

November 30, 2022

The Public Service Commission convened in the Commission Hearing Room, State Capitol, Bismarck, North Dakota, on November 30, 2022, 10:00 a.m. Present were Commissioners Fedorchak, Christmann and Haugen-Hoffart.

Minutes

Ms. Fedorchak: I move the minutes of November 10, 2022, be approved.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. AM-22-25
Public Service Commission
2022 Morton County Phase 3 AML
Project

Ms. Fedorchak: I move the Commission close the 2022 Morton County Phase 3 Abandoned Mine Lands Project, Case No. AM-22-25, in Public Service Commission, 2022 Morton County Phase 3 AML Project, Case No. AM-22-25.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. AM-22-411
Public Service Commission
2023 Garrison Phase 6 AML
Project

Ms. Fedorchak: I move the Commission initiate Case No. AM-22-411 for the 2023 Garrison Phase 6 AML Project for reclamation of abandoned mine lands in Public Service Commission, 2023 Garrison Phase 6 AML, Project, Case No. AM-22-411.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. AM-22-412
Public Service Commission
2023 Buechler-Velva Phase 3 AML
Project

Ms. Fedorchak: I move the Commission initiate Case No. AM-22-412 for the 2023 Buechler-Velva Phase 3 AML Project for reclamation of abandoned mine lands in Public Service Commission, 2023 Buechler-Velva Phase 3 AML, Project, Case No. AM-22-412.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Blaster Re-Certification
Approval

Ms. Fedorchak: I move the Commission to approve blaster re-certification for the following applicants:

Applicant	Affiliation	Certificate No.
Darin Rudland	Freedom Mine	08-05-303-R(5)
Brent Lipelt	Freedom Mine	08-05-301-R(5)
Jason Downing	Freedom Mine	11-01-244-R(4)

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-22-86
Badger Wind, LLC
251.6 MW Badger Wind Project -
Logan & McIntosh
Siting Application

Ms. Fedorchak: I move the Commission adopt the Findings of Fact, Conclusions of Law and Order in Badger Wind, LLC, 251.6 MW Badger Wind Project – Logan & McIntosh, Siting Application, Case No. PU-22-86.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: Ms. Fedorchak votes "Aye".

Mr. Christmann votes "Nay".

Ms. Haugen-Hoffart votes "Aye".

Concurring Opinion

Case No. PU-22-86
Badger Wind, LLC
251.6 MW Badger Wind Project -
Logan & McIntosh
Siting Application

Concurring Opinion

Commissioner Julie Fedorchak, Chair

One fellow Commissioner voted against the permit for the Badger Wind generation facility citing concerns expressed by three advocates of the state's coal industry who attended the siting hearing. They requested that the Commission reject the application claiming the facility would exacerbate congestion on the grid, threaten reliability and negatively impact the economics of the North Dakota coal industry, thereby negatively impacting the welfare of North Dakota citizens. Commissioner Christmann further predicted that the project will increase costs to North Dakota ratepayers, also negatively impacting the welfare of our citizens.

While I have great respect for my colleague, I disagree with him on this case and reject these arguments for two reasons. I provide this concurring opinion to memorialize the rationale expressed in the order because I have serious concerns about the impact this case and decision could have on future permitting of energy infrastructure in North Dakota.

First, opponents did not provide factual evidence to substantiate their claims that this project would exacerbate congestion, threaten reliability, increase rates or decrease the run time of coal fired power plants in North Dakota. In fact, MISO, the entity responsible for operating the bulk power system, evaluated the impact of the project on the grid, identified the problems, and assigned the company \$18 million worth of grid improvements needed prior to receiving an interconnection agreement. Finding that this project jeopardizes grid reliability would require the Commission to substitute its judgement, based on a heat map and a few quotes from MISO documents, for MISO's multi-year interconnection study. This would be imprudent and likely indefensible in court.

Using customer bill impacts as a consideration for a siting permit is also riddled with problems. The

Concurring Opinion Continued

Case No. PU-22-86
Badger Wind, LLC
251.6 MW Badger Wind Project -
Logan & McIntosh
Siting Application

Commission doesn't have authority over or insight into ratepayer impacts for many of the projects that come before us for a permit. In fact, projects are not required to have buyers prior to applying for a permit, and many don't. Therefore, identifying and examining rate impacts of potential energy infrastructure would be impossible. In this case, opponents didn't provide evidence that quantified in any way that this project would increase rates for North Dakota customers. Again, this Commission cannot reject a permit for a \$390 million investment based on unsubstantiated predictions.

Second, the issues expressed by opponents of this project stretch the interpretation of the siting act into areas not previously considered and in ways that will create significant complications and uncertainty long term. The siting act was initiated in the 1970s to provide a thoughtful, orderly and stable path for development of our state's abundant energy resources in a way that minimizes impact to the environment and the people living closest to the energy infrastructure. The law outlines 11 factors for the Commission to evaluate. Nine of the 11 factors call for minimizing impacts to the environment, cultural resources, and a litany of local resources. One factor requires the Commission to consider concerns of federal, state and local agencies. The remaining factor directs the PSC to consider direct or indirect economic impacts of the project. Traditionally, this factor has focused on job creation, property taxes and other economic benefits of proposed projects, as well as locational impacts to county roads, emergency personnel, water and sewer, power infrastructure, etc.

This Commission has a 45-year tradition of interpreting the siting law strictly. This has allowed North Dakota to maintain a fair, predictable, and open siting process that provides certainty to those investing in our state and results in projects that minimize environmental impact and are largely supported by their local communities. This regulatory certainty is a key part of North Dakota's successful energy industry.

Rejecting this project on the grounds proposed by opponents would represent a significant deviation from the way this Commission has traditionally considered permitting energy infrastructure. My colleague's rationale for rejecting this permit rests entirely on language included in the broad policy statement at the introduction of the siting act regarding the welfare of North Dakota citizens. That language is intended to describe the philosophy of the siting act, but it is not a factor or standard in and of itself. The criteria are defined within

Concurring Opinion Continued

Case No. PU-22-86
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the many subsections of the act including the 11 specific factors policy makers outlined for us to consider.

Using a vague standard such as “welfare of the citizens of North Dakota,” especially without a weighty record of facts to back it up, would throw 45 years of restrained, fact-based siting decisions out the window, significantly upending the long history of regulatory certainty this Commission has maintained and exposing future siting applications to any number of factors that opponents may claim negatively impact the welfare of North Dakota citizens.

I understand and appreciate the challenges the coal industry is experiencing as generating technology changes, renewable technologies flood the grid and electricity markets fail to properly compensate thermal generators for the full value they provide to maintaining reliability. Our nation’s power grid was built around coal-fired power and the challenges facing coal-fired generation create a real threat to the reliability and stability of the grid.

I spend a significant amount of time working on solutions to these problems as the Commission’s liaison to MISO and immediate past president of the Organization of MISO states. Meaningful market changes have recently been made and more are underway to appropriately compensate thermal resources such as coal fired power to ensure that it is fairly treated by the market and available to maintain a plentiful supply of reliable and affordable power to citizens in our state and region.

These challenges are real and urgent and do have consequences for North Dakota ratepayers. But they are not caused by or even exacerbated by the North Dakota siting process. Attempting to solve them by rejecting this project will not improve reliability, lower rates or solve the economic challenges facing our state’s coal industry. Rather it will jeopardize our state’s proven and reasonable siting process that is a source of strength for our citizens, communities, the environment, the energy industry and the broader business community. And in doing so we would threaten our state’s ability to generate and export North Dakota’s diverse and abundant energy resources to help power our nation and world.



Julie Fedorchak, Chair

Dissenting Opinion

Case No. PU-22-86
Badger Wind, LLC
251.6 MW Badger Wind Project -
Logan & McIntosh
Siting Application

DISSENT

**Commissioner Randy Christmann
November 30, 2022**

Badger Wind's application for a Certificate of Site Compatibility should be denied. It will bring obvious and significant adverse effects upon the welfare of the citizens of this state.

During the public input portion of the Hearing we heard multiple people come forward to express opposition based primarily on concerns about the impact to electric reliability and to consumer prices. Among other things, they emphasized the fact that this project is to be constructed in an area of high congestion due to insufficient electric transmission infrastructure. (These congestion issues are well known by this Commission. MISO, the Regional Transmission Organization, is working on a solution)

Badger responded with Late Filed Exhibit #35. Among other things they addressed reliability by pointing out that if the growth in wind places financial pressure on coal, MISO can provide the coal plant with a guaranteed rate of return when needed for reliability. But this Commission knows that MISO will not pay for a guaranteed rate. That bill trickles back to the ratepayers. Furthermore, evidence was submitted by the opposition showing that MISO's Response to the Reliability Imperative, which was updated in January of 2022, states that MISO expects reliability risks to increase going forward as the region's resource mix continues to evolve.

Badger's Late Filed Exhibit #35 also addressed costs by pointing out that MISO provided them with an interconnection agreement that requires Badger to pay for upgrades necessary to facilitate interconnection. But the cost of the upgrades to facilitate interconnection are minimal compared to the costs to solve the congestion problem which already haunts this area and which will be compounded by this addition of another 250 MW of generation. Estimates for solving the current congestion problem in this area are in the hundreds of millions of dollars, and this project exacerbates the problem. Those costs will also come back to the ratepayers.

This Commission has sited energy infrastructure for decades and the discussion has mostly been about environmental issues. But throughout most of that time we were dealing with a situation where much of our electric transmission system had been built decades ago in anticipation of additional coal generation being developed. Many of those coal projects never

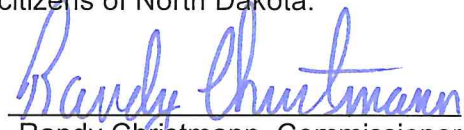
Dissenting Opinion Continued

Case No. PU-22-86
Badger Wind, LLC
251.6 MW Badger Wind Project -
Logan & McIntosh
Siting Application

materialized, so we have been able to add thousands of MW of wind generation without adversely impacting the electric transmission system. The system had enough excess capacity. (We also absorbed some of the additional generation with the expansion of our oil industry)

But now this unbridled buildout of new generation facilities and the associated retirement of existing facilities is threatening both the reliability and the affordability of electricity. Our electric transmission system, built to export energy to higher population areas outside of North Dakota, has now been saturated in many areas.

The Siting Act guides us to ensure that new energy facilities will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota. Historically our siting cases had minimal impact on the welfare of the citizens because the electric transmission system had plenty of capacity. That is no longer the case in some areas of the state, so we must start focusing more of our attention on the second half of that directive. The addition of Badger Wind in this area of extreme electric transmission congestion will undoubtedly produce significant adverse effects upon the welfare of the citizens of North Dakota.



Randy Christmann, Commissioner

Case No. PU-22-334
Tesoro High Plains Pipeline / Bakken
Oil Express
Transfer - Certificate #150 & Permit
#161
Siting Application

Ms. Fedorchak: I move the Commission adopt the Order in Tesoro High Plains Pipeline/Bakken Oil Express, Transfer - Certificate #150 & Permit #161, Siting Application, Case No. PU-22-334.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-22-380
Basin Electric Power Cooperative
Pioneer Generation Station Ph IV -
Williams County
Siting Application

Ms. Fedorchak: I move the Commission deem complete the application for a Certificate of Site Compatibility, and issue a Notice of Filing and Notice of Public Hearing in Basin Electric Power Cooperative, Pioneer Generation Station Ph IV - Williams County, Siting Application, Case No. PU-22-380.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. RC-21-329
Public Service Commission
Surface Coal Mining and Reclamation
Operations
Rulemaking

Mr. Christmann: I move the Commission submit the mining and reclamation rule changes proposed in Case No. RC-21-329 and the reclamation law changes made by Senate Bill 2317, to the Office of Surface Mining as State Program Amendment XLII (42), in Public Service Commission, Surface Coal Mining and Reclamation Operations, Rulemaking, Case No. RC-21-329.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. RC-22-28
Public Service Commission
Surface Coal Mining and Reclamation
Operations
Rulemaking

Mr. Christmann: I move the Commission submit the mining and reclamation rule changes proposed in Case No. RC-22-28 and the reclamation law changes made by House Bill 1061, Senate Bill 2327, and House Bill 1353 to the Office of Surface Mining as State Program Amendment XLIII (43), in Public Service Commission, Surface Coal Mining and Reclamation Operations, Rulemaking, Case No. RC-22-28.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-22-367
Otter Tail Power Company
Economic Development
Rates

Ms. Haugen-Hoffart: I move the Commission adopt the Order in Otter Tail Power Company, Economic Development, Rates, Case No. PU-22-367.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-22-380
Basin Electric Power Cooperative
Pioneer Generation Station Ph IV -
Williams County
Siting Application

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Case No. PU-22-400
Montana-Dakota Utilities Co.
Generation Resource Cost Recovery
Rates

Ms. Haugen-Hoffart: I move the Commission suspend the rates and issue a Notice of Opportunity for Hearing in Montana-Dakota Utilities Co., Generation Resource Cost Recovery, Rates, Case No. PU 22-400.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-22-401
Montana-Dakota Utilities Co.
Renewable Resource Cost Recovery
Rates

Ms. Haugen-Hoffart: I move the Commission suspend the rates and issue a Notice of Opportunity for Hearing in Montana-Dakota Utilities Co., Renewable Resource Cost Recovery, Rates, Case No. PU-22-401.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-22-402
Northern States Power Company
Transmission Facility Cost Recovery
(2023)
Rates

Ms. Haugen-Hoffart: I move the Commission suspend the rate, reduce the application fee to \$10,000, and issue a Notice of Opportunity for Hearing in Northern States Power Company, Transmission Facility Cost Recovery (2023), Rates, Case No. PU-22-402.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

ATTEST

THE COMMISSION ADJOURNED AT 11:49 A.M.


Executive Secretary


JULIE FEDORCHAK, CHAIR