gr/observations-winter-electric-reliability-event-south-central-us>

abnormally high on both Monday and Tuesday this week.<sup>5</sup>

Now, here in North Dakota, SB 2313 seeks to create “grid reliability” by mandating non-dispatchable sources of electricity secure firming contracts to ensure they have enough capacity to meet the “reliability standard”. Unfortunately, firming contracts do not actually increase reliability.

This is because firming contracts are basically a form of insurance for non-dispatchable resources that allow them to guarantee capacity in their power purchase agreements even during times when the wind is not blowing or the sun is not shining.

But insurance is a form of financial hedging; it does not prevent catastrophe, it is simply a compensation mechanism that kicks in after a catastrophe happens. Much like life insurance doesn't prevent you from dying, the firming requirement in SB 2313 will not prevent the grid from failing.

In fact, all the firming requirement does is require that renewable energy subsidize the uneconomic operation of coal-fired power plants<sup>6</sup>. Even if this same law was in place in Texas last week, that grid would have still failed because the supposedly “dispatchable” energy of natural gas and coal was unable to dispatch due to the weather conditions.

You might be asking, well, what does create reliability?

That's simple, reliability is a function of diversity. This is because all energy sources can be disrupted, and therefore being overly dependent on any one source just isn't smart. If half of your capacity is in natural gas - like the grid in Texas - then adding more natural gas actually provides diminishing returns for reliability.

In short, accounting for correlated outages like the kind that occurred in Texas and in the SPP this week indicate that generation diversity is the best way to manage unpredictable severe weather events.<sup>7</sup>

Conversely, SB 2313 - if implemented - would actually result in less generation diversity because the firming requirement foists regulatory and monetary hurdles onto renewable resources. In other words, this “grid resiliency” bill will actually make our grid less resilient!

---

<sup>5</sup> This is likely because the efficiency of solar panels is markedly improved by cold weather.

<sup>6</sup> Basin's Coal Creek power plant is estimated to have lost over 21 million dollars between 2015 and 2017 due to running the plant when it would have been cheaper to purchase power from the market instead. See

<https://www.cureriver.org/wp-content/uploads/2020/02/UCS-Issue-Brief-Minnesota-Electric-Cooperatives-and-Out-of-State-Coal-Plants.pdf>

<sup>7</sup>

[https://www.andrew.cmu.edu/user/fs0v/papers/CEIC\\_17\\_02R1%20Resource%20adequacy%20risks%20to%20the%20bulk%20power%20system%20in%20North%20America.pdf](https://www.andrew.cmu.edu/user/fs0v/papers/CEIC_17_02R1%20Resource%20adequacy%20risks%20to%20the%20bulk%20power%20system%20in%20North%20America.pdf)

In closing, the lesson learned from this week is that grid disruption is caused by severe weather events. Severe weather events are more and more frequent due to the rate of climate change. Climate change is accelerating due to the amount of CO2 and other greenhouse gases that we are releasing into the atmosphere. And burning fossil fuels to create electricity is one of the biggest sources of atmospheric CO2 in the world.

In other words, burning fossil fuels to create electricity over the last 80 years started a chain reaction that has directly led to the grid disruptions of today.

This bill seeks to create “grid reliability” by forcing renewable energy to subsidize the market failures of coal. Given that the grid is threatened most by severe weather events and that these events have increased in frequency due to the climate change spurred by burning fossil fuels, this is a little like starting a fire one day, and then coming back the next day and claiming that you are the only one who knows how to put it out. No, I don’t think so, we need a diverse set of solutions to put this fire out. And we definitely shouldn’t put additional regulations and costs on the very sources of electricity that are actually helping the most put out this fire.

As such, I urge the committee to move forward with a DO NOT PASS designation for SB 2313.

ND  
Living

Phone: 701.663.6501 or 800.234.0518

Fax: 701.663.3745 [www.ndarec.com](http://www.ndarec.com)

**NDARECs**  
North Dakota Association of Rural Electric Cooperatives  
3201 Nygren Drive NW • P.O. Box 727 • Mandan, ND 58554-0727

February 18, 2021

To: Senate Energy and Natural Resources Committee

RE: Support of Senate Bill 2313 as amended

From: Zac Smith, communications and government relations director, NDAREC

Chairman Kreun and members of the Senate Energy and Natural Resources committee, my name is Zac Smith, and I am testifying on behalf of the North Dakota Association of Rural Electric Cooperatives in support of Senate Bill 2313 as amended by Senate Majority Leader Wardner. The North Dakota Association of Rural Electric Cooperatives (NDAREC) represents sixteen electric distribution cooperatives and five generation and transmission cooperatives that generate, transmit, and distribute electricity across the state of North Dakota.

The amendments will make clear in code the Transmission Authority's responsibility to gather data and report to the Legislature and Industrial Commission on the resilience and adequacy of the electric grid. This is a worthy effort and thoughtful approach to providing the state another opportunity to hear the challenges and opportunities for electrical generation in North Dakota.

Thank you for the opportunity to provide written testimony on SB 2313. We urge adoption of Senator Wardner's amendment and, thereafter, a DO PASS recommendation on SB 2313, as amended.

215 South Cascade Street  
PO Box 496  
Fergus Falls, Minnesota 56538-0496  
218 739-8200  
[www.otpco.com](http://www.otpco.com)



**Testimony in Favor of SB 2313, as amended by Senator Wardner  
February 18, 2021**

Mr. Chairman and Members of the Committee, for the record my name is Mark Bring. I'm a lawyer licensed in North Dakota, South Dakota, and Minnesota, and I serve as Director of Legislative Affairs for Otter Tail Power Company.

Our company is the largest subsidiary of Otter Tail Corporation, which has headquarters in Fargo, North Dakota and Fergus Falls, Minnesota and is traded on the NASDAQ stock exchange with stock symbol OTTR. Otter Tail Corporation also owns several manufacturing companies, including Northern Pipe Products in Fargo and BTM Manufacturing in Detroit Lakes, Minnesota.

Otter Tail Power Company, which is headquartered in Fergus Falls, provides electricity to more than 130,000 customers in a service area encompassing 70,000 square miles of western Minnesota, eastern North Dakota, and northeastern South Dakota. The largest community we serve in North Dakota is Jamestown.

Our company was incorporated in 1907. Its first customer was the City of Wahpeton. We still serve Wahpeton, but many of the communities we serve are much smaller - - such as my hometown Galesburg in Traill County.

While we had concerns with SB 2313, as introduced, Senator Majority Leader Rich Wardner and House Majority Leader Chet Pollert graciously agreed to meet with us and other utilities to address concerns about the bill. SB 2313, as amended by Senator Wardner, addresses our concerns and those of other stakeholders. We are thankful for the Leaders' willingness to work collaboratively on the legislation. We support SB 2313, as amended.

Because there has been a great deal of media regarding recent issues with the electrical grid, I would like to add a brief status update about our company's system.

Our company is a member of the Midcontinent Independent System Operator, or MISO. There will be MISO personnel available to answer technical questions for your committee this afternoon. While there was a maximum generation emergency in this region of MISO on Tuesday morning, the more serious issues have either been in the Southwest Power Pool, also referred to as SPP, or in the South Region of MISO (which includes most of Arkansas, Louisiana, Mississippi, and Southeast Texas). Our system was impacted only in an isolated incidence, when a power system operator in the SPP region briefly disconnected several small communities that we serve for a duration of one to thirty-seven minutes, under the misapprehension that these communities were in the SPP region rather than the MISO region.

Thank you for the opportunity to provide written testimony on SB 2313. **We urge adoption of Senator Wardner's amendment and, thereafter, a DO PASS recommendation on SB 2313, as amended.**



1200 W. Century Ave.  
Bismarck, ND 58503  
Mailing address:  
P.O. Box 5650  
Bismarck, ND 58506-5650  
(701) 530-1000  
[www.MDU.com](http://www.MDU.com)

**TESTIMONY REGARDING SENATE BILL 2313  
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE  
FEBRUARY 18, 2021**

**JUSTIN DEVER - SENIOR PUBLIC AFFAIRS SPECIALIST, MDU RESOURCES GROUP, INC.**

Good morning, Mr. Chairman and members of the committee. My name is Justin Dever and I am testifying today on behalf of MDU Resources Group and its subsidiary Montana-Dakota Utilities Co.

Montana-Dakota Utilities Co. has been serving customers in the region with reliable electric and natural gas since 1924. This includes about 93,000 electric customers and 113,000 natural gas customers in 158 North Dakota communities.

While we have concerns with the original version of SB 2313, we support the amendments provided by the bill sponsor and feel they are a fair and reasonable compromise that would provide policy makers with information regarding the resiliency of the electric grid. We appreciate the willingness of the bill sponsors to work with stakeholders in developing these amendments.

We respectfully ask the committee to adopt the amendments and recommend Do Pass on the amended bill.

Mr. Chairman and members of the committee, thank you for allowing me to visit with you today. That concludes my testimony and I am happy to entertain any questions.



Senate Energy & Natural Resources Committee

Thursday, February 18, 2021

Testimony in Support of Senate Bill No. 2313 with Amendments

Wind Industry of North Dakota (WIND) supports SB 2313 with the amendments advanced by Senator Wardner. WIND is a coalition of wind industry members who believe North Dakota should harness its abundance of wind for the continued benefit of its communities and residents. WIND's members include American Clean Power Association (formerly the American Wind Energy Association), Apex Clean Energy, Capital Power, EDF Renewables, Enel North America, Invenergy, NextEra Energy Resources, and Orsted. WIND shares the goal of a reliable and affordable power grid, along with an all-of-the-above energy strategy.

Since its inception, WIND has had an active and collaborative working relationship with the ND Transmission Authority (NDTA), which provides a unique and strategic advantage that other states do not enjoy. The NDTA has been a responsive partner to WIND and many others in strengthening and growing the state's energy sector. Within the statute creating the NDTA, NDCC ch. 17-05, the legislature has declared the critical role of our state's natural resources play, the challenges of transmission constraints, and how those constraints need to be overcome to strengthen and grow our economy.

The bill, with the proposed amendments, seeks to grow the NDTA's role by codifying its responsibility to participate in transmission studies and to report important data to the legislature and the Industrial Commission. This enhanced role is a good idea because it elevates understanding of the challenges and opportunities facing electricity generation and transmission in ND.

WIND respectfully urges a DO PASS recommendation as amended, and it supports the amendments offered by Senator Wardner.



Wind Industry of North Dakota

**Please feel free to contact any of us for continued discussion.**

**American Clean Power Association**

Jeff Danielson  
[jdanielson@cleanpower.org](mailto:jdanielson@cleanpower.org)

**Apex Clean Energy**

Chris Kunkle  
[chris.kunkle@apexcleanenergy.com](mailto:chris.kunkle@apexcleanenergy.com)

**Capital Power**

Jon Sohn  
[jsohn@capitalpower.com](mailto:jsohn@capitalpower.com)

**EDF Renewables**

Adam Sokolski  
[adam.sokolski@edf-re.com](mailto:adam.sokolski@edf-re.com)  
**Represented by GA Group, PC**  
[landrist@gagroup.law](mailto:landrist@gagroup.law)  
[acleary@gagroup.law](mailto:acleary@gagroup.law)

**Enel North America**

Gina Mace  
[gina.mace@enel.com](mailto:gina.mace@enel.com)  
**Represented by Olson Effertz**  
[kayla@olsoneffertz.com](mailto:kayla@olsoneffertz.com)  
**Represented by The Harms Group**  
[robert@harmsgroup.net](mailto:robert@harmsgroup.net)

**Invenergy**

Dan Litchfield  
[dlitchfield@invenergy.com](mailto:dlitchfield@invenergy.com)

**NextEra Energy Resources**

Julie Voeck  
[julie.voeck@nexteraenergy.com](mailto:julie.voeck@nexteraenergy.com)  
**Represented by Olson Effertz**  
[john@olsoneffertz.com](mailto:john@olsoneffertz.com)  
**Represented by Odney**  
[dlarson@odney.com](mailto:dlarson@odney.com)  
[sgoettle@odney.com](mailto:sgoettle@odney.com)  
[landerson@odney.com](mailto:landerson@odney.com)

**Orsted**

Francesca Martella Kehl  
[FRKEH@orsted.com](mailto:FRKEH@orsted.com)

Mr. Chairman and members of the committee.

I am John Weeda, Director of the North Dakota Transmission Authority

Thank you for the opportunity to present testimony in support of SB2313.

Senate Bill 2313 contains provisions that will assure that the Legislature, the Governor's Office, the Industrial Commission, the Public Service Commission and the public in North Dakota will have access to a complete overview of the electric grid for North Dakota and the surrounding area every two years prior to the Legislative Session.

We are in a time of unprecedented change to the electric grid. Many of the coal fired resources that have been the baseload anchor to the grid are being retired. New additions to the grid are mostly wind and solar generation. There are also some new resources that are natural gas fired.

The grid in North Dakota is managed by two independent system operators (ISOs). The ISOs are responsible for the operation of the grid, but take the position that states are responsible for the resources that are attached to the grid. The only regulation of generation resources in North Dakota is the Public Service Commission oversight of Investor Owned Utilities. A majority of generation resources in North Dakota are owned by Generation and Transmission Cooperative that are regulated by their owners. The wind generation in the state has a mix of ownership by regulated utilities both in and outside of North Dakota and by developers that sell to utilities and cooperatives inside or outside of North Dakota. As a result the State of North Dakota has very little control over the resources attached to the grid in North Dakota.

Both regulated utilities and generators that are not subject to PSC regulation would be incorporated in a statewide view of resources compiled by the North Dakota Transmission Authority.

Senate Bill 2313 is intended to bring attention to the mix of resources in North Dakota and understanding of the importance of diversity of resources and the value of dispatchable resources to the state. Retaining our baseload resources as long as practical and diversifying resources as we continue is a key to the low emission strategy that is being developed in the state. By focusing on opportunities such as carbon capture and enhanced oil recovery the combined efficiency of ND energy can be maximized. This extended to opportunities for hydrogen fuels, electric storage, low carbon ethanol production and other emerging technologies.

In a recent report, the Midcontinent Independent System Operator (the ISO for portions of North Dakota) reported on their Renewable Integration Impact Assessment (RIIA) for achieving high renewable generation in response to desires of member states and companies. They reported being confident that they can reach 50% MISO wide renewable levels. The language also has some word of caution for the portion of the grid that serves North Dakota:

The RIIA said that at the MISO-wide 30% penetration level, parts of the North region see penetration levels ranging from 40% to over 100% local penetration. These changes lead to very different reliability risks than are experienced today.

The events of the past week of cold weather penetrating deep into the central part of the country did bring reality to the fact that generation resources even as they exist today can be overtaxed. ERCOT in Texas, SPP from Texas to North Dakota and MISO in southern regions in Louisiana and east Texas all curtailed load on the grid. The rotating blackouts that affected service to retail customers in ND have highlighted the need for the Legislative and Administrative divisions of government to be regularly advised on the electric grid in North Dakota.

Senate Bill 2313 will not prevent future incidents like that, but will help send the message to the ISOs that are responsible for our grid to understand our intent to continue our current operations that bring stability to the grid and to encourage renewable generation that is compatible and indeed enabled by the stability that the baseload resources contribute in an area that will experience very different reliability risks in the future as renewable generation progresses.

John Weeda

Director, ND Transmission Authority

February 16, 2021

## 67 LEGISLATIVE ASSEMBLY

## Testimony on SB 2313 RELIABILITY TESTIMONY

Submitted by Sonja Kaye

**States are not responsible for resources attached to the grid.** To state that they are is a gross misinterpretation of ISOs' position. ISO's position is that states address problems regarding the social benefit, interplay and free market access resulting from or affecting the MIX of resources. If the mix of resources is working, then no policy is needed. **Regarding reliability, ISOs' position is that states follow recommendations from the ISO.** (The ISO will identify problems.) **Not the other way around.**

North Dakota's electric grid is part of a larger bulk electric system. It is not the job of North Dakota, the lignite industry, or individual utilities to maintain the reliability of the bulk electric system. Reliability is the job of MISO and SPP. They are Reliability Authorities, as is CAISO, California's Reliability Authority. California reaches renewable penetration of 67% and zero coal with no reliability issues. They have fewer brown outs and black outs on a per capita basis than North Dakota does.

Even without legislation, opportunity already exists for coal plants to sell their reliability services into the ancillary market operated by MISO and SPP. As it is a free market, they must, however, compete with other resources offering similar services, such as hydro, gas, wind, battery, and even solar. It is not necessary to mandate reliability, and it is not right to conflate dispatchability with reliability. *Please see the article below that describes the capabilities of wind and solar.*

[https://www.esig.energy/grid-flexible-solar-and-wind-what-it-means-for-our-future/?fbclid=IwAR3Dy1eTSdzwYTi3UJ4\\_42zVWIXkq1aEkhgEXYKzcVesubWs6G6-\\_Rfg5pU](https://www.esig.energy/grid-flexible-solar-and-wind-what-it-means-for-our-future/?fbclid=IwAR3Dy1eTSdzwYTi3UJ4_42zVWIXkq1aEkhgEXYKzcVesubWs6G6-_Rfg5pU)

Not only is coal NOT synonymous with reliability, but it is, also, NOT synonymous with baseload. The concept of baseload is not what it used to be 20- 30 years ago, where your cheapest resource (then coal) would be the resource you run at constant output to cover the minimum demand in a 24- hour period.

The current and future grid system is much more dynamic and changes with the fluctuations in intermittent energy, (fluctuations that will diminish as renewable energy becomes more widely distributed across the country.) Intermittent electricity is cheaper than coal and must be allowed to dip as far as possible into “baseload” as possible. Coal is not a good player in this new system, because it lacks the flexibility to respond to these fluctuations. Its inability to ramp up and down keeps it from backing away when there is cheaper energy available from a different resource.

For the last 50 years of electricity grid history, FERC has established guidelines (for example PURPA, FERC orders 888 and 889 etc.) to increase grid efficiency, thereby reducing costs and dependence on foreign markets and to open electricity markets allowing competitors with zero fuel costs to play fairly with conventional resources. SB 2313 will fly in the face of 50 years of work by FERC. If passed, this bill would drive away renewable energy projects and enable monopolies, uneconomic dispatch, inefficiency, and gold-plating. All are flaws in the market which should be discouraged not promoted.

We have rules of economic dispatch to create the most economically efficient electricity production. Creating arbitrary rules for operating uneconomic power plants will kill any hope of economic efficiency and will lead to gold-plating. Gold-plating is over-investment in capital expenditures. Gold-plating leads to an unnecessary increase in the cost of electricity. Additionally, I would not like the PSC telling my cooperative how they should operate.

Penalizing renewable energy is neither necessary nor economically prudent.

I also oppose repealing Chapter 17- 01 for the reasons stated in Chapter 17- 01. “Increasing America's renewable energy use will bring new technologies to market and save consumers money.” Renewables are, by far, cheaper than coal, especially carbon- sequestered coal.

The true intent of this bill is to keep the Lignite Industry alive. The Lignite Industry is promoting the idea that coal is necessary for reliability, The Lignite Industry is trying to create value for a resource where value only marginally exists. They are pandering to people’s fears of the loss of reliability of the grid in order to achieve value for their resource. The reliability of the grid is not in danger. The Lignite Industry, the state of North Dakota and individual utilities are not responsible for the reliability of the bulk electric grid. Reliability is explicit responsibility of MISO and SPP, the ultimate and federally recognized grid

authority(s) on reliability is MISO (and SPP.) I have yet to see a recommendation from them that we spend more money on fossil fuel technology to maintain reliability of the electric grid.

Coal was a great resource for many decades past but will only have a small place in our electricity future. The sooner we accept this and move on the better. This is why I urge you to oppose SB 2313.

For your convenience I have included below an excerpt from MISO's Reliability Imperative completed in December of 2020.

**MISO REGION RELIABILITY IMPERATIVE – Dec. 2020 Draft 4**

*1. Market Redefinition: The initiatives in this category aim to ensure that resources with the types of capabilities and attributes the system needs will be available in all 8,760 hours of the year. This is important because as noted above, the region is increasingly facing reliability risks outside of the summer peak-load months that historically posed the greatest challenges. Specific efforts in this area include providing a longer-term and deeper assessment of system needs across all hours of the year, including required capabilities such as flexibility; shifting to verifying sufficient generation adequacy across all hours of the year; improving how resources are accredited; ensuring that prices accurately reflect market conditions, especially during emergencies; and development of market products that provide the right incentives for resources to maintain system reliability.*

*2. Long Range Transmission Planning: This effort is designed to identify what transmission the region will need going forward as the electric industry continues to evolve. For example, building additional transmission is especially crucial to support the continued growth of large-scale wind and solar, since those resources are often located far from load centers. A robust transmission plan can also reduce the cost of electricity for consumers by signaling better locations for resource siting that deliver fuel cost savings, decarbonization, and flexibility.*

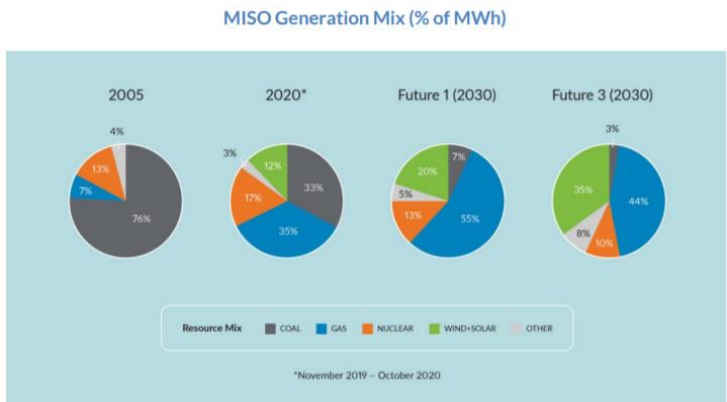
*3. Operations of the Future: This effort is designed to ensure that MISO will have the kinds of skills, processes, and technologies it will need to effectively manage both wholesale and retail connected resources. For example, this initiative will leverage artificial intelligence, machine learning and advanced analytics among other tools to help future MISO control-room operators effectively forecast, visualize, and manage grid uncertainty. It will also help MISO to better manage maintenance and “pre-position” the grid ahead of system changes such as*



weather.

4. *Market System Enhancements: This category of work is designed to transform MISO’s historical system—which was built in the early 2000’s—into a more flexible and secure system that will meet the needs for years to come. Current systems and technology are not capable of accommodating the increasing demands for new, reliability-driven market enhancements and fully leveraging the opportunities of new resource types such as storage and residential generation options (like rooftop solar) to meet future challenges. This initiative will employ flexible architecture and analysis to support the evolving resource mix and future-state processes for operating MISO markets.*

Public @ <https://cdn.misoenergy.org/MISO%20Response%20to%20the%20Reliability%20Imperative504018.pdf>



1

From **North American Electric Reliability Corporation (NERC)** website:

*The vision for the Electric Reliability Organization Enterprise, which is comprised of NERC and the six Regional Entities, is a highly reliable and secure North American bulk power system. Our mission is to assure the effective and efficient reduction of risks to the reliability and security of the grid.*

See below for reliability standards that have been finetuned by industry professional over several decades. **ND state government has no business interfering with their process.**

<https://www.nerc.com/pa/Stand/Pages/default.aspx>

“Baseload” is now a meaningless concept now that multiple resources are cheap enough to cover base power.

If by “baseload” power we mean coal power, the time of **“retaining our baseload resources as long as practical”** as John Weeda states in his testimony is **already gone**. Coal plants are already impractical to operate, which is why half of them are already closing.

Remember: The mission of Minnkota Power Cooperative is to keep our electricity the best energy value in the region.

Testimony of Dakota Resource Council  
Senate Bill 2313  
February 18<sup>th</sup>, 2021

1 Chairman Curt Kreun & members of the committee, my name is Scott Skokos and I am  
2 testifying on behalf of Dakota Resource Council and our members. Thank you for allowing me  
3 to submit written testimony in opposition of SB 2313.

4 Dakota Resource Council (DRC) is a non-partisan grassroots group of landowners, ranchers,  
5 farmers, and other citizens. A key part of our mission is to promote the sustainable use of North  
6 Dakota's natural resources.

7 DRC stands in opposition to SB 2313 because in our view it creates an unnecessary regulatory  
8 burden on renewable energy sources, which could prevent future investment in North Dakota. In  
9 addition, we also oppose SB 2313 because it is our view that firming and grid reliability should  
10 be managed by the Independent System Operator that North Dakota is a part of, the  
11 Midcontinent Independent Operating System (MISO). This bill, in our view, will do nothing to  
12 make energy more reliable in North Dakota (because MISO already works at a regional level to  
13 ensure grid reliability), rather it will push wind and solar investment out of state. North Dakota  
14 will lose out on the tax dollars generated by new wind and solar developments. SB 2313 will  
15 also make electricity more expensive for ratepayers which is not what anyone wants.

16 You will likely hear in testimony today that the blackouts in Texas provide evidence to support  
17 SB 2313. First, we do not recommend North Dakota make long-term policy decisions based on  
18 current events that have yet to be fully understood. An autopsy of the blackouts in Texas will be  
19 completed in the near future so that we can better address the issues that led to this point. Lies  
20 and misinformation around the blackouts happening in Texas are being used to manipulate and  
21 push forward an agenda by special interest groups to damage the reputation of the renewable  
22 energy industries. However, since the blackouts in Texas over the last week are being used to  
23 support coal bills, we would like to set the record as straight as we can with the information that  
24 is available currently.

25 On page 2, lines 1-3 it defines "'Resilience" means the ability to withstand and reduce the  
26 magnitude or duration of events disruptive to electric supply, including the capability to  
27 anticipate, absorb, adapt to, or rapidly recover from such an event.'" Many people are suggesting  
28 that wind makes the grid less resilient, when in fact, all types of energy are impacted by  
29 disruptive events. Coal and natural gas plants are not working in Texas due to record low  
30 temperatures. Those record low temps and winter storms are caused by climate change.  
31 Therefore, we encourage you to oppose SB 2313 because it is focusing on the wrong enemy. The  
32 enemy is not renewable energy, it is climate change. We need to put our energy towards finding  
33 new ways to use energy that reduces the amount of carbon we are putting into the atmosphere  
34 that is disrupting the natural biological, chemical, and physical cycles of our planet. Carbon  
35 sequestration is often touted as the solution and savior to these problems even as there has not  
36 been an economically feasible project anywhere in the world.<sup>1</sup> In addition, several recent reports

---

<sup>1</sup> [http://www.worc.org/media/Too\\_Good\\_to\\_Be\\_True\\_Report.pdf](http://www.worc.org/media/Too_Good_to_Be_True_Report.pdf)

37 have highlighted the investor risks and problems with Project Tundra.<sup>2</sup> Fossil fuel representatives  
38 also like to blame the blackouts in California on renewables as well, when in fact it was partly  
39 due to the increase of fires and due to the demand of electricity exceeding supply. The increase  
40 of fires is, not surprisingly, also due to climate change.<sup>3</sup>

41 Take for instance the quote from Texas Governor Greg Abbott on the current situation with the  
42 Texas grid, “The Texas power grid has not been compromised. The ability of some companies  
43 that generate the power has been frozen. This includes the natural gas & coal generators. They  
44 are working to get generation back on line. ERCOT & PUC are prioritizing residential  
45 consumers.”<sup>4</sup>

46

47 Creating a reliability standard and penalizing wind and solar for not meeting that standard is not  
48 going to address the resiliency problem. Our infrastructure and the way that the grids are being  
49 managed are the real issue. Severe weather events are only going to increase in frequency as we  
50 begin to see the effects from climate change.

51 Finally, manipulating the markets for one industry is not a free market policy. We understand  
52 that energy markets are not a “pure free market”, but that also means that they never have been  
53 truly free. Pure free markets are rare. All forms of energy have been heavily subsidized by the  
54 federal government for decades. Supporters of this bill will reference a “distorted” market. In our  
55 view, the energy market is not distorted because the energy market has always been influenced  
56 by government subsidies and through laws. The need to address man-made climate change has  
57 caused many parts of the country to experience a change in their consumer preferences, which  
58 has naturally led to new laws, policies, and incentives at various levels of government.  
59 Addressing climate change is crucial; doing so without unnecessarily raising the cost of  
60 electricity is obviously preferable for the residents of North Dakota. This bill supports projects  
61 that will, without a doubt, raise costs. Using federal tax credits to subsidize unnecessary  
62 electricity costs of electricity used by residents of North Dakota and Minnesota is unfair to both  
63 North Dakotans and the residents of the rest of the United States.

64 I urge the committee to oppose SB 2313 because creating a reliability standard that penalizes  
65 wind will not address the grid resiliency problem and as a result, we recommend a **DO NOT**  
66 **PASS** on SB 2313.

67

---

<sup>2</sup> [https://ieefa.org/wp-content/uploads/2020/09/Project-Tundra\\_A-Step-in-the-Wrong-Direction\\_September-2020.pdf](https://ieefa.org/wp-content/uploads/2020/09/Project-Tundra_A-Step-in-the-Wrong-Direction_September-2020.pdf); [https://ieefa.org/wp-content/uploads/2020/08/Petra-Nova-Mothballing-Post-Mortem\\_August-2020.pdf](https://ieefa.org/wp-content/uploads/2020/08/Petra-Nova-Mothballing-Post-Mortem_August-2020.pdf)

<sup>3</sup> <https://www.nationalgeographic.com/science/2020/08/why-renewables-arent-reason-california-blackouts/>

<sup>4</sup> [https://twitter.com/GregAbbott\\_TX/status/1361398774216744967](https://twitter.com/GregAbbott_TX/status/1361398774216744967)

# 2021 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2313  
2/18/2021 PM

A BILL for an Act to create and enact a new chapter to title 49 of the North Dakota Century Code, relating to electric power reliability and price transparency; and to repeal chapter 17-01 of the North Dakota Century Code, relating to the 25x'25 initiative.

**Chairman Kreun** called the Hearing to order at 3:10pm  
Senators Roers, Bell, Schaible, Patten, Piepkorn, and Kreun all present

### Discussion Topics:

- Amendment

**Senator Schaible** moved to adopt the amendment LC 21.0748.04006 (3:11pm)

**Senator Roers** seconded the motion (3:11pm)

| Senators                   | Vote |
|----------------------------|------|
| Senator Curt Kreun         | Y    |
| Senator Jim P. Roers       | Y    |
| Senator Dale Patten        | Y    |
| Senator Merrill Piepkorn   | N    |
| Senator Donald Schaible    | Y    |
| Senator Jessica Unruh Bell | N    |

Motion passed 4-2-0

**Senator Bell**, moved DO PASS AS AMENDED (3:12pm)

**Senator Patten**, seconded DO PASS AS AMENDED (3:12pm)

| DO PASS AS AMENDED         | Vote |
|----------------------------|------|
| Senator Curt Kreun         | Y    |
| Senator Jim P. Roers       | Y    |
| Senator Dale Patten        | Y    |
| Senator Merrill Piepkorn   | N    |
| Senator Donald Schaible    | Y    |
| Senator Jessica Unruh Bell | Y    |

Motion Passed 5-1-0,

**Senator Schabile** will carry

Chairman Kreun called the hearing to a close at 3:14pm

*Dave Owen, Committee Clerk*

February 16, 2021

CS  
2/16  
1 of 3

PROPOSED AMENDMENTS TO SENATE BILL NO. 2313

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 17-05-05 and 17-05-13 of the North Dakota Century Code, relating to the powers of the transmission authority and the transmission authority's reporting requirements; and to repeal chapter 17-01 of the North Dakota Century Code, relating to the 25x25 initiative.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 17-05-05 of the North Dakota Century Code is amended and reenacted as follows:

**17-05-05. Powers.**

The authority has all powers necessary to carry out the purposes of this chapter, including the power to:

1. Make grants or loans and to provide other forms of financial assistance as necessary or appropriate for the purposes of this chapter;
2. Make and execute contracts and all other instruments necessary or convenient for the performance of its powers and functions under this chapter;
3. Borrow money and issue evidences of indebtedness as provided in this chapter;
4. Receive and accept aid, grants, or contributions of money or other things of value from any source, including aid, grants, or contributions from any department, agency, or instrumentality of the United States, subject to the conditions upon which the aid, grants, or contributions are made and consistent with the provisions of this chapter;
5. Issue and sell evidences of indebtedness in an amount or amounts as the authority may determine, but not to exceed eight hundred million dollars, plus costs of issuance, credit enhancement, and any reserve funds required by agreements with or for the benefit of holders of the evidences of indebtedness for the purposes for which the authority is created under this chapter, provided that the amount of any refinancing shall not be counted toward such eight hundred million dollar limitation to the extent it does not exceed the outstanding amount of the obligations being refinanced;
6. Refund and refinance its evidences of indebtedness;
7. Make and execute interest rate exchange contracts;
8. Enter lease-sale contracts;



CJ  
2/18  
2 of 3

9. Pledge any and all revenues derived by the authority under this chapter or from a transmission facility, service, or activity funded under this chapter to secure payment or redemption of the evidences of indebtedness;
10. To the extent and for the period of time necessary for the accomplishment of the purposes for which the authority was created, plan, finance, develop, acquire, own in whole or in part, lease, rent, and dispose of transmission facilities;
11. Enter contracts to construct, maintain, and operate transmission facilities;
12. Consult with the public service commission, regional organizations, and any other relevant state or federal authority or persons as necessary and establish reasonable fees, rates, tariffs, or other charges for transmission facilities and all services rendered by the authority;
13. Lease, rent, and dispose of transmission facilities owned pursuant to this chapter;
14. Investigate, plan, prioritize, and propose corridors of the transmission of electricity;
15. Participate in and join regional transmission organizations; ~~and~~
16. Participate in studies of transmission options for the purpose of identifying opportunities for private transmission investment or private public investment options in transmission which will increase opportunity for export from the state consistent with maintaining a stable grid for the load serving entities in North Dakota; and
17. Do any and all things necessary or expedient for the purposes of the authority provided in this chapter.

**SECTION 2. AMENDMENT.** Section 17-05-13 of the North Dakota Century Code is amended and reenacted as follows:

**17-05-13. Reporting requirements.**

1. The authority shall deliver a written report on its activities to the legislative council each biennium. Notwithstanding chapter 54-60.1, the authority shall provide an annual report to the industrial commission detailing activities and expenditures incurred during the preceding year.
2. The authority shall deliver a written report on the status of the resilience of the electric grid to the legislative council and the industrial commission by September 1, 2022, and annually thereafter. The report must be forwarded by the industrial commission to the regional transmission operators in the state.
  - a. The information for the report should be collected from publicly available information to the extent possible. If public information is unavailable, the authority shall request a generation facility and a transmission owner to provide the information needed to complete the report.

CS  
2/16  
2021

- b. The report may be a short-term and long-term projection of the following:
- (1) The adequacy of the state's electric grid to meet the demands of load within the state and to continue to export electricity from the state;
  - (2) The resilience of the state's electric grid, including local resilience; and
  - (3) The plans of generation owners, developers, or operators to add or remove generation assets connected to an independent system or regional transmission operator in excess of an aggregate of twenty-five megawatts.

**SECTION 3. REPEAL.** Chapter 17-01 of the North Dakota Century Code is repealed."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2313, as amended: Energy and Natural Resources Committee (Sen. Kreun, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2313, as amended, was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 17-05-05 and 17-05-13 of the North Dakota Century Code, relating to the powers of the transmission authority and the transmission authority's reporting requirements; and to repeal chapter 17-01 of the North Dakota Century Code, relating to the 25x25 initiative.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 17-05-05 of the North Dakota Century Code is amended and reenacted as follows:

**17-05-05. Powers.**

The authority has all powers necessary to carry out the purposes of this chapter, including the power to:

1. Make grants or loans and to provide other forms of financial assistance as necessary or appropriate for the purposes of this chapter;
2. Make and execute contracts and all other instruments necessary or convenient for the performance of its powers and functions under this chapter;
3. Borrow money and issue evidences of indebtedness as provided in this chapter;
4. Receive and accept aid, grants, or contributions of money or other things of value from any source, including aid, grants, or contributions from any department, agency, or instrumentality of the United States, subject to the conditions upon which the aid, grants, or contributions are made and consistent with the provisions of this chapter;
5. Issue and sell evidences of indebtedness in an amount or amounts as the authority may determine, but not to exceed eight hundred million dollars, plus costs of issuance, credit enhancement, and any reserve funds required by agreements with or for the benefit of holders of the evidences of indebtedness for the purposes for which the authority is created under this chapter, provided that the amount of any refinancing shall not be counted toward such eight hundred million dollar limitation to the extent it does not exceed the outstanding amount of the obligations being refinanced;
6. Refund and refinance its evidences of indebtedness;
7. Make and execute interest rate exchange contracts;
8. Enter lease-sale contracts;
9. Pledge any and all revenues derived by the authority under this chapter or from a transmission facility, service, or activity funded under this chapter to secure payment or redemption of the evidences of indebtedness;
10. To the extent and for the period of time necessary for the accomplishment of the purposes for which the authority was created,

- plan, finance, develop, acquire, own in whole or in part, lease, rent, and dispose of transmission facilities;
11. Enter contracts to construct, maintain, and operate transmission facilities;
  12. Consult with the public service commission, regional organizations, and any other relevant state or federal authority or persons as necessary and establish reasonable fees, rates, tariffs, or other charges for transmission facilities and all services rendered by the authority;
  13. Lease, rent, and dispose of transmission facilities owned pursuant to this chapter;
  14. Investigate, plan, prioritize, and propose corridors of the transmission of electricity;
  15. Participate in and join regional transmission organizations; ~~and~~
  16. Participate in studies of transmission options for the purpose of identifying opportunities for private transmission investment or private public investment options in transmission which will increase opportunity for export from the state consistent with maintaining a stable grid for the load serving entities in North Dakota; and
  17. Do any and all things necessary or expedient for the purposes of the authority provided in this chapter.

**SECTION 2. AMENDMENT.** Section 17-05-13 of the North Dakota Century Code is amended and reenacted as follows:

**17-05-13. Reporting requirements.**

1. The authority shall deliver a written report on its activities to the legislative council each biennium. Notwithstanding chapter 54-60.1, the authority shall provide an annual report to the industrial commission detailing activities and expenditures incurred during the preceding year.
2. The authority shall deliver a written report on the status of the resilience of the electric grid to the legislative council and the industrial commission by September 1, 2022, and annually thereafter. The report must be forwarded by the industrial commission to the regional transmission operators in the state.
  - a. The information for the report should be collected from publicly available information to the extent possible. If public information is unavailable, the authority shall request a generation facility and a transmission owner to provide the information needed to complete the report.
  - b. The report may be a short-term and long-term projection of the following:
    - (1) The adequacy of the state's electric grid to meet the demands of load within the state and to continue to export electricity from the state;
    - (2) The resilience of the state's electric grid, including local resilience; and
    - (3) The plans of generation owners, developers, or operators to add or remove generation assets connected to an independent

system or regional transmission operator in excess of an  
aggregate of twenty-five megawatts.

**SECTION 3. REPEAL.** Chapter 17-01 of the North Dakota Century Code is repealed."

Renumber accordingly

**2021 HOUSE ENERGY AND NATURAL RESOURCES**

**SB 2313**



# 2021 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2313  
3/18/2021

Relating to electric power reliability and price transparency; and to repeal chapter 17-01 of the North Dakota Century Code, relating to the 25x'25 initiative

### 10:00 AM

Chairman Porter opened the hearing. Roll call was taken. Present: Representatives Porter, Damschen, Anderson, Bosch, Devlin, Heinert, Keiser, Lefor, Marschall, Roers Jones, Ruby, Zubke, Guggisberg, and Ista.

### Discussion Topics:

- Electric generation-renewable or nonrenewable
- Rolling blackouts / brownouts
- Powers of the Transmission Authority
- Status of electric grid report
- Integrated Resource Planning process
- Minimum capacity requirement
- Planning reserve margin
- Commission's penal provision for public utilities
- 100% carbon free vision
- Reliability of electric service in a changing environment
- Cyber threats / event
- Cyber security study
- Qualitative benefits of electric power reliability
- Energy producing state vs consumer states

### Discussion topics:

- #10019 Sen Wardner, District 37  
Rep Pollert, District 29-oral testimony
- #10023 Julie Fedorchak, PSC
- #9980 Geoff Simon, Western Dakota Energy Association
- #10042 Anna Novak, Hazen, Mercer County  
Perry Schafer-oral testimony
- #9967 Carlee McLeod, President of the Utility Shareholders of ND

11:27 AM hearing closed.

*Kathleen Davis, Committee Clerk*

**49-05-04.5. Resource Planning.**

1. An integrated resource plan must include:
  - a. The electric public utility's forecast of demand for electric generation supply over the planning period with recommended plans for meeting the forecasted demand plus an additional planning reserve margin for ensuring adequate and sufficient reliability of service; and
  - b. Any additional information the commission requests related to how an electric public utility intends to provide sufficient electric generation service for use by retail customers within the state over the planning period.
2. An electric public utility shall include a least cost plan for providing adequate and reliable service to retail customers which is consistent with the provisions of this title and the rules and orders adopted and issued by the commission.
3. The Commission may consider the qualitative benefits and provide value to a baseload generation and load-following generation resource and its proximity to load.
4. The commission may contract or consult with an expert to evaluate qualitative benefits of resources and to review reliability planning. The commission may require an electric public utility to pay a fee necessary for completion of an evaluation into the qualitative benefits of resources and review reliability planning. If the evaluation applies to more than one electric public utility the commission may assess each electric public utility the proportionate share of the fee.

**49-05-04.6. Planning Reserve Margin – fines or penalties.** The commission may require action, assess a disallowance or fine, or provide a penalty in accordance with Chapter 49-07 if an electric public utility fails to meet the minimum capacity requirement and reserve margin. Unless otherwise set by the commission, the minimum capacity requirement and planning reserve margin is as set by the regional transmission organization to which the electric public utility belongs.

**49-05-04.7. Reliable Service Obligation.** An electric public utility is responsible for ensuring reliable service. If an electric utility fails to meet its obligation to provide reliable service to customers within the state, the commission may require action, assess disallowances or fine, or provide a penalty on a per customer basis in accordance with chapter 49-07.

## Senate Bill 2313

**Presented by:** Julie Fedorchak, Chair  
Public Service Commission

**Before:** House Energy and Natural Resources Committee  
The Honorable Todd Porter, Chair

**Date:** March 18, 2021

### TESTIMONY

Mr. Chairman and committee members, I am Commissioner Julie Fedorchak of the Public Service Commission. You might recall me being here in the early days of the session to present House Bill 1067, an agency bill that allowed the Commission to assess a fee to complete an analysis into the integrated resource plans of public utilities serving North Dakota customers.

Today's amendments further define the Integrated Resource Planning (IRP) process, establish a minimum capacity requirement and planning reserve margin, and enhance the commission's penal provision for public utilities who fail to provide reliable service.

First I'll provide context for the creation of this amendment, and then I'll explain each of these three provisions.

As you well know, the utility industry is in the throes of a complete transformation. As a result, many states through their utility commissions are requiring regulated utilities to file their integrated resource plans for review by the commission. Just as a reminder an integrated resource plan spells out how much

power a utility's customers will need in 15-20 years and where the power will come from.

Because of our concerns about the speed and vigor with which many in this industry are pursuing a 100 percent carbon free vision and the resulting reliability and cost implications for North Dakota customers, last fall we worked with our utilities on HB 1067. This allows us to complete more in-depth reviews of the Integrated Resource Plans the utilities file with us.

Passage of HB 1067 is an important start and will facilitate a very productive advanced discussion of each utility's long-term plans.

Since the legislature started, lawmakers have proposed multiple bills to address concerns regarding the economic viability of baseload power and the reliability of North Dakota's grid. In response to these concerns, the PSC has been working with leadership, industry and lawmakers to craft reasonable and meaningful, measures to strengthen our state's position on maintaining reliable electricity service in this rapidly changing environment. The amendment you have before you is the result of this work.

**49-05-04.5 Resource Planning.** The first two points are standard IRP language spelling out what needs to be included in the plans. Utilities have not raised any concerns about numbers 1 and 2 – they already follow these guidelines.

Number 3 further defines what the Commission can value in resource plans. It allows the Commission to consider the qualitative benefits and provide a specific value to a baseload, load-following generation resources and its proximity to load.

Number 4 allows us to hire an expert to establish that value, which can then be incorporated into the modeling of the generation resource mix in the Integrated Resource Plan.

Why do we think this is important? Currently electricity markets treat all generation resources the same. Wind, coal, gas, solar, nuclear are all paid the same price for the megawatts supplied to the grid. But these resources don't provide the same attributes to the grid. Think of MISO and SPP as big swimming pools. All of the utilities sell their megawatts of power into the pool and get paid the same price per megawatt. However, unlike a swimming pool where the water is uniform throughout, this pool of megawatts is very different. Each of the generation resources has different reliability characteristics and different technical impacts on the grid. Baseload resources provide stronger frequency signals and voltage support that variable or intermittent resources don't. Coal and nuclear generation have onsite fuel. This proved to be a distinguishing factor compared to gas during the Artic Event last month.

These are examples of qualitative benefits that are important to reliability that currently aren't rewarded in the market. So these resources struggle to be economic and, when modeled in an Integrated Resource Plan on cost per megawatt alone these resources often don't make the cut.

With this amendment, North Dakota policy makers would give us a tool to work with our utilities to establish a value for these qualitative benefits so they can be fairly weighed and considered in the overall planning process. This isn't putting our hand on the scale to give an advantage to one resource over another.



This is providing fair recognition of the reliability attributes of dispatchable generation resources that currently are ignored by the market.

Quite honestly, I've been surprised and disappointed by our utilities' objections to this measure. You'll hear from them, but I want to point out how these amendments attempt to address their concerns. First, they object to the cost of hiring an expert to establish this value to be used for modeling. The amendment sets a cap of \$250,000 (end of point 4) and states that the costs can be shared proportionally between all three electric utilities in 4b. This value, once established, will last indefinitely – a decade or more. It's not something that we anticipate setting often if ever again.

One final point on costs. Yes the cost of this lands on top of costs that could be assessed for evaluating the IRPs. However, we assure you the Commission is not going to levy new costs casually. In fact, we assert that no one except the customers themselves cares more about keeping costs low than we do. My colleagues and I hear about rate increases on radio shows, in letters to the editor, at parent teacher conferences, and even when selecting apples at Dans Supermarket. The fact that the rates we approve are on average 40 percent lower than the rate increases requested by utilities is pretty strong evidence about who cares most about costs.

The utilities also emphasize, quite accurately, that they have a solid record on reliability, that they always meet their capacity and reserve margins, and that MISO, of which all three investor-owned utilities are members, didn't have problems in the outages last month.



We agree. However, this initiative isn't reactive, it's proactive. The industry is rapidly changing at a pace that current technology, infrastructure and market structures aren't equipped to support. Power shortages and blackouts this past year prove that no region is immune from challenges. Other states are baking their energy policy preferences firmly into law and regulation. Renewable Portfolio Standards, state tax incentives for solar, wind and batteries, placing a value on local economic benefits or the social costs of carbon that must be incorporated into modelling ... These are just a few examples of state policies currently at play in our region.

All of these policies work their way up through regional transmission organizations of MISO and SPP in a variety of ways – impacting everything from models, the futures used for planning and the very resources offered every day to serve customers in these markets.

North Dakota needs to strengthen our tools to engage in and support the resource mix and policies we believe are best for our customers and our economy. This is a reasoned and reasonable step in that direction.

**49-05-04.6: Planning Reserve Margin – fines or penalties.**

This section establishes in law that the utilities must meet the minimum capacity requirement and reserve margin set by the RTO in which they belong. Our utilities already do this, it's a minimum standard and there isn't any disagreement over this language.

#### **49-05-04.7 Reliable Service Obligation:**

This section clarifies that the electric public utility is ultimately responsible for ensuring reliable service. It allows the Commission to assess penalties on a per customer basis for failing to provide reliable service. And it directs the Commission to develop policies for assessing these penalties that take into consideration the nature, circumstances, gravity, culpability, outage history, and good faith attempts of utilities to ensure reliability.

This provision more than the others is a direct result of the power outages last month in Texas and SPP and last summer in California. In all of these events, the first reaction of the players involved was to blame someone else. It reminds me of my house, where a mystery family member is somehow always responsible for putting a completely empty cereal box back in the cupboard.

The electricity business has many overlapping players – utilities, merchant generators, state regulators, state legislators, regional transmission organizations, FERC, NERC, Congress. On top of that, the electric grid is called the most complicated machine ever created. Considering all of this, it's far too easy for players involved to pass the blame when the lights go out. A recent conversation I heard between a utility rep and legislator illustrates the disconnect between industry and the public when it comes to reliability. The utility person suggested that meeting its reserve margin was a good measure of a utility's reliability. The legislator pushed back and said, "No, reliability is having the lights come on when you flick the switch."

We agree. Meeting a reserve margin set by the RTO helps support reliability. And it's certainly important for the RTO and the utility. But it's little comfort for a customer who doesn't have power on a cold day in February.

This provision recognizes that a lot of factors can cause service disruptions, including bad policies and practices by an RTO. But it establishes that the responsibility for providing reliable electric service, including holding RTOs accountable for their part, belongs to the utility. That's who the customer is paying for the service.

Thank you Mr. Chairman. That concludes my testimony. I'll stand for your questions.



# WESTERN DAKOTA ENERGY ASSOCIATION

March 18, 2021

## EXECUTIVE COMMITTEE

Shannon Holter  
President  
City of Bowbells

Trudy Ruland  
Vice President  
Mountrail County

Supt. Leslie Bieber  
Alexander PSD

Daryl Dukart  
Dunn County

Zach Gaaskjolen  
City of Stanley

Supt. Shon Hocker  
Dickinson PSD

Supt. Tim Holte  
Stanley PSD

Lyn James  
City of Bowman

David Montgomery  
Williams County

John Phillips  
Coal Conversion  
Counties

Supt. Brad Rinas  
Washburn PSD  
Coal Conversion  
Counties

Testimony of:

Geoff Simon, Lobbyist #144  
in support of SB 2313  
House Energy and Natural Resources Committee

Chairman Porter and Committee members:

On behalf of the city, county and school district members of the Western Dakota Energy Association (WDEA), we wish to express the urgent need for Senate Bill 2313.

Energy policy in America is a mess, particularly as it pertains to the electric markets. And there are indications it will only get worse under the Biden administration. One would have hoped that the rolling blackouts in mid-February would be a ringing wake-up call to energy policy makers. But predictably, even though the evidence indicates that over-reliance on renewable resources and failure to maintain reliable baseload plants were to blame, the White House chose to assign blame to a few coal and natural gas plant outages in Texas. Even worse, rather than recognizing that poor energy policy and poor planning were responsible for the outages, we witnessed elements of the mainstream media blaming “climate change” for the blackouts.

Policy makers at the federal level will try to deflect from this very real and serious problem to continue pursuit of their climate agenda. But every North Dakotan should understand this a problem we cannot afford to ignore. WDEA has heard in previous testimony this session that our grid operators, MISO and the Southwest Power Pool, have evaluated the problem with the region’s growing penetration of intermittent generation. The grid operators know there are limits to renewable integration, and they will also tell you we need baseload generation to back up the intermittent generation. Therein lies the problem. As more and more wind generation is brought onto the grid, electrons from those wind farms displace electrons that would otherwise be generated by North Dakota’s coal fleet. And that takes money out of the pocket of the utilities that operate the plants. So what are federal policy makers, MISO and SPP, doing about compensating coal plants for reliability? Next to nothing.

The Utility Working Group – our state’s cooperative and investor-owned utilities – will tell you they did not ask for this bill, and they were successful in watering down the bill in the Senate. Those same utilities have testified on other bills aimed at ensuring electric grid reliability in North Dakota, and told us MISO and SPP have it under control and that we have nothing to be concerned about. But on February 16 we saw rolling blackouts in Bismarck and elsewhere in North Dakota. Capitol Electric Co-op customers experienced an outage when the temperature was 12 below zero. If that’s not a wake-up call that North Dakota needs to take measures to prevent a similar occurrence, we’re not sure what it will take.

WDEA applauds the initiative of Senator Wardner and Representative Pollert for introducing this important legislation, and urges the committee to restore the original intent of SB 2313.

Thank you for the opportunity to submit testimony.

Western Dakota Energy Association  
1661 Capitol Way, Bismarck ND 58501  
www.ndenergy.org • 701-527-1832



Mr. Chairman, members of the committee, my name is Anna Novak and I am here today to testify in favor of bill 2313 and more specifically, I support the amendments which grant the PSC authority to hold the utilities accountable to ensure the reliability of electricity within the state. I'm representing no group, only myself... but I feel like am representing the over 13,000 people employed by the state's lignite industry as well as their families. I'm from Hazen and have lived in Mercer County the vast majority of my life. My husband Loren and I met while I was living in Bismarck after finishing my college education. But after we were married and started a family, he got a job at a coal mine by Beulah. The 1 ½ hour commute from Bismarck to Beulah proved to be too much for our family so we moved to my old stomping grounds. 8 years later, we have 4 boys, ages 3 to 11. Truly, I am thankful every day that my children get to grow up in a place where their childhoods can still be innocent.

There are 3 coal-fired power plants, 3 coal mines and the Dakota Gasification Synfuels Plant in Mercer County. To say that coal is the lifeblood of our communities is almost minimizing how important it is to all of us back home. And McLean County and Oliver County are no different.

For years, supporters of coal have been warning of blackouts because of overreliance on renewables. With each coal-fired power plant that closed, we would grow more and more concerned about blackouts but we were painted by wind lobbyists and unrealistic environmentalists as people who just didn't care about the earth and "stupid" to not realize how efficient renewables are. But the third week in February was basically a promotional piece put together by nature, making us look and feel like prophets. And I have to hand it to our leaders in North Dakota, because you have seen the value of the coal industry, for the jobs and tax revenue, for a long time. A lot has been done to protect the industry. More recently, there has been concern about ensuring our state has reliable, baseload power. This bill with the amendments is an example of that.

I don't know the inner workings of the Regional Transmission Organizations. But I do know that we are told time and time again that they are reliable and that we don't have to worry about power outages. But California experienced them last fall, Texas experienced them last month, as did many here across our state in the SPP. That is not reliability! The RTO's use policies enacted by the states they represent, they don't make their own rules. But on the opposite end, we are also told that enacting a Baseload Portfolio Standard isn't constitutional, which is baffling to me considering that the state of California has renewable energy mandates in place since 2016. Aside from having opposite goals, how is bill 2313 any different than the renewable mandates that California put into place?

As you know, MISO and SPP are our local RTO's. On February 15, SPP declared a Level 3 energy emergency alert because of extreme cold across the US. In the SPP, the price is typically around \$30 per megawatt. There were times on February 15 and February 16 that they were charging up to \$47,000 per megawatt, when they were experiencing rolling power outages. What I found interesting about those things in particular was that just 2 days prior to the energy debacle last month, there was an article in the Fargo Forum, where possible power outages were discussed. The sponsor of this bill, Senator Wardner, was interviewed for the article and warned of the very power outage scenario we experienced here in ND. However, Carlee McLoud, President of the Utility Shareholders of North Dakota, said in the article that the state's grid is both adequate and reliable for the time being – and worries of rolling brownouts are baseless. Unfortunately, our state experienced rolling power outages across the state

just days after she made that statement. I wouldn't consider a nearly 1600% increase in electricity prices or rolling brownouts in North Dakota adequate or reliable.

As this worst-case scenario was unfolding before my eyes last month, I really started to become scared. Two of North Dakota's coal-fired power plants are either rumored to be or have announced plans to shut down. Coal Country remains hopeful discussions continue on a potential purchase of Coal Creek Station. But there is no certainty there. Rumors circled on February 11 about Leland Old's Station closing after an email was sent to the employees at the plant by another employee. The email said Unit 1 would be shut down in 2025 and Unit 2 would be shut down in 2030. Basin Electric later clarified that they had no immediate plans to close the plant, that it was a misunderstanding because at their January board meeting, they made the decision to accelerate the depreciation of its coal assets and that the "end of depreciated life" for units 1 and 2 didn't determine the useful operation of the plant. I hope and pray Leland Olds is open for years to come. But two things struck me when I read their response. The first is that accelerating depreciation of the assets of the plant is exactly what Great River Energy did with Coal Creek Station a few years before they announced their plans to shut the plant down. And the second thing is that the email wasn't sent from a random employee that was a low man on the totem pole...it was the plant manager. After the tough year those in North Dakota's lignite industry have had, it's hard for us to believe that there is zero truth to the email. I guess only time will tell what happens. But I think everyone in this room understands that the power outages we experienced last month would have been much worse had LOS or Coal Creek Station not been contributing to the grids' power supply.

And I would like to point out that many of the utilities' boards of directors are made up of out-of-state people. For instance, according to their most recent annual report, Basin Electric has eleven board members, but only one of them lives in North Dakota. According to MDU's most recent annual report, two of their ten board members reside in North Dakota. And Great River Energy has nobody from North Dakota on their board of directors. These are the people that make the call to close a coal-fired power plant that would put hundreds of our citizens out of work and devastate our small communities in North Dakota. That's a lot of power for a handful of people that don't even live in our state to have over the 13,000 North Dakotans employed by the lignite industry.

I watched much of the joint hearing on grid reliability last week. While I appreciated the fact that the grids and utilities took the time to address the power outages we experienced in February, it came across that both of them were just kind of throwing up their hands and saying "it wasn't our fault", and that it was a result of the cold weather experienced in Texas and the other southern states that were a part of the SPP. My initial reaction was thinking if it isn't their fault, who's fault is it exactly? Until we have legislation like 2313 with these new amendments, which will hold one of them accountable, that will continue to be their response when this happens again and again. But this bill says that North Dakota both values its baseload resources and needs to make sure they continue to be available, by valuing them more fairly. With possible fines, it will prevent the utilities from wanting to take a chance of becoming over-reliant on renewable energy sources.

The utilities and RTO's are not the enemy here and I am certainly not trying to make them out to be so. I want to be clear in saying that I am thankful for their services and am grateful to have electricity. I have many friends and family that work for the utilities in particular and they are good employers.

What is going on with the grid was not intentional. My point is that they ALL have said that there is nothing to worry about in terms of grid reliability and that power outages will not happen. But we have seen evidence just last month that it can and does happen. And these will occur more frequently the more baseload power sources go offline because there is a saturation in the energy market because of renewables. These organizations are driven by government subsidies and profits, because they are businesses...and at the end of the day, they aim to reduce their costs and make money. Their focus is not about keeping good paying jobs in North Dakota, the well-being of our state's economy, and making sure North Dakotan's are protected from political decisions made by the boards at the utilities in other states...that is our state legislature's job.

I am here today – a life-long resident of North Dakota, a mother of four choosing to raise my family here, the wife and daughter of a coal miner, and community member that knows my town will be devastated if we don't take action. Please, don't accept business as usual when it comes to how utilities are operating. As the market changes, the regulations must change too. Our policy makers – all of you – need to make clear North Dakota wants to keep our baseload power operational. Don't take away our way of life by inaction. Don't make North Dakotan's pay unreasonably high power rates, sacrificing our people, our families and our communities all to serve other states' mandates and federal policies. We need leadership from all of you, standing strong in the face of uncertainty. Please – do what you know is right for our citizens and vote to keep what we've already built – affordable, reliable electricity powered by coal.

And with that, I'll stand for questions.





PO Box 1856  
Bismarck, ND 58502  
701-258-8864  
1-800-981-5132  
www.usnd.org

## **Engrossed Senate Bill 2313—Testimony in Support**

House Energy and Natural Resources, Chairman Porter

March 18, 2021

Chairman Porter, members of the committee, I am Carlee McLeod, President of the Utility Shareholders of North Dakota (USND), and I come before you to testify in support of Engrossed Senate Bill 2313 on behalf of my members, including ALLETE, Montana Dakota Utilities, Otter Tail Power Company, and Xcel Energy.

When this bill was heard in the Senate committee, it was in the midst of the weather event (Feb 14-20) that crippled the south and disrupted power in several transmission organizations, including the Southwest Power Pool (SPP), Electric Reliability Council of Texas (ERCOT), and Midcontinent Independent System Operator (MISO). Since that time, we've gleaned some clear-cut information, but it will be months of investigation before we see the full picture. Much of what we know is too complicated for the soundbite driven crowd, and messaging of varying levels of truth have filled the void that hasn't been or can't be filled quickly or simply. As this body moves to develop germane energy policy, it is imperative that we all understand the same truths about this event and what they mean about our reliability and resource adequacy. Without that common understanding, subsequent policy is unlikely to address any real, substantive issues. Bearing that in mind, we want to thank you for your time and attention last week as representatives from regional transmission organizations (RTOs) and utilities shared information about their experiences during the event. It was a lot of information packed into 3-hour window, so I'll highlight the lessons we know to date.

- ERCOT is unlike North Dakota and much of SPP and MISO which feature vertically integrated utilities. Unlike our vertically integrated structures, ERCOT is comprised of companies at various points within electric generation and delivery which are not compensated for the sorts of investments necessary to ensure reliability, like weatherization, and which are not responsible for the whole of the delivery from generation to distribution.
- Southwest Power Pool is comprised of many vertically integrated utilities, and those doing business within North Dakota understand and implement proper weatherization. Still, within the weather event, there were generation failures in the southern areas of SPP stemming from improper weatherization.
  - As demand increased—caused by the needs arising with cold weather, and generation failures occurred, SPP entered into emergency protocol.

- Two periods of outages occurred—these were rolled so that only some customers were affected at a time, and each outage was limited in time.
    - Feb 15—regional energy consumption needed to be lessened 1.5% for 50 minutes.
    - Feb 16—regional energy consumption needed to be lessened by 6.5% for approximately 3 hours. This was the event in which some ND customers lost power for 45 minutes or less.
- MISO is the RTO in which all ND investor-owned utilities participate. Our customers were not subject to MISO-led outages. MISO was affected by the weather events which increased demand, and in response, did issue emergency warnings. MISO is a very large RTO with multiple regions within its footprint. Its size in both load and distance adds to its ability to withstand major weather events. As a result, only MISO's southern region was affected with any minor outages.
- There is no perfect fuel source. That is not to say that baseload resources don't have value, because they do, and they should be valued accordingly. However, that does not mean a grid based on 100% coal would be infallible. In planning for demand, utilities and RTOs consider the strengths and weaknesses of each resource and plan accordingly. For instance, wind does not usually generate at temperatures below -22 degrees. Utilities and RTOs know that and switch their models accordingly. Traditionally, coal, gas, and nuclear energy is available regardless of weather. During this weather event, which wasn't out of the normal realm of possibility of local weather, local generation performance varied. In ND and MT, there were periods of outage at one coal plant unrelated to the weather but caused equipment failure and Covid-related delay in part availability. At another coal plant and a natural gas plant, low water levels caused brief system failure. These sorts of outages do occur on occasion, and they are routinely handled within utilities and RTOs by shifting loads from other sources and regions without causing customer outages. In this event, they were handled similarly and did not add to the need for SPP to shed load. Likewise, during this event, locally, some wind was down, and some operated beyond expectations at -37 degrees. Nuclear and other coal facilities operated perfectly during this time. In general, our generation mix operated as expected, and no plant failures in our region caused disruption. The disruption came from southern states from baseload and intermittent resources. There is no perfect fuel source.

Other information will come from the investigations the Federal Energy Regulatory Commission (FERC) and the North American Electric Reliability Corporation (NERC) have launched, as well as the investigations within each RTO. This event highlighted weaknesses across the country, and the RTOS and stakeholders have already begun discussions to reform markets accordingly. These are important conversations, and our utilities will participate robustly. It will be important to have ND perspective in these conversations. As a state that exports roughly half of its generation, and which did not fail to generate enough electricity to serve its load and that of its neighbors during these events, it is critical that the RTOs

understand and value the tenets that supported our mix of fuel and reliability practices. That leads to the reason behind our support of this bill.

In its engrossed version, SB 2313 reinforces the importance of the role of North Dakota Transmission Authority. The bill language expands information available to the authority, directs the authority to compile information, and directs reporting to the legislature and RTOs. Most importantly, it directs the authority to participate in transmission option studies. This additional voice could be helpful as RTOs work to address reliability through appropriate transmission development. We support these goals, and we ask for your support of the engrossed bill.

We understand there may be amendments proposed to this bill. To date, we have not reached support of the concepts we've heard. Our reaction to any amendments proposed during this hearing will be addressed in our oral testimony, and if helpful to the committee, we would whatever oral remarks we have in writing upon hearing the amendments proposed.

Thank you.



# 2021 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2313 SUBCOMMITTEE  
3/25/2021

Relating to electric power reliability and price transparency; and to repeal chapter 17-01 of the North Dakota Century Code, relating to the 25x'25 initiative

### 8:00 AM

Chairman Bosch called the meeting to order. Roll call was taken. Present: Rep Bosch, Lefor, Zubke, and Ista.

### Discussion Topics:

- Baseload power for ND citizens
- Penalty provision
- Loadshed policies
- Disallowance
- Reliable service plan
- Accountability
- Fossil fuel energy
- Nuclear energy
- Policy takers- policy makers
- Unreliable resources
- Qualitative benefits
- Texas deregulated market

Julie Fedorchak, Commissioner, ND PSC- oral testimony

John Schuh, PSC attorney- oral testimony

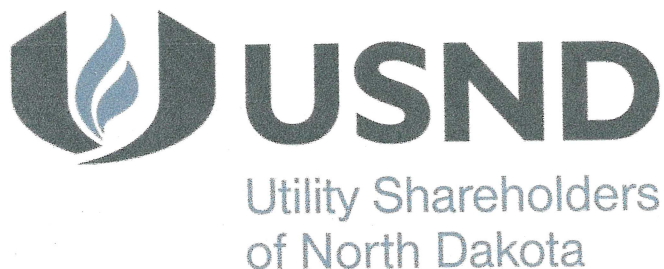
Randy Christmann, Commissioner, ND PSC- oral testimony

Carlee McLeod, President of the Utility Shareholders of ND #10722, #9967

Geoff Simon, Western Energy Association – oral testimony

8:43 AM hearing closed.

*Kathleen Davis, Committee Clerk*



PO Box 1856  
 Bismarck, ND 58502  
 701-258-8864  
 1-800-981-5132  
 www.usnd.org

### **Engrossed Senate Bill 2313—Opposition to potential amendments**

This amendment is unnecessary, and it will not address resource adequacy, reliability, or the future of lignite in a meaningful way. Rather, it will bring unintended consequences, including regulatory uncertainty and increased energy costs for ND consumers.

#### 49-05-04.5

- Rather than address the entities that set market pricing rules—SPP and MISO—this amendment would artificially inflate the value of baseload generation as it applies to only a small portion of market participants—namely Xcel, Otter Tail, and MDU. This would not apply to cooperative generators or their customers. While we are NOT suggesting cooperatives be brought under the jurisdiction of the PSC, it is important to understand that their generation resources comprise a large part of ND's overall generation.
- Our state is a net exporter of electricity. Roughly half of the state's generation serves out-of-state load, yet in-state Xcel, MDU, and Otter Tail customers would bear the whole cost of this artificial value.
- The effect of this artificial value would not be significant enough to make a substantial difference to lignite generators. SPP has approximately 90,000 MW of generation capacity and MISO has approximately 175,000 MW of generation capacity. ND IOU customer load is approximately 1,200 MW.

#### 49-05-04.6

- We don't have an objection to this concept, as it is already required within MISO, to which Xcel, Otter Tail and MDU belong. However, since it is already required, putting this provision into NDCC is unnecessary.

#### 49-05-04.7

- This provision is overly broad, which makes it dangerously open to interpretation.
- Reliability is already required, and it is specifically addressed in ND administrative rule 69-09-02-06, regarding continuity of service.
- If a utility fails to provide reliable service, the PSC will address those concerns in a rate case, or it may open an investigation separate from a rate case.
- While fines would negatively affect utility profits, reliability investments generally improve utility profits. Utilities are incented to properly plan for, build, and manage reliability infrastructure. Adding a provision like the one proposed by this amendment would lead to unnecessary and redundant development of infrastructure, with the costs borne by ND customers.

This amendment should not be adopted. At a time when the future of Coal Creek Station is in flux, any additional regulatory uncertainty is not helpful. Moreover, this amendment creates duplicative, unnecessary, and costly regulation that will ultimately result in increased electric rates. It would be best for the bill to be acted on without further amendment.





PO Box 1856  
Bismarck, ND 58502  
701-258-8864  
1-800-981-5132  
www.usnd.org

## **Engrossed Senate Bill 2313—Testimony in Support**

House Energy and Natural Resources, Chairman Porter

March 18, 2021

Chairman Porter, members of the committee, I am Carlee McLeod, President of the Utility Shareholders of North Dakota (USND), and I come before you to testify in support of Engrossed Senate Bill 2313 on behalf of my members, including ALLETE, Montana Dakota Utilities, Otter Tail Power Company, and Xcel Energy.

When this bill was heard in the Senate committee, it was in the midst of the weather event (Feb 14-20) that crippled the south and disrupted power in several transmission organizations, including the Southwest Power Pool (SPP), Electric Reliability Council of Texas (ERCOT), and Midcontinent Independent System Operator (MISO). Since that time, we've gleaned some clear-cut information, but it will be months of investigation before we see the full picture. Much of what we know is too complicated for the soundbite driven crowd, and messaging of varying levels of truth have filled the void that hasn't been or can't be filled quickly or simply. As this body moves to develop germane energy policy, it is imperative that we all understand the same truths about this event and what they mean about our reliability and resource adequacy. Without that common understanding, subsequent policy is unlikely to address any real, substantive issues. Bearing that in mind, we want to thank you for your time and attention last week as representatives from regional transmission organizations (RTOs) and utilities shared information about their experiences during the event. It was a lot of information packed into 3-hour window, so I'll highlight the lessons we know to date.

- ERCOT is unlike North Dakota and much of SPP and MISO which feature vertically integrated utilities. Unlike our vertically integrated structures, ERCOT is comprised of companies at various points within electric generation and delivery which are not compensated for the sorts of investments necessary to ensure reliability, like weatherization, and which are not responsible for the whole of the delivery from generation to distribution.
- Southwest Power Pool is comprised of many vertically integrated utilities, and those doing business within North Dakota understand and implement proper weatherization. Still, within the weather event, there were generation failures in the southern areas of SPP stemming from improper weatherization.
  - As demand increased—caused by the needs arising with cold weather, and generation failures occurred, SPP entered into emergency protocol.

- Two periods of outages occurred—these were rolled so that only some customers were affected at a time, and each outage was limited in time.
  - Feb 15—regional energy consumption needed to be lessened 1.5% for 50 minutes.
  - Feb 16—regional energy consumption needed to be lessened by 6.5% for approximately 3 hours. This was the event in which some ND customers lost power for 45 minutes or less.
- MISO is the RTO in which all ND investor-owned utilities participate. Our customers were not subject to MISO-led outages. MISO was affected by the weather events which increased demand, and in response, did issue emergency warnings. MISO is a very large RTO with multiple regions within its footprint. Its size in both load and distance adds to its ability to withstand major weather events. As a result, only MISO's southern region was affected with any minor outages.
- There is no perfect fuel source. That is not to say that baseload resources don't have value, because they do, and they should be valued accordingly. However, that does not mean a grid based on 100% coal would be infallible. In planning for demand, utilities and RTOs consider the strengths and weaknesses of each resource and plan accordingly. For instance, wind does not usually generate at temperatures below -22 degrees. Utilities and RTOs know that and switch their models accordingly. Traditionally, coal, gas, and nuclear energy is available regardless of weather. During this weather event, which wasn't out of the normal realm of possibility of local weather, local generation performance varied. In ND and MT, there were periods of outage at one coal plant unrelated to the weather but caused equipment failure and Covid-related delay in part availability. At another coal plant and a natural gas plant, low water levels caused brief system failure. These sorts of outages do occur on occasion, and they are routinely handled within utilities and RTOs by shifting loads from other sources and regions without causing customer outages. In this event, they were handled similarly and did not add to the need for SPP to shed load. Likewise, during this event, locally, some wind was down, and some operated beyond expectations at -37 degrees. Nuclear and other coal facilities operated perfectly during this time. In general, our generation mix operated as expected, and no plant failures in our region caused disruption. The disruption came from southern states from baseload and intermittent resources. There is no perfect fuel source.

Other information will come from the investigations the Federal Energy Regulatory Commission (FERC) and the North American Electric Reliability Corporation (NERC) have launched, as well as the investigations within each RTO. This event highlighted weaknesses across the country, and the RTOS and stakeholders have already begun discussions to reform markets accordingly. These are important conversations, and our utilities will participate robustly. It will be important to have ND perspective in these conversations. As a state that exports roughly half of its generation, and which did not fail to generate enough electricity to serve its load and that of its neighbors during these events, it is critical that the RTOs



understand and value the tenets that supported our mix of fuel and reliability practices. That leads to the reason behind our support of this bill.

In its engrossed version, SB 2313 reinforces the importance of the role of North Dakota Transmission Authority. The bill language expands information available to the authority, directs the authority to compile information, and directs reporting to the legislature and RTOs. Most importantly, it directs the authority to participate in transmission option studies. This additional voice could be helpful as RTOs work to address reliability through appropriate transmission development. We support these goals, and we ask for your support of the engrossed bill.

We understand there may be amendments proposed to this bill. To date, we have not reached support of the concepts we've heard. Our reaction to any amendments proposed during this hearing will be addressed in our oral testimony, and if helpful to the committee, we would whatever oral remarks we have in writing upon hearing the amendments proposed.

Thank you.



# 2021 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2313 SUBCOMMITTEE  
3/26/2021

|  |
|--|
| Relating to electric power reliability and price transparency; and to repeal chapter 17-01 of the North Dakota Century Code, relating to the 25x'25 initiative |
|--|

### 8:30 AM

Chairman Bosch called the meeting to order. Roll call was taken. Present: Rep Bosch, Lefor, Zubke, and Ista.

### Discussion Topics:

- Proposed amendment .05001 discussion
- Future resource planning variables
- Values for assessments
- Clarification from third party
- Policy with rule changes
- Reliability penalty
- Culpability
- Solution requests from utilities and PSC
- Penalty cap/provision
- Elimination/inclusion of Section 5

Julie Fedorchak, Commissioner, ND PSC-oral testimony #10839, #10838  
Carlee McLeod, President of the Utility Shareholders of ND-oral testimony  
Randy Christmann, Commissioner, ND PSC-oral testimony

**9:27 AM** hearing closed.

*Kathleen Davis, Committee Clerk*

Sixty-seventh  
Legislative Assembly  
of North Dakota

**ENGROSSED SENATE BILL NO. 2313**

Introduced by

Senator Wardner

Representative Pollert

1 A BILL for an Act to create and enact three new sections to chapter 49-05 of the North Dakota  
2 Century Code, relating to resource planning, planning reserve margin, and reliable service  
3 obligation; to amend and reenact sections 17-05-05 and 17-05-13 of the North Dakota Century  
4 Code, relating to the powers of the transmission authority and the transmission authority's  
5 reporting requirements; and to ~~repeal chapter 17-01 of the North Dakota Century Code, relating~~  
6 ~~to the 25x25 initiative~~provide a penalty.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 17-05-05 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **17-05-05. Powers.**

11 The authority has all powers necessary to carry out the purposes of this chapter, including  
12 the power to:

- 13 1. Make grants or loans and to provide other forms of financial assistance as necessary  
14 or appropriate for the purposes of this chapter;
- 15 2. Make and execute contracts and all other instruments necessary or convenient for the  
16 performance of its powers and functions under this chapter;
- 17 3. Borrow money and issue evidences of indebtedness as provided in this chapter;
- 18 4. Receive and accept aid, grants, or contributions of money or other things of value from  
19 any source, including aid, grants, or contributions from any department, agency, or  
20 instrumentality of the United States, subject to the conditions upon which the aid,  
21 grants, or contributions are made and consistent with the provisions of this chapter;
- 22 5. Issue and sell evidences of indebtedness in an amount or amounts as the authority  
23 may determine, but not to exceed eight hundred million dollars, plus costs of issuance,  
24 credit enhancement, and any reserve funds required by agreements with or for the

- 1 benefit of holders of the evidences of indebtedness for the purposes for which the  
2 authority is created under this chapter, provided that the amount of any refinancing  
3 shall not be counted toward such eight hundred million dollar limitation to the extent it  
4 does not exceed the outstanding amount of the obligations being refinanced;
- 5 6. Refund and refinance its evidences of indebtedness;
- 6 7. Make and execute interest rate exchange contracts;
- 7 8. Enter lease-sale contracts;
- 8 9. Pledge any and all revenues derived by the authority under this chapter or from a  
9 transmission facility, service, or activity funded under this chapter to secure payment  
10 or redemption of the evidences of indebtedness;
- 11 10. To the extent and for the period of time necessary for the accomplishment of the  
12 purposes for which the authority was created, plan, finance, develop, acquire, own in  
13 whole or in part, lease, rent, and dispose of transmission facilities;
- 14 11. Enter contracts to construct, maintain, and operate transmission facilities;
- 15 12. Consult with the public service commission, regional organizations, and any other  
16 relevant state or federal authority or persons as necessary and establish reasonable  
17 fees, rates, tariffs, or other charges for transmission facilities and all services rendered  
18 by the authority;
- 19 13. Lease, rent, and dispose of transmission facilities owned pursuant to this chapter;
- 20 14. Investigate, plan, prioritize, and propose corridors of the transmission of electricity;
- 21 15. Participate in and join regional transmission organizations; ~~and~~
- 22 16. ~~Participate~~ Identify and participate in studies of transmission options for the purpose of  
23 identifying opportunities for private transmission investment or private public  
24 investment options in transmission which will increase opportunity for export from the  
25 state consistent with maintaining a stable grid for the load serving entities in North  
26 Dakota; and
- 27 17. Do any and all things necessary or expedient for the purposes of the authority  
28 provided in this chapter.

29 **SECTION 2. AMENDMENT.** Section 17-05-13 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1 **17-05-13. Reporting requirements.**

2 1. The authority shall deliver a written report on its activities to the legislative council  
3 each biennium. Notwithstanding chapter 54-60.1, the authority shall provide an annual  
4 report to the industrial commission detailing activities and expenditures incurred during  
5 the preceding year.

6 2. The authority shall deliver a written report on the status of the resilience of the electric  
7 grid to the legislative council and the industrial commission by September 1, 2022, and  
8 annually thereafter. The report must be forwarded by the industrial commission to the  
9 regional transmission operators in the state.

10 a. The information for the report should be collected from publicly available  
11 information to the extent possible. If public information is unavailable, the  
12 authority shall request a generation facility and a transmission owner to provide  
13 the information needed to complete the report.

14 b. The report may be a short-term and long-term projection of the following:

15 (1) The adequacy of the state's electric grid to meet the demands of load within  
16 the state and to continue to export electricity from the state;

17 (2) The resilience of the state's electric grid, including local resilience; and

18 (3) The plans of generation owners, developers, or operators to add or remove  
19 generation assets connected to an independent system or regional  
20 transmission operator in excess of an aggregate of twenty-five megawatts.

21 ~~**SECTION 3. REPEAL.** Chapter 17-01 of the North Dakota Century Code is repealed.~~

22 **SECTION 3.** A new section to chapter 49-05 of the North Dakota Century Code is created  
23 and enacted as follows:

24 **Resource planning.**

25 1. An integrated resource plan must include:

26 a. The electric public utility's forecast of demand for electric generation supply over  
27 the planning period with recommended plans for meeting the forecasted demand  
28 plus an additional planning reserve margin for ensuring adequate and sufficient  
29 reliability of service; and

1            b. Any additional information the commission requests related to how an electric  
2            public utility intends to provide sufficient electric generation service for use by  
3            retail customers within the state over the planning period.

4            2. An electric public utility shall include a least cost plan for providing adequate and  
5            reliable service to retail customers which is consistent with the provisions of this title  
6            and the rules and orders adopted and issued by the commission.

7            3. The commission may consider the qualitative benefits and provide value to a  
8            base-load generation and load-following generation resource and its proximity to load.

9            4. The commission may contract or consult with an expert to evaluate qualitative benefits  
10           of resources and to review reliability planning. The commission may require an electric  
11           public utility to pay a fee necessary for completion of an evaluation in an amount not to  
12           exceed two hundred fifty thousand dollars.

13           a. If additional funds are necessary for completion of the evaluation, upon approval  
14           of the emergency commission, the electric public utility shall pay the additional  
15           fees reasonably necessary for the completion.

16           b. If the evaluation applies to more than one electric public utility, the commission  
17           may assess each electric public utility the proportionate share of the fee.

18           5. An electric public utility shall report annually to the commission on cybersecurity  
19           preparedness, including an assessment of emerging threats and efforts taken by the  
20           electric public utility to implement cybersecurity measures.

21           **SECTION 4.** A new section to chapter 49-05 of the North Dakota Century Code is created  
22 and enacted as follows:

23           **Planning reserve margin - Penalty.**

24           The commission may require action, assess a disallowance or fine, or provide a penalty in  
25 accordance with chapter 49-07 if an electric public utility fails to meet the minimum capacity  
26 requirement and reserve margin. Unless otherwise set by the commission, the minimum  
27 capacity requirement and planning reserve margin is as set by the regional transmission  
28 organization to which the electric public utility belongs.

29           **SECTION 5.** A new section to chapter 49-05 of the North Dakota Century Code is created  
30 and enacted as follows:

1 **Reliable service obligation.**

2 An electric public utility is responsible for ensuring reliable service. If an electric public utility  
3 fails to meet its obligation to provide reliable service to customers within the state, the  
4 commission may require action, assess disallowances or fines, or provide a penalty on a  
5 per-customer basis in accordance with chapter 49-07, not to exceed two million dollars for any  
6 related series of violations. The commission shall develop policies for assessment of penalties  
7 or disallowances which will take into consideration the nature, circumstances, and gravity of the  
8 violation, degree of culpability, history of prior outages, and good faith attempts to ensure  
9 reliability.



21.0748.05001  
Title.

Prepared by the Legislative Council staff for  
Representative Bosch  
March 25, 2021

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2313

Page 1, line 1, after "to" insert "create and enact three new sections to chapter 49-05 of the North Dakota Century Code, relating to resource planning, planning reserve margin, and reliable service obligation; to"

Page 1, line 3, remove "repeal chapter 17-01 of the North Dakota Century"

Page 1, line 4, replace "Code, relating to the 25x'25 initiative" with "provide a penalty"

Page 2, line 20, replace "Participate" with "Identify and participate"

Page 2, line 20, remove "studies of transmission options for the purpose of identifying"

Page 3, replace line 18 with:

"**SECTION 3.** A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

**Resource planning.**

1. An integrated resource plan must include:
  - a. The electric public utility's forecast of demand for electric generation supply over the planning period with recommended plans for meeting the forecasted demand plus an additional planning reserve margin for ensuring adequate and sufficient reliability of service; and
  - b. Any additional information the commission requests related to how an electric public utility intends to provide sufficient electric generation service for use by retail customers within the state over the planning period.
2. An electric public utility shall include a least cost plan for providing adequate and reliable service to retail customers which is consistent with the provisions of this title and the rules and orders adopted and issued by the commission.
3. The commission may consider the qualitative benefits and provide value to a base-load generation and load-following generation resource and its proximity to load.
4. The commission may contract or consult with an expert to evaluate qualitative benefits of resources and to review reliability planning. The commission may require an electric public utility to pay a fee necessary for completion of an evaluation in an amount not to exceed two hundred fifty thousand dollars.
  - a. If additional funds are necessary for completion of the evaluation, upon approval of the emergency commission, the electric public utility shall pay the additional fees reasonably necessary for the completion.

- b. If the evaluation applies to more than one electric public utility, the commission may assess each electric public utility the proportionate share of the fee.
5. An electric public utility shall report annually to the commission on cybersecurity preparedness, including an assessment of emerging threats and efforts taken by the electric public utility to implement cybersecurity measures.

**SECTION 4.** A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

**Planning reserve margin - Penalty.**

The commission may require action, assess a disallowance or fine, or provide a penalty in accordance with chapter 49-07 if an electric public utility fails to meet the minimum capacity requirement and reserve margin. Unless otherwise set by the commission, the minimum capacity requirement and planning reserve margin is as set by the regional transmission organization to which the electric public utility belongs.

**SECTION 5.** A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

**Reliable service obligation.**

An electric public utility is responsible for ensuring reliable service. If an electric public utility fails to meet its obligation to provide reliable service to customers within the state, the commission may require action, assess disallowances or fines, or provide a penalty on a per-customer basis in accordance with chapter 49-07, not to exceed two million dollars for any related series of violations. The commission shall develop policies for assessment of penalties or disallowances which will take into consideration the nature, circumstances, and gravity of the violation, degree of culpability, history of prior outages, and good faith attempts to ensure reliability."

Renumber accordingly

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2313 SUBCOMMITTEE  
3/30/2021

|  |
|--|
| Relating to electric power reliability and price transparency; and to repeal chapter 17-01 of the North Dakota Century Code, relating to the 25x'25 initiative |
|--|

### 8:00 AM

Chairman Bosch called the meeting to order. Roll call was taken. Present: Rep Bosch, Lefor, Zubke, and Ista.

#### Discussion Topics:

- Proposed amendment .05001
- Christmann's proposed amendment
- Incentive programs
- Proposed amendment 05003
- Cyber security language in 05003
- Reliable service obligation
- Penalties / fines
- Regulatory risk assessment

Rep Lefor moved to recommend to the full committee: on line 20 after the word measures, add the sentence, "The commission may limit the access to records and portions of a meeting which relate to cyber security preparedness." (#11012), seconded by Rep Zubke. Voice vote. Motion carried.

Rep Lefor moved to recommend an amendment to the full committee a \$5000 fine per customer up to a maximum of \$2 million. The recommendation failed for lack of a second.

Rep Zubke moved to recommend to the full committee 05003 with no changes, seconded by Rep Ista.

| Representative | Yes | No |
|----------------|-----|----|
| Rep Bosch      | Y   |    |
| Rep Lefor      | Y   |    |
| Rep Zubke      | Y   |    |
| Rep Ista       | Y   |    |

4-0-0 Motion carried.

Randy Christmann, Commissioner, ND PSC- #11012  
Carlee McLeod, President of the Utility Shareholders of ND-oral testimony  
Perri Schafer, Environmental Services, contractor suppliers for LEC,  
#11029 Rep Glenn Bosch, proposed amendment 05003, #11013, #11014  
Julie Fedorchak, Commissioner, ND PSC-oral testimony  
John Schuh, PSC legal counsel- oral testimony

8:51 AM hearing closed.

*Kathleen Davis, Committee Clerk*

An electric public utility shall annually report to the commission on cybersecurity preparedness, including an assessment of emerging threats and efforts taken by the electric public utility to implement cybersecurity measures. The commission may limit access to records and portions of a meeting which relate to cybersecurity preparedness.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2313

Page 1, line 1, after "to" insert "create and enact three new sections to chapter 49-05 of the North Dakota Century Code, relating to resource planning, planning reserve margin, and reliable service obligation; to"

Page 1, line 3, remove "repeal chapter 17-01 of the North Dakota Century"

Page 1, line 4, replace "Code, relating to the 25x'25 initiative" with "provide a penalty"

Page 2, line 20, replace "Participate" with "Identify and participate"

Page 2, line 20, remove "studies of transmission options for the purpose of identifying"

Page 3, replace line 18 with:

"**SECTION 3.** A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

**Resource planning.**

1. An integrated resource plan must include:
  - a. The electric public utility's forecast of demand for electric generation supply over the planning period with recommended plans for meeting the forecasted demand plus an additional planning reserve margin for ensuring adequate and sufficient reliability of service; and
  - b. Any additional information the commission requests related to how an electric public utility intends to provide sufficient electric generation service for use by retail customers within the state over the planning period.
2. An electric public utility shall include a least cost plan for providing adequate and reliable service to retail customers which is consistent with the provisions of this title and the rules and orders adopted and issued by the commission.
3. The commission may consider the qualitative benefits and provide value to a base-load generation and load-following generation resource and its proximity to load.
4. The commission may contract or consult with an expert to evaluate qualitative benefits of resources and to review reliability planning. The commission may require an electric public utility to pay a fee necessary for completion of an evaluation in an amount not to exceed two hundred fifty thousand dollars.
  - a. If additional funds are necessary for completion of the evaluation, upon approval of the emergency commission, the electric public utility shall pay the additional fees reasonably necessary for the completion.

- b. If the evaluation applies to more than one electric public utility, the commission may assess each electric public utility the proportionate share of the fee.
5. An electric public utility shall report annually to the commission on cybersecurity preparedness, including an assessment of emerging threats and efforts taken by the electric public utility to implement cybersecurity measures.

**SECTION 4.** A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

**Planning reserve margin - Penalty.**

The commission may require action, assess a disallowance or fine, or provide a penalty in accordance with chapter 49-07 if an electric public utility fails to meet the minimum capacity requirement and reserve margin. Unless otherwise set by the commission, the minimum capacity requirement and planning reserve margin is as set by the regional transmission organization to which the electric public utility belongs.

**SECTION 5.** A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

**Reliable service obligation.**

An electric public utility is responsible for ensuring reliable service. If an electric public utility fails to meet its obligation to provide reliable service to customers within the state, the commission may require action, assess disallowances or fines, or provide a penalty. The commission shall adopt rules and establish guidelines for assessment of penalties, fines, or disallowances which must take into consideration the nature, circumstances, and gravity of the violation, degree of culpability, history of prior outages, and good-faith attempts to ensure reliability."

Renumber accordingly

An electric public utility shall annually report to the commission on cybersecurity preparedness, including an assessment of emerging threats and efforts taken by the electric public utility to implement cybersecurity measures. The commission may limit access to records and portions of a meeting which relate to cybersecurity preparedness.



**Perrie Schafer**

---

**From:** Perrie Schafer  
**Sent:** Saturday, March 27, 2021 1:27 PM  
**To:** Perrie Schafer  
**Subject:** RE: 2313

Chairman Rep Bosch and Subcommittee members Lefor, Ista and Zubke, thank you for this forum in which to speak.

This is a hard conversation to have as the people across the room are my customers, and people I have worked for and with and continue to do so. People I respect. This isn't a finger pointing conversation for me or the contractor suppliers I represent.

However, I need to express "the other side" of the conversation.

Where are we as a coal industry if we don't act now, today with 2313 as amended? I dare say in 10-15 years we won't have a coal fired plant that is utility owned producing electrons from coal in the state of ND.

Why? Because the present situation the utilities fined themselves in is being determined by another source, specifically the "endangerment finding" levied by the Federal Gov on our industry. The utilities were then incented, paid, to generate electrons from "other" sources.

What can be done in a proactive manner is to show the RTO's what ND values and what we advocate for...which is reliable, clean, readily available base load power. Holding the utilities accountable as 2313 does will tell the RTO's exactly this as we will look back on this moment in time and say, we have done well in protecting our fleet and our economy together, the utilities, the legislature, the PSC and contractor suppliers.

Will we ever be in the same situation as what recently happened on the TX grid? We can "say" this won't happen to us; but it will happen to us unless we act to approve 2313 as amended. Renewables are only 44% reliable while base load power sources are 96% reliable...these are simply the facts. (Please see the attached spread sheet comparing renewables to Coal.)

I applaud the PSC for their leadership in securing our energy future in ND and support them in this bill.

I also understand the "business" model the utilities operate under, I have been in business for 35 years and have successfully built companies in wealth management, real estate, and engineered sales, so I understand markets and pressures from regulators and from suppliers and customers, so I empathize with them. The concern they have as to self-preservation, I understand.

Passing 2313 as amended is one way for the utilities to have the security they desire, as well as the security the support industry desires. Sounds weird doesn't it, if the utilities agree to be penalized they have security down the road; but that is correct! This bill as amended will hold the utilities to account, in a similar way we as contractor suppliers are held to account when working with them. This bill will ensure the RTO's understand the value we, including the utilities, put on coal, and the RTO's will see the utilities are advocating for coal now and as we head towards the future.

Thank you for understanding this and thank you for your consideration in doing the right thing as we look into the future of ND Coal.

**Perrie Schafer**  
**Environmental Services, Ltd.**

...Coal is an indispensable pillar to our state and local communities as well as the nation in general because it generates far more jobs and tax revenue than wind, no matter what Bob Harms says about the \$2.4Billion ND has left on the table not allowing wind to replace GRE Coal Creek (for example). The spread sheet shows Harm's number as "Capacity Factor" and shows wind at 57% available, and we know that number to be far lower, the actual number is 44% available for ND wind...however using 57% STILL doesn't get wind up to the tax revenue that the same 1000MW of coal does. And if we had to build a new plant to produce 1000MW of coal generated electrons, the "new construction" to build a power plant with respect to land value savings, would also dwarf that of building a new 1000MW wind farm and on only about 3000 acres, not 1.5MM acres consumed by a 1000MW wind farm...so what Harms says is blatantly false...period.

...A 1000-MW coal facility provides six times more tax revenue than a 1000-MW wind farm as seen in the attached spreadsheet.

Comparison-

- Jobs:
  - Wind- The value to the state's economy is largely in the upfront capital investment to purchase turbine materials and the fair amount of temporary construction workers, many of whom are from out of state, and this is a temporary situation, not permanent as far as people coming into the state to build the wind Farm, (this is quite different than building a Power plant, those workers are mostly local that then stay here once the plant is built and operate the plant). Once a 1000MW wind farm, which equals around 800 turbines, is built and operational a few full-time workers gain employment.
  - Coal- A 1000MW coal power plant already built; and the capital investment has been made so it is not a true apples-to-apples comparison to only consider construction and materials into this analysis. However, we can compare employees, which means the families who fill our schools and towns. One 1000-MW coal power plant and associated mine has around 700 full time workers who average some of the highest wages in the state, which is shown on the spread sheet (and this spread sheet does not take into consideration all the services companies that support the plants daily).
- Tax Revenue:
  - A 1000MW coal plant generates about \$32 million per year in tax revenue from all sources that is paid to state and local taxes.
  - A 1000MW wind farm generates about \$5 million per year in tax revenue including property taxes and sales taxes (income taxes), (using the 57% capacity factor which is not accurate).
  - By giving up coal for wind, we are blowing a \$27 million hole in the budgets of state and local governments every single year. This comparison can easily be capitulated throughout the nation as a comparison of 1000MW of coal to 1000MW of wind...it isn't a ND thing, but a national comparison.

Setting aside all the other quantifiable factors between wind and coal, wind does not come close to providing the full-time jobs and tax revenue that coal does. If we are comparing what wind brings into the state as far as jobs and economic development, we must compare what destroying coal takes out of the state as far as jobs and taxes and the decline of the economies of our communities. Again, this is a national comparison as well, not only a ND comparison.

21.0748.05003  
Title.

Prepared by the Legislative Council staff for  
Representative Bosch  
March 29, 2021

#### PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2313

Page 1, line 1, after "to" insert "create and enact three new sections to chapter 49-05 of the North Dakota Century Code, relating to resource planning, planning reserve margin, and reliable service obligation; to"

Page 1, line 3, remove "repeal chapter 17-01 of the North Dakota Century"

Page 1, line 4, replace "Code, relating to the 25x'25 initiative" with "provide a penalty"

Page 2, line 20, replace "Participate" with "Identify and participate"

Page 2, line 20, remove "studies of transmission options for the purpose of identifying"

Page 3, replace line 18 with:

"**SECTION 3.** A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

#### **Resource planning.**

1. An integrated resource plan must include:
  - a. The electric public utility's forecast of demand for electric generation supply over the planning period with recommended plans for meeting the forecasted demand plus an additional planning reserve margin for ensuring adequate and sufficient reliability of service; and
  - b. Any additional information the commission requests related to how an electric public utility intends to provide sufficient electric generation service for use by retail customers within the state over the planning period.
2. An electric public utility shall include a least cost plan for providing adequate and reliable service to retail customers which is consistent with the provisions of this title and the rules and orders adopted and issued by the commission.
3. The commission may consider the qualitative benefits and provide value to a base-load generation and load-following generation resource and its proximity to load.
4. The commission may contract or consult with an expert to evaluate qualitative benefits of resources and to review reliability planning. The commission may require an electric public utility to pay a fee necessary for completion of an evaluation in an amount not to exceed two hundred fifty thousand dollars.
  - a. If additional funds are necessary for completion of the evaluation, upon approval of the emergency commission, the electric public utility shall pay the additional fees reasonably necessary for the completion.

- b. If the evaluation applies to more than one electric public utility, the commission may assess each electric public utility the proportionate share of the fee.
- 5. An electric public utility shall report annually to the commission on cybersecurity preparedness, including an assessment of emerging threats and efforts taken by the electric public utility to implement cybersecurity measures.

**SECTION 4.** A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

**Planning reserve margin - Penalty.**

The commission may require action, assess a disallowance or fine, or provide a penalty in accordance with chapter 49-07 if an electric public utility fails to meet the minimum capacity requirement and reserve margin. Unless otherwise set by the commission, the minimum capacity requirement and planning reserve margin is as set by the regional transmission organization to which the electric public utility belongs.

**SECTION 5.** A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

**Reliable service obligation.**

An electric public utility is responsible for ensuring reliable service. If an electric public utility fails to meet its obligation to provide reliable service to customers within the state, the commission may require action, assess disallowances or fines, or provide a penalty. The commission shall adopt rules and establish guidelines for assessment of penalties, fines, or disallowances which must take into consideration the nature, circumstances, and gravity of the violation, degree of culpability, history of prior outages, and good-faith attempts to ensure reliability."

Renumber accordingly

21.0748.05003

FIRST ENGROSSMENT

Sixty-seventh  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2313

Introduced by

Senator Wardner

Representative Pollert

1 A BILL for an Act to create and enact three new sections to chapter 49-05 of the North Dakota  
2 Century Code, relating to resource planning, planning reserve margin, and reliable service  
3 obligation; to amend and reenact sections 17-05-05 and 17-05-13 of the North Dakota Century  
4 Code, relating to the powers of the transmission authority and the transmission authority's  
5 reporting requirements; and to ~~repeal chapter 17-01 of the North Dakota Century Code, relating~~  
6 ~~to the 25x25 initiative~~provide a penalty.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 17-05-05 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **17-05-05. Powers.**

11 The authority has all powers necessary to carry out the purposes of this chapter, including  
12 the power to:

- 13 1. Make grants or loans and to provide other forms of financial assistance as necessary  
14 or appropriate for the purposes of this chapter;
- 15 2. Make and execute contracts and all other instruments necessary or convenient for the  
16 performance of its powers and functions under this chapter;
- 17 3. Borrow money and issue evidences of indebtedness as provided in this chapter;
- 18 4. Receive and accept aid, grants, or contributions of money or other things of value from  
19 any source, including aid, grants, or contributions from any department, agency, or  
20 instrumentality of the United States, subject to the conditions upon which the aid,  
21 grants, or contributions are made and consistent with the provisions of this chapter;
- 22 5. Issue and sell evidences of indebtedness in an amount or amounts as the authority  
23 may determine, but not to exceed eight hundred million dollars, plus costs of issuance,  
24 credit enhancement, and any reserve funds required by agreements with or for the

- 1 benefit of holders of the evidences of indebtedness for the purposes for which the  
2 authority is created under this chapter, provided that the amount of any refinancing  
3 shall not be counted toward such eight hundred million dollar limitation to the extent it  
4 does not exceed the outstanding amount of the obligations being refinanced;
- 5 6. Refund and refinance its evidences of indebtedness;
- 6 7. Make and execute interest rate exchange contracts;
- 7 8. Enter lease-sale contracts;
- 8 9. Pledge any and all revenues derived by the authority under this chapter or from a  
9 transmission facility, service, or activity funded under this chapter to secure payment  
10 or redemption of the evidences of indebtedness;
- 11 10. To the extent and for the period of time necessary for the accomplishment of the  
12 purposes for which the authority was created, plan, finance, develop, acquire, own in  
13 whole or in part, lease, rent, and dispose of transmission facilities;
- 14 11. Enter contracts to construct, maintain, and operate transmission facilities;
- 15 12. Consult with the public service commission, regional organizations, and any other  
16 relevant state or federal authority or persons as necessary and establish reasonable  
17 fees, rates, tariffs, or other charges for transmission facilities and all services rendered  
18 by the authority;
- 19 13. Lease, rent, and dispose of transmission facilities owned pursuant to this chapter;
- 20 14. Investigate, plan, prioritize, and propose corridors of the transmission of electricity;
- 21 15. Participate in and join regional transmission organizations; and
- 22 16. ~~Participate~~ Identify and participate in studies of transmission options for the purpose of  
23 identifying opportunities for private transmission investment or private public  
24 investment options in transmission which will increase opportunity for export from the  
25 state consistent with maintaining a stable grid for the load serving entities in North  
26 Dakota; and
- 27 17. Do any and all things necessary or expedient for the purposes of the authority  
28 provided in this chapter.

29 **SECTION 2. AMENDMENT.** Section 17-05-13 of the North Dakota Century Code is  
30 amended and reenacted as follows:



1 **17-05-13. Reporting requirements.**

2 1. The authority shall deliver a written report on its activities to the legislative council  
3 each biennium. Notwithstanding chapter 54-60.1, the authority shall provide an annual  
4 report to the industrial commission detailing activities and expenditures incurred during  
5 the preceding year.

6 2. The authority shall deliver a written report on the status of the resilience of the electric  
7 grid to the legislative council and the industrial commission by September 1, 2022, and  
8 annually thereafter. The report must be forwarded by the industrial commission to the  
9 regional transmission operators in the state.

10 a. The information for the report should be collected from publicly available  
11 information to the extent possible. If public information is unavailable, the  
12 authority shall request a generation facility and a transmission owner to provide  
13 the information needed to complete the report.

14 b. The report may be a short-term and long-term projection of the following:

15 (1) The adequacy of the state's electric grid to meet the demands of load within  
16 the state and to continue to export electricity from the state;

17 (2) The resilience of the state's electric grid, including local resilience; and

18 (3) The plans of generation owners, developers, or operators to add or remove  
19 generation assets connected to an independent system or regional  
20 transmission operator in excess of an aggregate of twenty-five megawatts.

21 ~~**SECTION 3. REPEAL.** Chapter 17-01 of the North Dakota Century Code is repealed.~~

22 **SECTION 3.** A new section to chapter 49-05 of the North Dakota Century Code is created  
23 and enacted as follows:

24 **Resource planning.**

25 1. An integrated resource plan must include:

26 a. The electric public utility's forecast of demand for electric generation supply over  
27 the planning period with recommended plans for meeting the forecasted demand  
28 plus an additional planning reserve margin for ensuring adequate and sufficient  
29 reliability of service; and



1            b. Any additional information the commission requests related to how an electric  
2            public utility intends to provide sufficient electric generation service for use by  
3            retail customers within the state over the planning period.

4            2. An electric public utility shall include a least cost plan for providing adequate and  
5            reliable service to retail customers which is consistent with the provisions of this title  
6            and the rules and orders adopted and issued by the commission.

7            3. The commission may consider the qualitative benefits and provide value to a  
8            base-load generation and load-following generation resource and its proximity to load.

9            4. The commission may contract or consult with an expert to evaluate qualitative benefits  
10           of resources and to review reliability planning. The commission may require an electric  
11           public utility to pay a fee necessary for completion of an evaluation in an amount not to  
12           exceed two hundred fifty thousand dollars.

13           a. If additional funds are necessary for completion of the evaluation, upon approval  
14           of the emergency commission, the electric public utility shall pay the additional  
15           fees reasonably necessary for the completion.

16           b. If the evaluation applies to more than one electric public utility, the commission  
17           may assess each electric public utility the proportionate share of the fee.

18           5. An electric public utility shall report annually to the commission on cybersecurity  
19           preparedness, including an assessment of emerging threats and efforts taken by the  
20           electric public utility to implement cybersecurity measures.

21           **SECTION 4.** A new section to chapter 49-05 of the North Dakota Century Code is created  
22 and enacted as follows:

23           **Planning reserve margin - Penalty.**

24           The commission may require action, assess a disallowance or fine, or provide a penalty in  
25 accordance with chapter 49-07 if an electric public utility fails to meet the minimum capacity  
26 requirement and reserve margin. Unless otherwise set by the commission, the minimum  
27 capacity requirement and planning reserve margin is as set by the regional transmission  
28 organization to which the electric public utility belongs.

29           **SECTION 5.** A new section to chapter 49-05 of the North Dakota Century Code is created  
30 and enacted as follows:

1     **Reliable service obligation.**

2     An electric public utility is responsible for ensuring reliable service. If an electric public utility  
3 fails to meet its obligation to provide reliable service to customers within the state, the  
4 commission may require action, assess disallowances or fines, or provide a penalty. The  
5 commission shall adopt rules and establish guidelines for assessment of penalties, fines, or  
6 disallowances which must take into consideration the nature, circumstances, and gravity of the  
7 violation, degree of culpability, history of prior outages, and good-faith attempts to ensure  
8 reliability.

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2313  
4/1/2021

|   |
|---|
| Relating to electric power reliability and price transparency; and to repeal chapter 17-01 of the North Dakota Century Code, relating to the 25x25 initiative |
|---|

### 10:33 AM

Chairman Porter opened the hearing. Present: Representatives Porter, Damschen, Anderson, Bosch, Devlin, Heinert, Keiser, Lefor, Marschall, Roers Jones, Ruby, Zubke, Guggisberg, and Ista.

#### Discussion Topics:

- Electric generation
- Investor owned utilities
- Amendment 05004
- Providing baseload energy close to the customer
- PSC / study ability to put a value on baseload power
- Report annually / assessment
- Minimum capacity requirement penalties
- Reliable service
- Cap at \$2 million
- PSC needs to adopt rules
- Cyber threats/events
- Cyber security study
- Acts of God - culpability
- Regional Transmission Authority (RTO)

Rep Bosch, Dist 30, chairman of the subcommittee #11014

Rep Bosch moved to adopt Amendment 05004, seconded by Rep Ista. Voice vote. Motion carried.

Rep Bosch moved a Do Pass as Amended, seconded by Rep Ista.

| REPRESENTATIVES        | YES | NO | REPRESENTATIVES | YES | NO |
|------------------------|-----|----|-----------------|-----|----|
| Chairman Porter        | Y   |    | Rep Ista        | Y   |    |
| Vice Chairman Damschen | Y   |    | Rep Keiser      | Y   |    |
| Rep D Anderson         | Y   |    | Rep Lefor       | Y   |    |
| Rep Bosch              | Y   |    | Rep Marschall   | Y   |    |
| Rep Devlin             | Y   |    | Rep Roers Jones | Y   |    |
| Rep Guggisberg         | Y   |    | Rep M Ruby      | Y   |    |
| Rep Heinert            | Y   |    | Rep Zubke       | Y   |    |

Motion carried. 14-0-0 Rep Bosch is carrier.

**11:00 AM** hearing closed.

*Kathleen Davis, Committee Clerk*

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2313

Page 1, line 1, after "to" insert "create and enact three new sections to chapter 49-05 of the North Dakota Century Code, relating to resource planning, planning reserve margin, and reliable service obligation; to"

Page 1, line 3, remove "repeal chapter 17-01 of the North Dakota Century"

Page 1, line 4, replace "Code, relating to the 25x'25 initiative" with "provide a penalty"

Page 3, replace line 18 with:

**"SECTION 3.** A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

**Resource planning.**

1. An integrated resource plan must include:
  - a. The electric public utility's forecast of demand for electric generation supply over the planning period with recommended plans for meeting the forecasted demand plus an additional planning reserve margin for ensuring adequate and sufficient reliability of service; and
  - b. Any additional information the commission requests related to how an electric public utility intends to provide sufficient electric generation service for use by retail customers within the state over the planning period.
2. An electric public utility shall include a least cost plan for providing adequate and reliable service to retail customers which is consistent with the provisions of this title and the rules and orders adopted and issued by the commission.
3. The commission may consider the qualitative benefits and provide value to a base-load generation and load-following generation resource and its proximity to load.
4. The commission may contract or consult with an expert to evaluate qualitative benefits of resources and to review reliability planning. The commission may require an electric public utility to pay a fee necessary for completion of an evaluation in an amount not to exceed two hundred fifty thousand dollars.
  - a. If additional funds are necessary for completion of the evaluation, upon approval of the emergency commission, the electric public utility shall pay the additional fees reasonably necessary for the completion.
  - b. If the evaluation applies to more than one electric public utility, the commission may assess each electric public utility the proportionate share of the fee.

5. An electric public utility shall report annually to the commission on cybersecurity preparedness, including an assessment of emerging threats and efforts taken by the electric public utility to implement cybersecurity measures. The commission may limit access to records and portions of a meeting relating to cybersecurity preparedness.

**SECTION 4.** A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

**Planning reserve margin - Penalty.**

The commission may require action, assess a disallowance or fine, or provide a penalty in accordance with chapter 49-07 if an electric public utility fails to meet the minimum capacity requirement and reserve margin. Unless otherwise set by the commission, the minimum capacity requirement and planning reserve margin is as set by the regional transmission organization to which the electric public utility belongs.

**SECTION 5.** A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

**Reliable service obligation.**

An electric public utility is responsible for ensuring reliable service. If an electric public utility fails to meet its obligation to provide reliable service to customers within the state, the commission may require action, assess disallowances or fines, or provide a penalty. The commission shall adopt rules and establish guidelines for assessment of penalties, fines, or disallowances which must take into consideration the nature, circumstances, and gravity of the violation, degree of culpability, history of prior outages, and good-faith attempts to ensure reliability."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2313, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2313 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact three new sections to chapter 49-05 of the North Dakota Century Code, relating to resource planning, planning reserve margin, and reliable service obligation; to"

Page 1, line 3, remove "repeal chapter 17-01 of the North Dakota Century"

Page 1, line 4, replace "Code, relating to the 25x25 initiative" with "provide a penalty"

Page 3, replace line 18 with:

**"SECTION 3.** A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

**Resource planning.**

1. An integrated resource plan must include:
  - a. The electric public utility's forecast of demand for electric generation supply over the planning period with recommended plans for meeting the forecasted demand plus an additional planning reserve margin for ensuring adequate and sufficient reliability of service; and
  - b. Any additional information the commission requests related to how an electric public utility intends to provide sufficient electric generation service for use by retail customers within the state over the planning period.
2. An electric public utility shall include a least cost plan for providing adequate and reliable service to retail customers which is consistent with the provisions of this title and the rules and orders adopted and issued by the commission.
3. The commission may consider the qualitative benefits and provide value to a base-load generation and load-following generation resource and its proximity to load.
4. The commission may contract or consult with an expert to evaluate qualitative benefits of resources and to review reliability planning. The commission may require an electric public utility to pay a fee necessary for completion of an evaluation in an amount not to exceed two hundred fifty thousand dollars.
  - a. If additional funds are necessary for completion of the evaluation, upon approval of the emergency commission, the electric public utility shall pay the additional fees reasonably necessary for the completion.
  - b. If the evaluation applies to more than one electric public utility, the commission may assess each electric public utility the proportionate share of the fee.
5. An electric public utility shall report annually to the commission on cybersecurity preparedness, including an assessment of emerging threats and efforts taken by the electric public utility to implement

cybersecurity measures. The commission may limit access to records and portions of a meeting relating to cybersecurity preparedness.

**SECTION 4.** A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

**Planning reserve margin - Penalty.**

The commission may require action, assess a disallowance or fine, or provide a penalty in accordance with chapter 49-07 if an electric public utility fails to meet the minimum capacity requirement and reserve margin. Unless otherwise set by the commission, the minimum capacity requirement and planning reserve margin is as set by the regional transmission organization to which the electric public utility belongs.

**SECTION 5.** A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

**Reliable service obligation.**

An electric public utility is responsible for ensuring reliable service. If an electric public utility fails to meet its obligation to provide reliable service to customers within the state, the commission may require action, assess disallowances or fines, or provide a penalty. The commission shall adopt rules and establish guidelines for assessment of penalties, fines, or disallowances which must take into consideration the nature, circumstances, and gravity of the violation, degree of culpability, history of prior outages, and good-faith attempts to ensure reliability."

Renumber accordingly



21.0748.05003

FIRST ENGROSSMENT

Sixty-seventh  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2313

Introduced by

Senator Wardner

Representative Pollert

1 A BILL for an Act to create and enact three new sections to chapter 49-05 of the North Dakota  
2 Century Code, relating to resource planning, planning reserve margin, and reliable service  
3 obligation; to amend and reenact sections 17-05-05 and 17-05-13 of the North Dakota Century  
4 Code, relating to the powers of the transmission authority and the transmission authority's  
5 reporting requirements; and to ~~repeal chapter 17-01 of the North Dakota Century Code, relating~~  
6 ~~to the 25x25 initiative~~provide a penalty.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 17-05-05 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **17-05-05. Powers.**

11 The authority has all powers necessary to carry out the purposes of this chapter, including  
12 the power to:

- 13 1. Make grants or loans and to provide other forms of financial assistance as necessary  
14 or appropriate for the purposes of this chapter;
- 15 2. Make and execute contracts and all other instruments necessary or convenient for the  
16 performance of its powers and functions under this chapter;
- 17 3. Borrow money and issue evidences of indebtedness as provided in this chapter;
- 18 4. Receive and accept aid, grants, or contributions of money or other things of value from  
19 any source, including aid, grants, or contributions from any department, agency, or  
20 instrumentality of the United States, subject to the conditions upon which the aid,  
21 grants, or contributions are made and consistent with the provisions of this chapter;
- 22 5. Issue and sell evidences of indebtedness in an amount or amounts as the authority  
23 may determine, but not to exceed eight hundred million dollars, plus costs of issuance,  
24 credit enhancement, and any reserve funds required by agreements with or for the

- 1 benefit of holders of the evidences of indebtedness for the purposes for which the  
2 authority is created under this chapter, provided that the amount of any refinancing  
3 shall not be counted toward such eight hundred million dollar limitation to the extent it  
4 does not exceed the outstanding amount of the obligations being refinanced;
- 5 6. Refund and refinance its evidences of indebtedness;
- 6 7. Make and execute interest rate exchange contracts;
- 7 8. Enter lease-sale contracts;
- 8 9. Pledge any and all revenues derived by the authority under this chapter or from a  
9 transmission facility, service, or activity funded under this chapter to secure payment  
10 or redemption of the evidences of indebtedness;
- 11 10. To the extent and for the period of time necessary for the accomplishment of the  
12 purposes for which the authority was created, plan, finance, develop, acquire, own in  
13 whole or in part, lease, rent, and dispose of transmission facilities;
- 14 11. Enter contracts to construct, maintain, and operate transmission facilities;
- 15 12. Consult with the public service commission, regional organizations, and any other  
16 relevant state or federal authority or persons as necessary and establish reasonable  
17 fees, rates, tariffs, or other charges for transmission facilities and all services rendered  
18 by the authority;
- 19 13. Lease, rent, and dispose of transmission facilities owned pursuant to this chapter;
- 20 14. Investigate, plan, prioritize, and propose corridors of the transmission of electricity;
- 21 15. Participate in and join regional transmission organizations; and
- 22 16. ~~Participate~~ Identify and participate in studies of transmission options for the purpose of  
23 identifying opportunities for private transmission investment or private public  
24 investment options in transmission which will increase opportunity for export from the  
25 state consistent with maintaining a stable grid for the load serving entities in North  
26 Dakota; and
- 27 17. Do any and all things necessary or expedient for the purposes of the authority  
28 provided in this chapter.

29 **SECTION 2. AMENDMENT.** Section 17-05-13 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1       **17-05-13. Reporting requirements.**

2       1. The authority shall deliver a written report on its activities to the legislative council  
3       each biennium. Notwithstanding chapter 54-60.1, the authority shall provide an annual  
4       report to the industrial commission detailing activities and expenditures incurred during  
5       the preceding year.

6       2. The authority shall deliver a written report on the status of the resilience of the electric  
7       grid to the legislative council and the industrial commission by September 1, 2022, and  
8       annually thereafter. The report must be forwarded by the industrial commission to the  
9       regional transmission operators in the state.

10       a. The information for the report should be collected from publicly available  
11       information to the extent possible. If public information is unavailable, the  
12       authority shall request a generation facility and a transmission owner to provide  
13       the information needed to complete the report.

14       b. The report may be a short-term and long-term projection of the following:

15       (1) The adequacy of the state's electric grid to meet the demands of load within  
16       the state and to continue to export electricity from the state;

17       (2) The resilience of the state's electric grid, including local resilience; and

18       (3) The plans of generation owners, developers, or operators to add or remove  
19       generation assets connected to an independent system or regional  
20       transmission operator in excess of an aggregate of twenty-five megawatts.

21       ~~**SECTION 3. REPEAL.** Chapter 17-01 of the North Dakota Century Code is repealed.~~

22       **SECTION 3.** A new section to chapter 49-05 of the North Dakota Century Code is created  
23       and enacted as follows:

24       **Resource planning.**

25       1. An integrated resource plan must include:

26       a. The electric public utility's forecast of demand for electric generation supply over  
27       the planning period with recommended plans for meeting the forecasted demand  
28       plus an additional planning reserve margin for ensuring adequate and sufficient  
29       reliability of service; and

1            b. Any additional information the commission requests related to how an electric  
2            public utility intends to provide sufficient electric generation service for use by  
3            retail customers within the state over the planning period.

4            2. An electric public utility shall include a least cost plan for providing adequate and  
5            reliable service to retail customers which is consistent with the provisions of this title  
6            and the rules and orders adopted and issued by the commission.

7            3. The commission may consider the qualitative benefits and provide value to a  
8            base-load generation and load-following generation resource and its proximity to load.

9            4. The commission may contract or consult with an expert to evaluate qualitative benefits  
10           of resources and to review reliability planning. The commission may require an electric  
11           public utility to pay a fee necessary for completion of an evaluation in an amount not to  
12           exceed two hundred fifty thousand dollars.

13           a. If additional funds are necessary for completion of the evaluation, upon approval  
14           of the emergency commission, the electric public utility shall pay the additional  
15           fees reasonably necessary for the completion.

16           b. If the evaluation applies to more than one electric public utility, the commission  
17           may assess each electric public utility the proportionate share of the fee.

18           5. An electric public utility shall report annually to the commission on cybersecurity  
19           preparedness, including an assessment of emerging threats and efforts taken by the  
20           electric public utility to implement cybersecurity measures.

21           **SECTION 4.** A new section to chapter 49-05 of the North Dakota Century Code is created  
22 and enacted as follows:

23           **Planning reserve margin - Penalty.**

24           The commission may require action, assess a disallowance or fine, or provide a penalty in  
25 accordance with chapter 49-07 if an electric public utility fails to meet the minimum capacity  
26 requirement and reserve margin. Unless otherwise set by the commission, the minimum  
27 capacity requirement and planning reserve margin is as set by the regional transmission  
28 organization to which the electric public utility belongs.

29           **SECTION 5.** A new section to chapter 49-05 of the North Dakota Century Code is created  
30 and enacted as follows:

1 **Reliable service obligation.**

2 An electric public utility is responsible for ensuring reliable service. If an electric public utility  
3 fails to meet its obligation to provide reliable service to customers within the state, the  
4 commission may require action, assess disallowances or fines, or provide a penalty. The  
5 commission shall adopt rules and establish guidelines for assessment of penalties, fines, or  
6 disallowances which must take into consideration the nature, circumstances, and gravity of the  
7 violation, degree of culpability, history of prior outages, and good-faith attempts to ensure  
8 reliability.