

**Testimony of the North Dakota Public Service Commission****Brian P. Kalk, Chairman****Presented Before the Interim Legislative Energy Development and Transmission  
Committee****Sen. Rich Wardner, Chairman****July 26, 2012**

Chairman Wardner and members of the Interim Committee, I am Dr. Brian P. Kalk, Chairman of the North Dakota Public Service Commission (PSC). Thank you for your invitation to be with you today. I am joined today by my colleague Commissioner Bonny M. Fetch. It is our pleasure to be able to deliver a brief update of our recent activities and to give you a broad overview of what is happening in the energy sector in North Dakota from the perspective of a regulatory agency that oversees a large portion of its development.

As you might suspect, this is an exceptionally active time for the members and staff of the PSC we are currently preparing our budget for the upcoming legislative session, which includes some key staff recommendations which are in direct response to the growing energy industry in our state. (ie additional pipeline safety position)

Additionally we are continuing work on numerous projects around the state. Here is a brief update of some of the key projects.

- Montana-Dakota Utilities Co. has filed a letter of intent for the siting of an 88 megawatt gas-to-electricity plant costing approximately \$56.6 million to be located near Heskett Station in Mandan.
- Basin Electric Power Cooperative, Inc. has filed a letter of intent for the siting of two 45 megawatt gas-to-electricity plants costing approximately \$102 million, it will be located northwest of Williston.
- The Commission is awaiting a siting application after receiving a letter of intent for a proposed \$2.2 billion coal-to-electricity plant at South Heart.
- Four cases related to 3 new gas processing plants and 2 expansions to existing gas processing plants. These investments totaled \$948 million and have increased the capture and export of natural gas from the Bakken.
- Fifty-two pipeline cases have been docketed by the Commission. These cases involve oil, gas, natural gas and CO<sub>2</sub>. The Commission has taken action on 38 of these cases, 7 of the cases required no Commission action under the siting exclusion law. The remaining 7 cases are pending. The project investment related to the 38 cases acted on by the Commission is \$1.7 billion. The project investment related to the 7 pending cases is \$183 million.

- Twenty-four electric transmission line cases have been docketed by the Commission. The Commission has taken action on 17 these cases, 3 of the cases required no Commission action under the siting exclusion law. The remaining 4 cases are pending. The project investment related to the 17 cases acted on by the Commission is nearly \$454 million.
- The investment related to the 4 pending cases is \$1 billion. Approximately 1/3 the pending investment is related to the Minnkota 345kV line from Center to Grand Forks – currently under construction and solely contained within North Dakota.
- Another 1/3 of that total is related to the Fargo-Monticello CapX 2020 line, most of which is physically located in Minnesota, but which supports reliability needs for Eastern North Dakota and the entire region. The remaining 1/3 is for Basin Electric’s proposed 345 kV Transmission line from Antelope Valley Station at Beulah to Tioga, North Dakota expected to be in service in 2016.
- Twenty-eight wind farm cases have been docketed by the Commission. The Commission has taken action on 19 of these cases. The project investment related to the 19 cases acted on by the Commission is \$3.7 billion. The investments related to the 9 pending wind farm cases are \$9.8 billion.
- The Commission has awarded, with 6 different engineering firms, 18 contracts for siting construction inspections. The total amount contracted is approximately \$150,000.
- In 2012 the Commission is reviewing applications to add an additional 19,130 acres to existing or new surface coal mining operations. The Commission is anticipating permit application for a new mine in the Beulah, ND area involving approximately 8,000 acres.
- The Commission is reviewing two final bond release application totaling 1,450 acres and approved four final bond release totaling 2,960 acres.

Since this recent energy boom began in 2005, the Commission has completed cases involving around \$7.2 billion in investments in North Dakota, and there are is another \$13.1 billion in proposed projects in various stages of permitting.

The Commission has only been able to process this caseload without adding significant staff because of forward looking changes the legislature approved several sessions ago. Project developers’ siting fees are available to process these cases, and to hire outside consultants and experts. This has allowed the Commission to manage our caseload to this point, without breaking the PSC budget. However, we have discussed and will be looking for support in adding three additional positions, they are (1) Gas Pipeline Inspector, (1) Public Utility Analyst, and (1) Legal Clerk.

In my remaining time, I would like to briefly address a few additional issues that maybe of interest to the Committee.

The Commission, with the help of our stakeholders, continues to increase the awareness of “Call Before You Dig” and the potential penalties for not calling 811.

For the year 2012 the North Dakota Public Service Commission has received ten Damage Prevention Enforcement cases which have been initiated by third party complaints. This is up from two in 2011, two in 2010 and one in 2009. We don’t attribute this increase to more violations of ND One Call law, but simply more complaints being reported by facility operators.

When there is a violation of One Call law the Commission will assess a penalty not to exceed five thousand dollars, provided by ND Century Code section 49-07-01.1, and takes into consideration a number of factors including the nature, circumstances and severity of the complaint, the respondent’s history of prior violations or complaints, the respondent’s ability to pay, and any good faith effort by the respondent in attempting to achieve compliance.

### **Transmission Development**

The state of North Dakota, through the participation of the PSC and others, continues to be involved with regional transmission planning efforts. While our state has seen tremendous electricity generation development in recent years, continued and even greater investments will be dependent on additional transmission assets being constructed throughout the region, and indeed, the entire Eastern Interconnection. Within our local Midwest ISO region (the MISO independently operates the regional transmission grid).

Perhaps most noteworthy are recently approved proposals that provide for a new category of transmission projects (multi-value project or “MVP’s that could expand the available transmission assets that serve both reliability and generation needs within the Midwest.

In addition, there are ongoing efforts amongst the 40 states in the Eastern Interconnect to plan for transmission on a forward-looking basis (Sandi Tabor, PSC staff member Jerry Lein, and myself are North Dakota’s representatives on this “Eastern Interconnection States Planning Council”). Finally, the Federal Energy Regulatory Commission (FERC) has been actively promoting future grid planning – especially in regards to supporting ways of meeting individual states’ renewable portfolio standards – through such things as its recent Order 1000, which seeks to compel greater regional and interregional transmission planning.

## **Gas Pipeline Safety**

Nationally, and within North Dakota, gas pipeline safety has become an increasingly important issue. Several high-profile incidents have highlighted it as a concern, and the industry and state and federal regulators are all interested in finding ways to ensure we have the safest gas pipeline system possible. In North Dakota, the Commission has jurisdiction, in cooperation with the US Department of Transportation, for intrastate gas transmission and distribution. In recent years, the PSC has devoted additional staff time to this important area through internal reorganization. However, as we expressed last legislative session, this is an area in which the Commission determined that more resources are needed. Additionally, federal regulations may be promulgated, and if so, we would hope that the federal government also finally fully fund state cost reimbursement at a level of 80% as provided in law (states have traditionally been shortchanged this amount). If additional resources are needed, we will keep the Committee apprised, and of course, would welcome any input or suggestions you have in this regard.

## **Coal Mine Reclamation**

The Commission has become increasingly concerned with programmatic changes being implemented through the federal Office of Surface Mining (OSM). Most of these changes appear to have the goal of making it more difficult and expensive to mine coal, as opposed to correcting any identified problems. For example, OSM is in the process of developing a new nationwide rule to protect any stream that may be impacted by coal mining. While the primary purpose of the proposed rule relates to mountaintop mining and valley fill issues in Appalachia, it will unnecessarily add new requirements for coal mining in all areas of the country. The additional baseline data requirements for streams and more comprehensive water monitoring throughout the mining and reclamation process will add to the cost of mining. At the same time, the OSM has indicated it intends to explore cutting federal funding to state programs and to require states to increase their own taxes on coal to fund the federal share of these programs. As an alternative to states increasing industry taxes or fees, OSM is also considering a new rule to assess fees to the coal industry that would be returned to the states to cover all or part of the federal share of the regulatory program costs. It appears that OSM is trying to do through regulation what has not been accomplished through legislation. Namely, the intent appears to be to erect regulations simply to raise the cost of coal. The Commission notes that these are concerns that are shared by a number of other states and we continue to express these concerns via a number of mechanisms, including our participation in the Interstate Mining Compact Commission.

## **Economic Regulation**

The Commission is also seeing an increase in the frequency of economic regulation cases. These rate cases determine how much North Dakotans served by investor owned utilities will pay for their regulated services. The PSC recently approved new rates for MDU electric, and is currently in the midst of an Xcel electric rate case. In addition, the Commission has processed a number of cases referred to as “Advanced Determinations

of Prudence.” These are cases brought to the Commission by utilities seeking Commission approval of projects in advance of their commencement.

### **Territorial Integrity Act**

Since the 2007 enactment of N.D.C.C. section 49-03-06 authorizing service area agreements to encourage harmony and operational efficiency among electric providers, the Commission has or is processing 12 electric service area agreements, including one recent agreement between two cooperatives. As a result, there are now service area agreements filed for areas within and around the cities of Mandan, Kenmare, Bottineau, Williston, Garrison, Jamestown, Stanley, Wahpeton, Casselton, and Kindred.

Mr. Chairman and committee members that ends my testimony. I would be happy to answer any questions you may have.

## Damage Prevention Cases

Case No.	Complainant	Respondent	Prior Violations	Damage	Comments	Fine
WM-09-640	NuStar Pipeline	Riley Brothers Construction	No	No	No locate ticket	\$ 500
PU-10-633	Otter Tail Power	Lakeside Construction	No	Yes	No locate ticket, damage electric lines	\$ 1,000
PU-10-649	Otter Tail Power	Kindred Plumbing & Heating	No	Yes	No locate ticket, damage electric lines	\$ 1,000
PU-11-298	Otter Tail Power	Kindred Plumbing & Heating	Yes	No	Dispute on needing a ticket, OTP withdrew its complaint	\$ -
GS-11-664	Advocacy Staff	Aevenia Inc.	No	Yes	No locate ticket, damage nat. gas line, one fatality when line was struck	\$ 5,000
GS-12-31	Belle Fourche Pipeline	Shores Companies Inc.	No	Yes	Expired locate ticket, damage oil pipeline spilling 200 barrels	
GS-12-37	Whiting Oil and Gas	Vern Maddox	No	No	No locate ticket	\$ 500
GS-12-53	Aux Sable Midstream	S. J. Louis Construction	No	No	No locate ticket	\$ 500
PU-12-54	Reservation Tele. Coop.	Edwards Gravel & Trucking	No	Yes	No locate ticket, damage fiber optic cable	\$ 1,000
GS-12-55	Belle Fourche Pipeline	Summit Energy	No	Yes	No locate ticket, damage oil pipeline w/ spillage	\$ 1,000
GS-12-57	Belle Fourche Pipeline	Pro Pipe Corp.	No	Yes	Expired locate ticket, damage oil pipeline	\$ 1,000
GS-12-198	Anonymous	Heidrich Homes, Inc.	No	No	Alleged no locate ticket when Heidrich did	\$ -
GS-12-220	Alliance Pipeline	Interstate Traffic Signs	No	No	Complaint on work description accuracy	\$ -
PU-12-303	Otter Tail Power	Kindred Plumbing & Heating	Yes	No	Started excavation before date on ticket	
PU-12-527	Century Link	Tooz Construction	No	Yes	Digging in located area, damage cable	

\*\*\*Highlighted cases are still under investigation/advisement as of July 26, 2012\*\*\*