

# North Dakota<sup>®</sup>

## Public Service Commission



2009-2011

**Biennial Report**

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## **Introduction**

The Public Service Commission is a constitutional agency with varying degrees of statutory authority over electric and gas utilities, telecommunications companies, power plant, transmission line and pipeline siting, railroads, grain elevators, auctioneers and auction clerks, weighing and measuring devices, pipeline safety and coal mine reclamation.

The commission typically meets in formal session every two weeks. Special meetings are held to handle special or emergency situations. The agendas for these special meetings are prepared and distributed in the same manner as those for regular meetings. These agendas are distributed to a mailing list of approximately 190 entities, either electronically or by direct mail. Agendas, meeting minutes, and copies of significant orders are also posted on the commission's website at [www.psc.nd.gov](http://www.psc.nd.gov).

The commission is comprised of three commissioners who are elected on a statewide basis to staggered six-year terms. The commission had 40 authorized full time employees throughout the biennium.

The commission was established before North Dakota became a state. Lawmakers for Dakota Territory established a Board of Railroad Commissioners in 1885 to oversee railroads, sleeping car companies, express companies, and telephone companies. The North Dakota Constitution retained this board and entrusted it with powers and duties to be prescribed by law. In 1940, the board's name was changed to Public Service Commission.

As the preceding list indicates, the Legislature has broadened the commission's duties since its early days. This trend has been reversed in some areas, however, as technology and a changing regulatory environment at both the federal and state levels have resulted in a greater dependence on competitive market forces to regulate services and rates of what were traditionally monopoly service providers.

We anticipate that some degree of regulatory oversight will remain in most of the commission's traditional areas of responsibility. The public's needs and legislative policy makers will ultimately decide how much regulation is required in various industries.

This report outlines the commission's functions, goals, accomplishments, legislation affecting the agency and future challenges. The following pages contain summary discussions from each of the commissions regulatory and support divisions. These reports will be presented following a brief biographical profile of each commissioner.

## **TONY CLARK**

### **Commissioner**

The citizens of North Dakota first elected Tony Clark to the Public Service Commission in November 2000. He was re-elected in 2006.

Since joining the PSC, he has been an advocate for North Dakota's interests in some of the state's most important industries.

Clark holds the PSC portfolio on electric generation and transmission. As such, he is active in state and regional efforts to develop North Dakota's vast energy exporting potential and provide affordable, reliable energy to consumers. Since joining the Commission, Clark has overseen regulatory proceedings that have facilitated over \$5 billion dollars in new investment in North Dakota through expanded wind, coal and petroleum infrastructure.

He is the 2010-2011 President of the National Association of Regulatory Utility Commissioners (NARUC) and is a past Chairman of its Telecommunications Committee. He has testified multiple times before committees of both the U.S. Senate and the U.S. House of Representatives on matters related to telecommunications and energy.

Clark holds the PSC rail and grain elevator portfolios and has been a leader in North Dakota's efforts to seek rail rate relief for the state's agricultural producers. These actions have led to millions in savings for North Dakota farmers. He has actively lobbied for better rail service, both in-state and before federal officials.

Prior to his election he was Labor Commissioner, serving in the cabinet of former Gov. Ed Schafer. From 1997-99 he was Administrative Officer for the state Tax Department. He is a former state legislator, representing District 44 (Fargo) in the state House from 1994-97.

In 1998, the Council of State Governments named him a "Toll Fellow" for his service to state government. In 1996, he was selected for and completed the Program for Emerging Political Leaders at the University of Virginia Darden School of Business.

He is a graduate of Fargo North High School. He holds bachelor's degrees, with honor, from North Dakota State University (NDSU). He holds a masters degree in public administration from the University of North Dakota.

Clark is a member of the Advisory Councils of the Upper Great Plains Transportation Institute at NDSU, The Institute for Public Utilities at Michigan State University, and the New Mexico State University Center for Public Utilities. He is a past Chairman of the Regional Oversight Committee, which is comprised of regulators in the 14 states where Qwest is the dominant local phone carrier.

Having attained the rank of Eagle Scout as a youth, he maintains his involvement with and support of the Scouting program. He is a past Chairman of the Frontier Trails District of the Northern Lights Council Boy Scouts of America. He currently serves as the Cubmaster of Pack 180 in Bismarck, and is a member of the Northern Lights Council Executive Board.

Tony and his wife, Amy, have three children.



## **KEVIN CRAMER**

### **Commissioner**

Kevin Cramer was re-elected to the North Dakota Public Service Commission in 2010, garnering over 61% of the vote in a three-person contest. He was first elected in 2004 with 65% of the vote after being appointed in 2003 by Governor John Hoeven to fill an unexpired term.

Prior to joining the PSC, Cramer served as the first director of the Harold Schafer Leadership Foundation. The Schafer Foundation supports the mission of the Harold Schafer Leadership Center to connect business and community leaders with emerging leaders enrolled at the University of Mary in Bismarck, ND. The goal of the center is to raise a generation of leaders who model the servant leadership principles of Jesus Christ.

Cramer has a distinguished career in public life having served eight years on the cabinet of Governor Ed Schafer. He was State Tourism Director from 1993 to 1997 and State Economic Development Director from 1997 through 2000.

Prior to government service, Cramer served as Chairman of the North Dakota Republican Party. At 30 he was the youngest member of the Republican National Committee.

Cramer serves on many boards and commissions and chairs the Roughrider Honor Flight Committee which raises funds and organizes flights for WWII Veterans to visit the memorial built in their honor on the U.S. Capitol Mall in Washington, DC. He is an adjunct instructor of marketing and management and serves on the board of trustees at the University of Mary. He is a popular master of ceremonies, speaker and teacher, taking his message of our call to be “servant leaders” to campuses and conferences across the United States.

Cramer has a B.A. degree from Concordia College in Moorhead, MN in Social Work with an emphasis on pre-seminary studies and a Master’s degree in Management from the University of Mary. He is a native of Kindred, ND where he received all of his primary and secondary education. Kevin and his wife Kris have two adult sons; Ian and Isaac, two adult daughters; Rachel and Annie and a four year old son, Abel.



## **Dr. Brian P. Kalk** **Commissioner**

Dr. Brian Kalk won the endorsement for the Public Service Commission after a spirited contest at the Republican State Convention in March of 2008. He was elected Public Service Commissioner in the November election.

Brian brings a wealth of education, experience, and expertise to the Public Service Commission. During the campaign, he focused on all aspects of the mission of the Commission. Dr. Kalk connected with the voters who agreed with the Fargo Forum when it endorsed his election by stating that he was the “Perfect Fit” for the PSC.

His educational background and experience is exceptional. He was born and raised in Bottineau, North Dakota and graduated from Bottineau High School in 1984. Brian enlisted in the Marine Corps in 1987. As an enlisted man, he served around the world as a communication non-commissioned officer. He deployed and served in both Desert Shield and Desert Storm resulting in the liberation of Kuwait.

While in the Marine Corps, he received his Bachelors’ Degree in Political Science from Campbell University, N.C., and was then selected to Officers Candidate School and commissioned in Quantico, Va. As a Logistics Officer he participated in numerous operations and exercises at home and abroad, to include the evacuations of the American Embassies in Liberia and the Central African Republic.

In June 1999, Major Kalk was selected to the Marine Corps Advanced Degree Program; returned to North Dakota and earned his Masters in Environmental Engineering from North Dakota State University. Brian was then assigned to Marine Corps Base Camp Pendleton as the Base Environmental Compliance Officer in 2001.

In February 2003, Major Kalk deployed as the Forward Operations Officer for Transportation Support Group One, providing critical logistics support to the 1st Marine Expeditionary Force in Kuwait and Iraq during Operations Enduring Freedom and Iraqi Freedom. During the summer of 2003 he returned to North Dakota and assumed command of the Fargo Military Entrance Processing Station until his retirement. During that time he received his Doctorate in Natural Resource Management from North Dakota State University.

Upon his retirement, he was hired by the Upper Great Plains Transportation Institute at NDSU. While at NDSU, he taught a variety of courses in Political Science, Transportation and Logistics, and Natural Resource Management.

Brian is a former member of the North Dakota State Soil Conservation Committee. He has remained very active in service organizations, such as the American Legion, the Marine Corps League, and the Veterans of Foreign Wars, and American Veterans. His Military Awards and Decorations are as follows:

**Defense Meritorious Service Medal**  
**The USMC Good Conduct Medal**

**Presidential Unit Citation**  
**Global War on Terrorism Exped Medal**



**Volunteer Service Medal**  
**Joint Meritorious Unit Citation**  
**Global War on Terrorism Service Medal**  
**Navy and USMC Achievement Medal**  
**Armed Forces Expeditionary Medal**  
**NATO Medal**  
**Meritorious Unit Citation**  
**Humanitarian Service Medal**

**Navy and USMC Commendation Medal**  
**National Defense Service Medal**  
**Sea Service Deployment Ribbons**  
**Navy Unit Citation**  
**Armed Forces Service Medal**  
**The Combat Action Ribbon**  
**Southwest Asia Service Medal**  
**Kuwait Liberation Medals**

Brian is passionate about North Dakota. He brings a lifelong commitment to our nation and our state. He knows, first hand, that energy independence is an absolute necessity in the world of the 21st Century. He believes that our state's plentiful natural resources should be utilized for the benefit of all our state and nation. He is committed to ensuring that everyone in North Dakota, consumers and producers alike, benefit from our abundant natural resources. Brian will use his experience and expertise to move North Dakota forward. Brian is married to Karen Nelson, formerly of Anamoose and Wyndmere; they have one college aged daughter Jordee Sue.



Commissioners listen to testimony during a Formal Hearing in Killdeer, ND

## *Agency Overview* *Executive Secretary*

The Legislature has given the commission broad jurisdiction over several industries. In some cases the commission functions like a court, in other instances it operates like a licensing board, and sometimes it serves as an environmental regulatory inspection agency.

This biennium there were 1,372 formal cases filed with the Public Service Commission to include industry filings, complaint proceedings, and rule making.

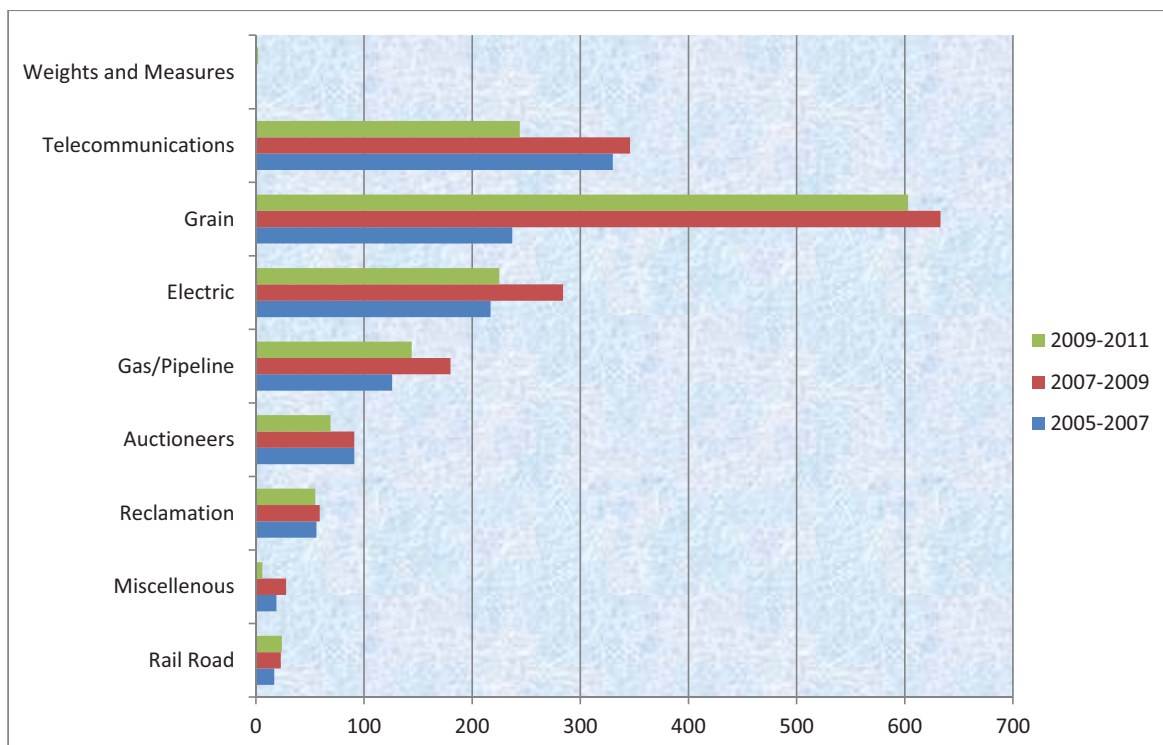
Formal hearings are held only when necessary and are used only in more complicated or contested cases, or when required by law. The vast majority of the cases that come before the commission are handled without the need for a formal hearing. Some of these filings take effect with little more than staff review. More involved cases are typically discussed with the parties and the commission at informal hearings.

The informal hearing is used by the commission to give parties an opportunity to meet publicly with the commission, but without the expense and delay that would be associated with a formal hearing. During this biennium the commission held 52 formal hearings either in the commission hearing room at the State Capitol or in the area directly affected.

- 96% of all formal cases were processed without the need for a formal hearing
- 22% of all formal cases were closed in less than thirty days
- 19% of all formal cases were closed in in sixty days or less

The following graph summarizes the number and types of cases that were processed by the commission during the biennium.

### **Docketed Cases with the Public Service Commission**





<b>Docketed Cases</b>			
	<b>2005-2007</b>	<b>2007-2009</b>	<b>2009-2011</b>
Rail Road	17	23	24
Miscellaneous	19	28	6
Reclamation	56	59	55
Auctioneers	91	91	69
Gas/Pipeline	126	180	144
Electric	217	284	225
Grain	237	633	603
Telecommunications	330	346	244
Weights and Measures	1	1	2
<b>Total</b>	<b>1094</b>	<b>1645</b>	<b>1372</b>

## **Executive Secretary**

The Executive Secretary, appointed by the Public Service Commissioners, serves as the point of contact for companies and individuals who are seeking information or submitting formal filings.

The Executive Secretary is also responsible to certify, publish, and maintain all official commission documents and case records, serve as the commission's personnel and training officer, provide timely recommendations and reports to the commission on operational and policy matters and coordinates efforts with other agencies and serves as the main informational liaison with other agencies on operational matters.

The commission meets in formal session every two weeks. Special meetings are held to handle special or emergency situations. The Executive Secretary office prepares and distributes the agendas and minutes for these meetings.

## **Mission Statement**

**The mission statement of the Public Service Commission is to fulfill its statutory mandates by protecting the public interest and regulating utilities, mining companies, and licensees in a fair, efficient, responsive, and cooperative manner. Regulatory initiatives assure that:**

- **Utility customers receive reliable and safe service at reasonable and just rates.**
- **Mined coal lands are reclaimed to provide a safe and productive environment now and in the future.**
- **License and permit holders and operators of commercial weighing and measuring devices operate in a safe and fair manner.**

## Public Outreach

The commission serves as a major resource for consumers who are having problems with the services provided by companies within the agency's areas of responsibility. Complaints or inquiries cover the gamut from utility billings to railroad lease rates and from grain protein tests to ground water near coal mines. In some cases, the commission has direct jurisdiction over the matters involved, while in other instances the agency has little or no authority to intervene in the matter. In either case, the commission attempts to provide assistance, either through direct intervention or by disseminating information that will help the parties resolve the problem.

The commission recorded approximately 2,970 complaints and inquiries during the biennium. The majority of incoming calls involved gas/electric utilities. These concerns have obviously left the consuming public with many questions, concerns, and problems; matters they look to the commission for help resolving. This occurrence may be indicative of the role that regulatory agencies will be called to play as more industries move towards full or partial deregulation.

The commission has had a website since 1995. The agency continues to update its site to keep it current and meaningful for users. The commission continued to provide audio and video broadcasts of the meetings from the website. The website was given a major facelift over the biennium with updated photos and the opportunity to follow the Commissions activities on Twitter.



The commission adopted a new Logo which will make us more recognizable and remembered. The new logo features the three color bars and the familiar Legendary font "North Dakota". The three bars represent the three commissioners that are elected at-large. The colored bars were chosen for their reflection of North Dakota's green prairies, golden wheat and blue skies.

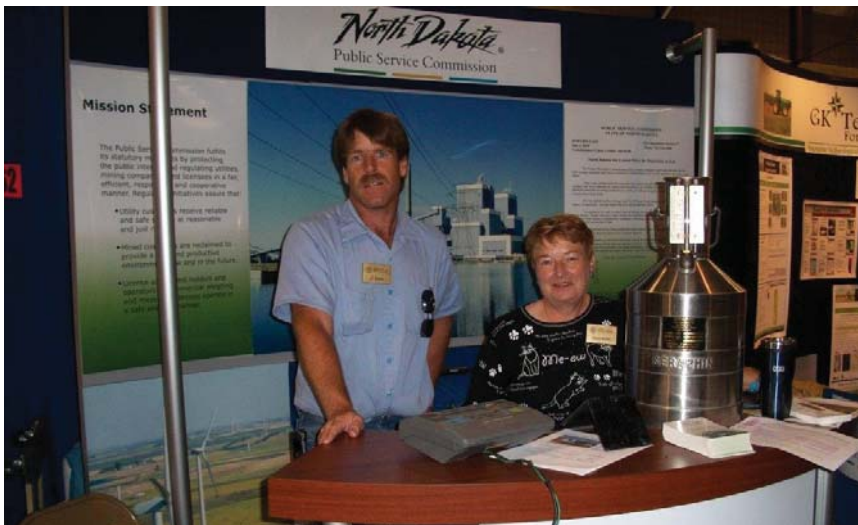
The commission has developed, maintained, updated and made available a series of "You Should Know..." brochures to help the public understand its rights. Topics covered by these brochures include information about the commission, how to file a complaint, participation in major cases, protection from utility disconnections, federal telephone assistance plans, telephone slamming and cramming, selling grain, auctioneer/auction clerk licensing, pipeline safety, weights and measures, mine reclamation and more. Copies of these brochures are available at the commission's office and on its website at [www.psc.nd.gov](http://www.psc.nd.gov).

The commission's wireless outreach initiative, "Zap the Gap," was established on July 26, 2004. Several public forums have been held throughout the state to gather input from citizens regarding wireless issues at locations including Marion, Anamoose, and Strawberry Lake. Since those meetings, at least one wireless company has installed cellular service to meet consumer telecommunications needs in Ellendale, Lisbon and LaMoure.

**Financial Data**

**2009-2011 Budget**

	<b>Appropriated</b>	<b>Expended</b>	<b>Unexpended</b>
<b>Expenditures by Line Item</b>			
Salaries and Wages	7,299,567	6,594,498	705,069
Operating Expenses	2,142,690	1,529,879	612,811
Capital Assets	127,500	104,627	22,873
Grants	10,000	8,000	2,000
AML Construction	6,500,000	3,063,736	3,436,264
Rail Fund	900,000	0	900,000
Valuation Fund	125,000	1,542	123,458
<b>Total Expenditures</b>	<b>17,104,757</b>	<b>11,302,282</b>	<b>5,802,475</b>
<b>Expenditures by Funding Source</b>			
General Fund	5,676,165	5,172,959	503,206
Federal Funds	10,403,592	6,127,781	4,275,811
Special Funds	1,025,000	1,542	1,023,458
<b>Total Expenditures by Source</b>	<b>17,104,757</b>	<b>11,302,282</b>	<b>5,802,475</b>



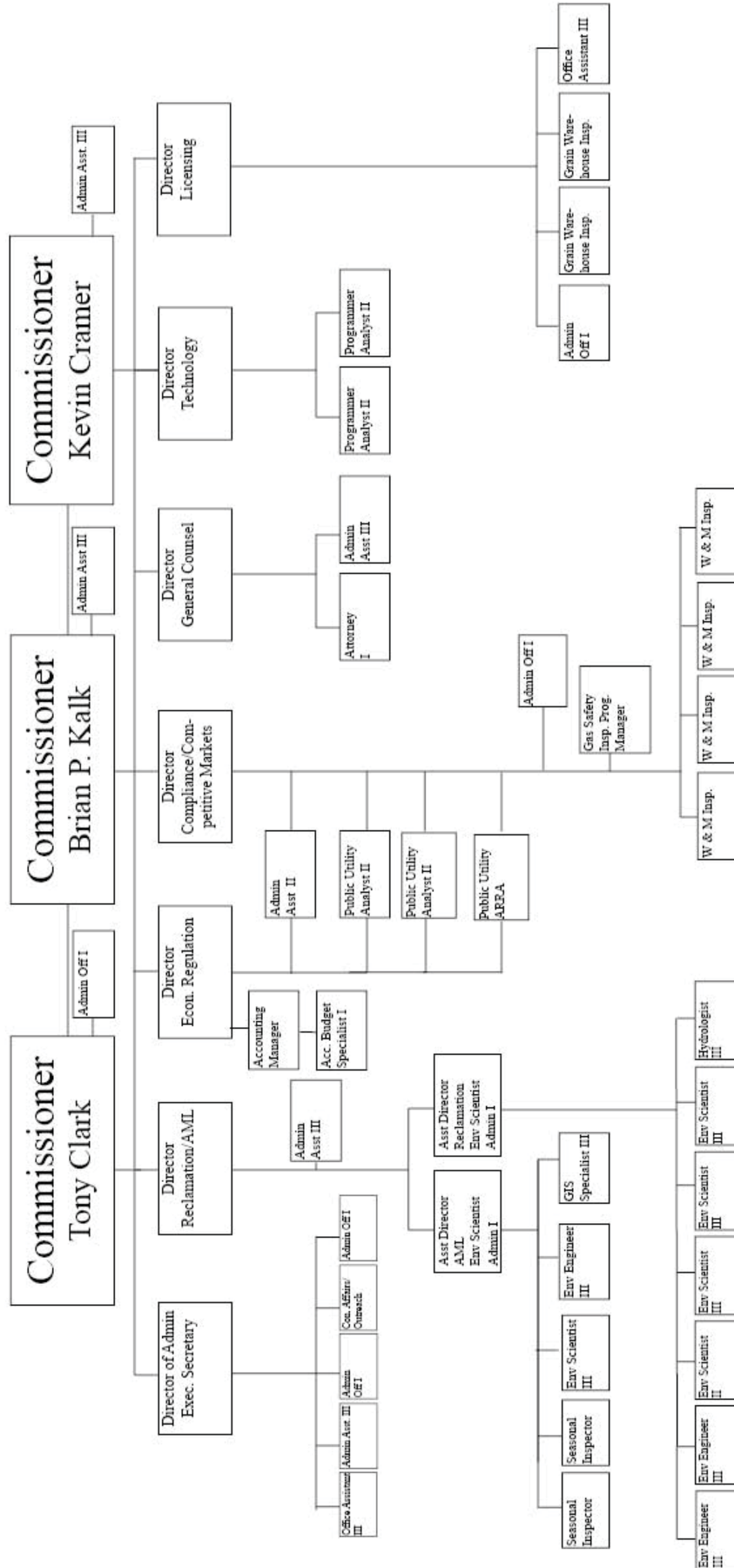
2010 ND State Fair,  
 Inspectors JP Robbins and  
 Phyllis Richter



Students from Velva High  
 School Visit the PSC  
 Hearing Room

# North Dakota Public Service Commission 2011

## Organizational Chart



## **Public Utilities**

### **Statutory and Constitutional Responsibilities**

The Commission regulates investor-owned power and gas companies to ensure that consumers receive safe and reliable service at reasonable rates.

The Commission is responsible for siting facilities such as power plants, pipelines and transmission lines.

The Commission regulates essential services offered by investor-owned phone companies.

The Commission works with utilities consumers to resolve billing disputes and service complaints.

The Commission enforces state's minimum gas pipeline safety standards upon all of North Dakota's intra-state gas transmission and distribution system operators.

The Commission supervises the installation and accurate operation of commercial weighing and measuring devices in the state through inspection and tolerance testing. The Commission supervises the calibration of all working standards used to inspect the accurate operation of weighing and measuring devices.

### **Mission Statement and Goals**

The mission statement of the division is to provide utility customers with reliable and safe service at reasonable and just rates.

Goals include:

- Establish and maintain a fair and reasonable regulatory environment in which utility services are provided.
- Provide information to consumers and the public to inform them of their rights and responsibilities.
- Protect North Dakota's environment and safety by maintaining effective oversight of the construction of energy conversion and transmission facilities.
- Enhance public safety by enforcing state and federal laws governing gas pipeline safety for intrastate natural gas transmission and distribution systems; and by maintaining liaison with and availability for special inspection assistance to the Pipeline and Hazardous Materials Safety Administration regarding interstate natural gas transmission systems and all hazardous liquids transmission systems.
- Promote fairness in the marketplace by implementing state law regarding the installation and operation of commercial weighing and measuring devices and ensuring the calibration of weights and measures standards that are traceable to the federal standards promulgated by the National Institute of Standards and Technology.

## Key 2011 Legislation

The 2011 legislature enacted five bills and one resolution relating to utility matters under the jurisdiction of the commission.

HB 1221 amended the Advance Determination of Prudence Law (N.D.C.C. Section 49-05-16)

Changes include:

- adding a definition for and using the term “resource addition” rather than identifying specific types of resource additions
- deleting the word “reasonable” as a standard for approval
- clarifying that in any subsequent proceeding to modify an advance determination of prudence it is appropriate to pay the expenses of the subsequent proceeding from the original application fee
- requiring periodic reports on projects for which there is an advance determination of prudence
- allowing deferred accounting for costs associated with a discontinued project for which there is an advance determination of prudence
- limiting both the amortization term and the return component in cost recovery for costs associated with a discontinued project for which there is an advance determination of prudence

SB 2196 amended the Energy Conversion and Transmission Facility Siting Act (N.D.C.C. Chapter 49-22)

Changes include:

- Defining wind energy conversion facilities separately from other energy conversion facilities
- Lowering the jurisdictional threshold for wind energy conversion facilities from 60 MW to ½ MW
- Lowering the jurisdictional threshold for other energy conversion facilities from 60 MW to 50 MW
- Including authority for the commission to assess a fee for siting transfer applications
- Including a authority for the commission to assess fee for certification (“footprint) filings

HB 1382 amended North Dakota’s One Call Law (N.D.C.C. Chapter 49-23) to revise the definitions for the terms “locate” and “underground facility” to clarify the law’s applicability and requirements for pipeline and cable facilities.

SB 2322 amended the Territorial Integrity Act (N.D.C.C. Chapter 49-03)

Changes include:

- Making the law applicable to electric transmission providers
- Adding a definition for the terms “electric transmission provider” and “electric transmission line”
- Limiting the commission’s authority to issue a certificate of public convenience and necessity to an electric transmission provider for a transmission line that will interconnect with an electric public utility if the electric public utility is willing and able to build and operate the line in question
- Authorizing the commission to assess an application fee for applications under the chapter

HB 1008 amended the Commission’s Budget

Changes include:

- Determination that the North Dakota Metrology Laboratory should be closed

HCR 3007 is a concurrent resolution to study eminent domain laws as they relate to pipeline siting

## Major Activities and Accomplishments

### Telecommunications

Competition for telecommunications continues to evolve in the state and the Commission continues to receive filings of interconnection agreements negotiated by incumbent local exchange companies and competitive local exchange companies. Interconnection agreements make provisions for wireline and wireless competitors to interconnect to local exchange areas served by incumbent rural telephone companies, and provision of wholesale prices for services that may be resold by competitors. During the 2009-2011 biennium, the Commission received for approval 41 interconnection agreements and 13 interconnection agreement amendments.

The Commission takes a hands-on role in reclaiming telephone numbers that have been allocated to a company but have not been activated by that company within six months. The Commission also assists in the procurement of telephone numbers not otherwise available to a telecommunications company.

Each year by October 1, the Commission provides to the Federal Communications Commission verification by the rural telephone companies that federal universal service funds are used only for those purposes specified by the Federal Communications Commission and therefore are eligible to receive such federal funding for the next calendar year.

Since 2007, telecommunications companies designated by the Commission as eligible to receive federal universal service funds began filing annual reports of the federal funds received; the use made of those federal funds for the provision of universal telephone services in the state, projections for future federal funds, and anticipated projects funded by those future dollars. Federal universal funds are to be used only for those purposes specified by the Federal Communications Commission. This information supports rural company certification to receive future universal service funds.

In July 2010, WWC Holding Co., Inc. (also known as Alltel Corporation cancelled its designation as a wireless telecommunications carrier eligible to receive federal universal service funding.)

In March 2011, New Cingular Wireless PCS, LLC filed an application to be designated as a wireless telecommunications carrier eligible to receive federal universal service funding. A decision was pending before the Commission at the close of the biennium.

The Commission continues to provide a web-based electronic self-registration system for telecommunications companies other than incumbent local exchange telecommunications companies. Approximately 392 telecommunications companies have self-registered.

### Natural Gas

In Case No. PU-08-627, the Commission opened an investigation after receiving a number of complaints regarding Xcel Energy having to estimate customer bills because of approximately 4,400 gas meter malfunctions during the winter of 2007-2008. Xcel had recently replaced automated meter reading modules on its natural gas meters. During the investigation, Xcel engaged an independent contractor to review its processes for provisioning and maintaining customers, measuring product delivery, creating customers' bills, and payment collection. Reports of the review were filed and presented to the Commission. Xcel has implemented the majority of the independent contractor's recommendations.

In Case No. PU-09-649, Montana Dakota Utilities Co., a Division of MDU Resources Group, Inc., filed

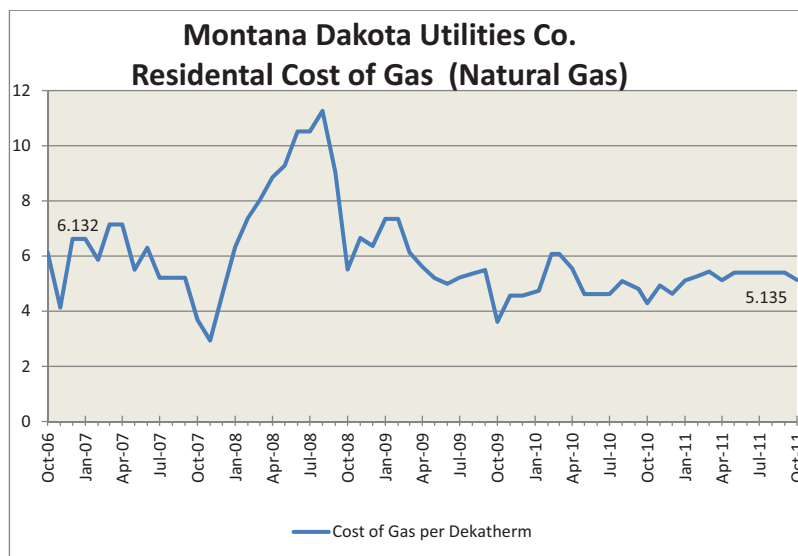
an application to expand an existing certificate of public convenience and necessity the Commission had granted for the construction and operation of a natural gas distribution line to serve US BioEnergy, an ethanol production facility near Hankinson, North Dakota. The expanded area would allow MDU to provide natural gas transportation service to customer's locations beyond the existing line. The Commission granted the request on December 31, 2009.

In Case No. PU-10-603, Great Plains Natural Gas Co., a Division of MDU Resources Group, Inc., filed a tariff to extend its natural gas distribution system approximately four miles west of Wahpeton, North Dakota along a corridor south of Highway 13 to provide natural gas service to twelve potential customers. The Commission approved the tariff on November 2, 2010.

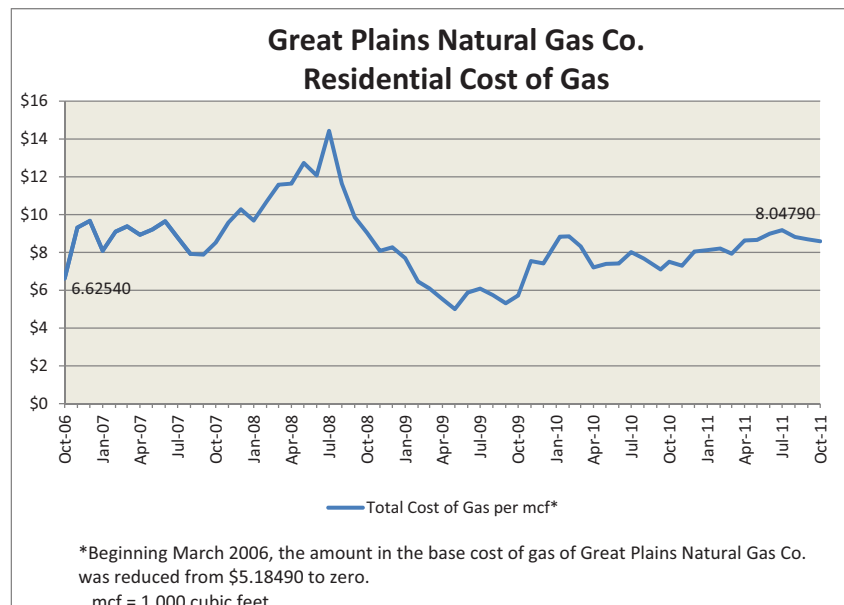
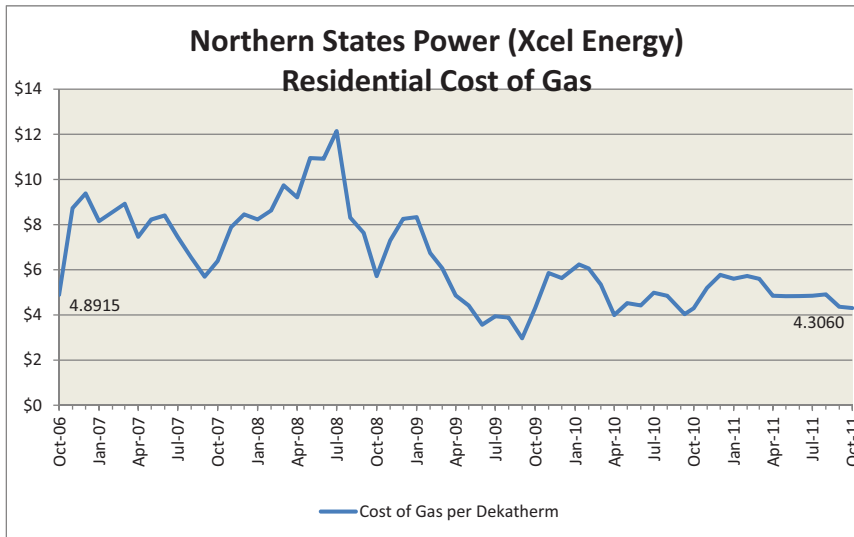
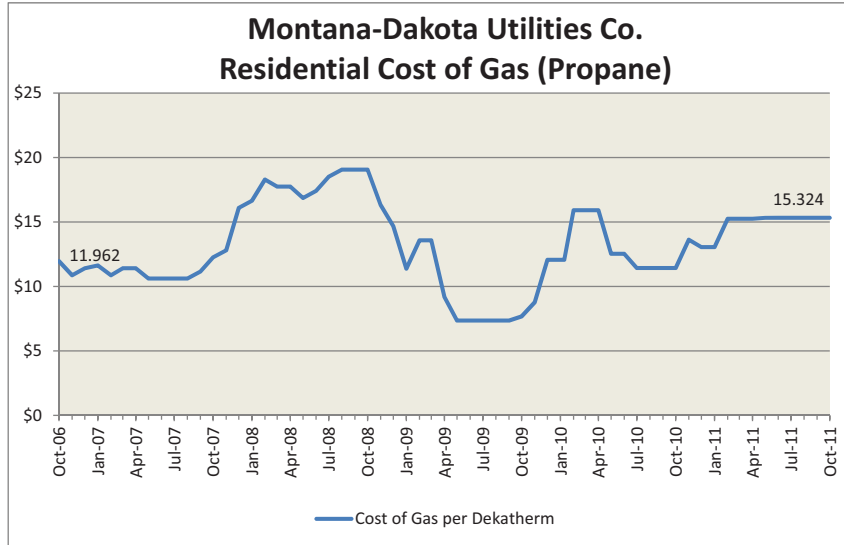
In Case No. PU-10-589, Montana Dakota Utilities Co., a Division of MDU Resources Group, Inc., filed an application for authority to recover in natural gas rates the costs incurred to remediate a former manufactured gas plant site. The site was remediated in order to reduce environmental risk to acceptable levels to allow MDU to sell the property. On July 22, 2011, the Commission approved the plan to amortize the cost over ten years beginning January 1, 2008 with no interest or rate base treatment.

The following graphs reflect changes in the supply cost of natural gas paid by utilities and customers:

complaints regarding Xcel Energy having to estimate customer bills because of approximately 4,400 gas meter malfunctions during the winter of 2007-2008. Xcel had recently replaced automated meter reading modules on its natural gas meters. During the investigation, Xcel engaged an independent contractor to review its processes for provisioning and maintaining customers, measuring product delivery, creating customers bills, and payment collection. A preliminary report of the review was filed in September 2008, and presented to the Commission. The investigation is ongoing.







## Gas Pipeline Safety Program

The Commission adopted administrative rules during the biennium:

On October 14, 2009, the Commission amended North Dakota Administrative Code section 69-09-03-02 to adopt by reference changes the federal government had made in gas pipeline safety regulations, Title 49, Code of Federal Regulations Parts 190, 191, 192, and 199, as of August 1, 2009, Case No. GS-09-67.

On September 20, 2011, the Commission amended North Dakota Administrative Code section 69-09-03-02 to adopt by reference changes the federal government had made in gas pipeline safety regulations, Title 49, Code of Federal Regulations Parts 190, 191, 192, and 199, as of June 22, 2011, Case No. GS-11-79. The rule has been submitted to the Attorney General for an opinion that the rule is approved as to legality.

In Case No. PU-08-765, Commission staff issued a notice alleging that Northern States Power Company had violated pipeline safety regulations in the operation of its natural gas distribution system in relation to a September 2, 2008 explosion that occurred at a twin home located in Fargo, North Dakota. On December 8, 2010, the Commission approved a settlement agreement executed between Northern States Power Company and Commission Advocacy Staff resolving the issues in the proceeding.

In Case No. PU-10-602, Commission staff issued a notice alleging that the City of Granville had violated pipeline safety regulations in the operation of its liquefied petroleum gas distribution facility in Granville, North Dakota. On May 5, 2011, the Commission adopted its order finding that the City of Granville had violated pipeline safety regulations and setting forth compliance actions.

For the 2009-2011 biennium, the gas pipeline safety inspector conducted inspections of 4 distribution operators and 4 transmission operators. The total number of inspections is as illustrated in the following table:

<b>PIPELINE INSPECTIONS BY TYPE</b>	<b>Number</b>
STANDARD INSPECTION – RECORDS AUDITS	120
COMPLIANCE FOLLOW-UP	1
DESIGN/TESTING AND CONSTRUCTION	24
INVESTIGATING GAS EXPLOSION INCIDENTS	0
ONSITE OPERATOR TRAINING (seminars)	2
OPERATOR QUALIFICATIONS	25
INTERGRITY MANAGEMENT INSPECTIONS	0
DAMAGE PREVENTION ACTIVITIES	0
<b>TOTAL INSPECTIONS</b>	<b>172</b>

As a result of pipeline safety inspections during the biennium, 19 violations were found resulting in the issuance of 9 compliance orders. To date, 17 of the 19 violations have been corrected and 2 are being monitored.

## Energy Conversion and Transmission Facility Siting

The Commission adopted administrative rules during the biennium:

A rule to incorporate a minor change relating to determining corridor size, a rule concerning requests for jurisdictional determinations, and a rule concerning letters of intent. .

Amendment to North Dakota Century Code section 49-02-27 to implement the requirement of 2009 House Bill 1449 that the rules for decommissioning of commercial wind energy conversion facilities address present and future natural resource development.

Prior to beginning construction of an energy conversion or transmission facility, a certificate of site compatibility or route permit must be obtained from the Commission. It is the responsibility of the Commission to assure that such facilities are sited in an orderly manner to ensure that energy needs are met and fulfilled in an efficient manner, continuing system reliability and integrity, while minimizing adverse human and environmental effects.

## Energy Conversion and Transmission Facility Siting Activities During the Biennium

Case No.	Applicant	Description	Date of App.	Status	Estimated Investment
PU-04-109	Basin Electric Power Cooperative, Inc.	AVS Cooling Line Replacement	11/17/04	Post-construction inspections	12,000,000
PU-04-452	Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.	175 MW Coal Plant at Gascoyne		Letter of Intent filed 9/1/04; Awaiting Application	374,205,000
PU-05-184	Plains Pipeline, L.P.	Trenton Extension; oil pipeline; 10-inch; 9.6 mile/McKenzie & Williams Counties	6/20/05	Post-construction inspections	750,000
PU-05-185	Plains Pipeline, L.P.	Buford Loop; oil pipeline; 10-inch; 2.75 mile/McKenzie & Williams Counties	7/26/05	Post-construction inspections	1,500,000
PU-05-205	FPL Energy Burleigh County Wind, LLC	Electric transmission; 230 kV; 30-mile/Burleigh & Oliver Counties	4/21/05	Tree survival oversight	5,000,000
PU-05-274	Enbridge Pipelines (North Dakota) LLC	Crude oil pumping stations	5/3/05	Post-construction inspections	3,200,000
PU-05-305	PPM Energy, Inc.	Electric transmission; 230 kV; 8-mile/Pierce C	6/16/05	Under construction	2,750,000

Case No.	Applicant	Description	Date of App.	Status	Estimated Investment
PU-06-312	FPL Energy Oliver County Wind, LLC	Electric transmission; 230 kV; 542-feet/Oliver County	7/25/06	Tree survival oversight	2,000,000
PU-06-317	Enbridge Pipelines (North Dakota) LLC	Pipeline; pump station upgrades/Alexander, Trenton, Beaver Lodge, Stanley	7/19/06	Post-construction inspections	16,450,000
PU-06-330	Enbridge Pipelines (North Dakota) LLC	Trenton to Beaver Lodge Crude Pipeline; 10-inch; 52-mile/Williams County	7/26/06	Post-construction inspections	25,122,200
PU-06-349	Enbridge Pipelines (North Dakota) LLC	Pipeline: oil; new pump stations/Blaisdell, Denbeigh, Penn, Larimore	8/4/06	Post-construction inspections	16,995,000
PU-06-421	TransCanada Keystone Pipeline, LP	Crude Oil Pipeline; 30-inch; 217-mile/Multiple ND Counties	4/11/07	Under construction	277,000,000
PU-06-443	Tatanka Wind Power, LLC	Electric transmission; 230 kV; 12-mile/Dickey & McIntosh Counties	10/13/06	Post-construction inspections	7,300,000
PU-07-108	Enbridge Energy, LP	LP Pipeline; 36-inch; 28-mile/Pembina Cty	7/16/07	Under construction	90,700,000
PU-07-169	Basin Electric Power Cooperative, Inc.	Electric transmission; 230 kV; 74-mile/Stark, Hettinger, Slope, Bowman Counties	4/18/08	Under construction	33,000,000
PU-07-184	Dakota Gasification Company	CO2 Pipeline Reroute; 14-inch; 11,400-feet/McKenzie & Williams Counties	5/11/07	Under construction	10,500,000
PU-07-26	FPL Langdon Wind, LLC	Wind-to-electricity; 160 MW/Cavalier County	3/21/07	Post-construction inspections	250,000
PU-07-516	Westmoreland Power, Inc.	500 MW Coal Plant at Gascoyne		Letter of Intent filed 7/20/07; Awaiting application	900,000,000

Case No.	Applicant	Description	Date of App.	Status	Estimated Investment
PU-07-596	Belle Fourche Pipeline Company	Oil pipeline; 8-inch; 31.3-mile/McKenzie County	9/18/07	Under construction	10,200,000
PU-07-600	Enbridge Pipelines (North Dakota) LLC	Oil pipeline reroute; 8-inch; 2100-feet/Williams County	8/9/07	Tree survival oversight	500,000
PU-07-671	Basin Electric Power Cooperative, Inc.	Electric transmission; 230 kV; 50-mile; Williston to Tioga /Williams County	8/10/09	Hearing scheduled 10/27/09	25,500,000
PU-07-722	Langdon Wind, LLC	Wind farm expansion; 40 MW/Cavalier County	2/5/08	Under construction	73,000,000
PU-07-75	Enbridge Pipeline (Southern Lights) LLC	LP Pipeline; 20-inch; 28-mile/Pembina Cty	4/16/07	Under construction	31,528,800
PU-07-759	Northern States Power Company	Electric transmission; 345 kV; 250-mile; CapX/Cass & Richland Counties		Letter of Intent filed 11/14/07; Awaiting application	390,000,000
PU-07-766	Otter Tail Power Company	Electric transmission; 230 kV; 83.8-mile; Hankinson-Ellendale reroute/Richland County	12/14/07	Post-construction inspections	260,000
PU-07-791	Enbridge Pipelines (North Dakota) LLC	Pipeline: oil, pump station upgrades; Alexander, Trenton, Beaver Lodge, Stanley, Blaisdell, Denbigh, Penn, Larimore, Minot, Pleasant Lake, Bartlett	2/20/08	Under construction	119,700,000
PU-08-107	M-Power, LLC	Electric transmission, 230 kV; 13-mile/Barnes & Steele Counties	5/21/08	Order issued 10/30/08	4,550,000
PU-08-32	Ashtabula Wind, LLC	Wind-to-electricity; 200 MW Ashtabula Wind Farm/Barnes County	3/24/08	Under construction	350,000,000

Case No.	Applicant	Description	Date of App.	Status	Estimated Investment
PU-08-424	Plains All American Pipeline LP	6-inch, 33-mile, crude oil pipeline/Stark County		Letter of Intent filed 6/30/08; Awaiting application	16,000,000
PU-08-46	Crown Butte Wind Power, LLC	Wind-to-electricity; 200 MW/Adams & Bowman Counties		Letter of Intent filed 2/4/08; Awaiting application	350,000,000
PU-08-48	Minnkota Power Coop., Inc.	Electric transmission; 230 kV; 61.6-mile/Barnes, Cass, & Steele Counties	3/18/08	Order issued 6/6/08; Appealed to District Court.	29,000,000
PU-08-52	South Heart Coal, LLC (Great Northern Power Development)	Coal-to-gas; South Heart/Stark County		Letter of Intent filed 1/23/08; Awaiting application	1,400,000,000
PU-08-597	Hartland Wind Farm, LLC	Wind-to-electricity; 2000 MW/Ward, Burke & Mountrail Counties		Letter of Intent filed 7/21/08; Awaiting application	4,000,000,000
PU-08-73	Ashtabula Wind, LLC	Electric transmission; 230 kV; 9.5-mile; Barnes County	3/24/08	Order issued 5/30/08	3,000,000
PU-08-75	Prairie Winds ND1	Wind-to-electricity; 115.5 MW Prairie Winds Wind Farm/Ward County	3/13/09	Under construction	240,000,000
PU-08-797	Sequoia Energy US, Inc.	Wind-to-electricity; 150 MW Border Winds Wind Energy Project/Rolette & Towner Counties	10/24/08	Hearing scheduled 11/3/09	300,000,000
PU-08-812	Enbridge Pipelines (North Dakota) LLC	Pipeline: oil, pump station upgrade, Stanley	10/13/08	Under construction	6,000,000
PU-08-843	Whiting Oil and Gas Corporation	6-inch, 16.5 mile, natural gas pipeline/Mountrail County	11/17/08	Under construction	3,300,000
PU-08-844	Whiting Oil and Gas Corporation	8-inch, 17-mile, crude oil pipeline/ Mountrail County	11/17/08	Under construction	6,100,000

Case No.	Applicant	Description	Date of App.	Status	Estimated Investment
PU-08-848	Allete, Inc.	Wind-to-electricity; 125 MW/Oliver County		Letter of Intent filed 10/24/08; Awaiting application	270,000,000
PU-08-931	Just Wind, LLC	Wind-to-electricity; 900 MW Emmons County Wind Project/Emmons County		Letter of Intent filed 12/12/08; Awaiting application	2,300,000,000
PU-08-932	Enxco Service Corporation	Wind-to-electricity; 150 MW Merricourt Wind Power Project/McIntosh & Dickey Counties		Letter of Intent filed 12/11/08; Awaiting application	400,000,000
PU-09-84	Rough Rider Wind 1, LLC	Wind-to-electricity; 175 MW Rough Rider Wind 1 Energy Center/Dickey County	2/19/09	Order issued 8/12/09	310,000,000
PU-09-151	Allete, Inc.	Wind-to-electricity; 75.9 MW Bison 1 Wind Project/Oliver & Morton Counties	5/12/09	Under construction	170,000,000
PU-09-153	Hawthorn Oil Transportation (North Dakota) Inc.	8-inch; 6-mile; crude oil pipeline/Mountrail County	9/28/09	Hearing scheduled 11/30/09	2,500,000
PU-09-370	CPV Ashley Renewable Energy Company, LLC	Wind-to-electricity; 487.6 MW Ashley Wind Power Project/McIntosh County		Letter of Intent filed 6/24/09; Application pending	1,013,000,000
PU-09-587	Allete, Inc.	Electric transmission; 230 kV; 22-mile/Oliver & Morton Counties		Letter of Intent filed 8/4/09; Application pending	13,000,000
PU-09-663	Hawthorn Oil Transportation (North Dakota) Inc.	Condensate pipeline; 4.5-inch; 11-mile/Mountrail County		Letter of Intent filed 9/30/09; Application pending	3,000,000
PU-09-668	NextEra Energy Resources, LLC	Wind-to-electricity; 99 MW Baldwin Wind Energy Center/Burleigh County		Letter of Intent filed 10/5/09; Application pending	200,000,000

Case No.	Applicant	Description	Date of App.	Status	Estimated Investment
PU-09-670	Minnkota Power Coop., Inc.	Electric transmission; 345 kV; 260-mile/Center to Grand Forks		Letter of Intent filed 10/5/09; Application pending	310,000,000
PU-09-674	Otter Tail Power Company	Electric Transmission; 230 kV; Sargent County	1/2/10	Under Construction	260,000
PU-09-724	Oliver Wind III, LLC	Electric Transmission; 230 kV; Morton and Oliver Counties	3/19/10	Order issued 4/21/11	3,500,000
PU-09-750	Bridger Pipeline LLC	Pipeline; crude oil; 10 inch; Mckenzie, Dunn, Billings, Richland Counties	7/23/10	Order issued 9/22/10	25,000,000
PU-10-130	Enbridge Pipelines (North Dakota) LLC	Pipeline; crude oil; Ward County	5/7/10	Order issued 8/4/10	8,900,000
PU-10-147	Ashtabula Wind III, LLC	Wind-to-electricity; 70 MW Ashtabula III Wind Energy Center; Barnes County	5/18/10	Order issued 8/4/10	140,000,000
PU-10-164	Montana-Dakota Utilities Co.	Electric Transmission; 230 kV; McIntosh and Dickey Counties	2/7/11	Under Construction	14,500,000
PU-10-218	Quintana Capital Group, L.P.	Pipeline; crude oil; 10,12, and 16 inch Mountrail, McKenzie, Williams, Billings, Stark and Golden Valley Counties	6/21/11	Notice of Continued Hearing	250,000,000
PU-10-554	Hiland Operating, LLC	Pipeline; 6 inch Natural Gas; Williams and McKenzie Counties	7/12/11	Hearing held 10/24/11	4,000,000



Case No.	Applicant	Description	Date of App.	Status	Estimated Investment
PU-10-555	Hiland Operating, LLC	Pipeline; 8 inch Natural Gas; McKenzie County	10/13/10	Order issued 12/30/10	3,400,000
PU-10-612	Enbridge Pipelines (North Dakota) LLC	Pipeline; crude oil; Ward & Burke Counties	11/5/10	Order issued 5/5/11	73,100,000
PU-10-613	Enbridge Pipelines (North Dakota) LLC	Pipeline; crude oil; Williams, Mountrail & Ward Counties	11/17/10	Order issued 5/18/11	132,600,000
PU-10-630	Plains Pipeline, LP.	Pipeline; crude oil; Williams County	8/12/11	Hearing scheduled for 11/1/11	200,000,000
PU-10-632	M-Power One, LLC	Wind-to-electricity; 145.5 MW; Steele County		Letter of Intent filed 11/23/10. Awaiting Application	262,000,000
PU-10-637	Rangeland Energy, LLC	Pipeline; 8 inch; Williams County	2/11/11	Order issued 9/29/11	15,000,000
PU-11-57	Allete, Inc.	Wind-to-electricity; 105 MW Bison 2 Wind Project; Oliver and Morton Counties	4/6/11	Order issued 8/10/11	160,000,000
PU-11-66	Bear Paw Energy, LLC	Pipeline; Natural Gas; McKenzie County	6/27/11	Order issued 9/7/11	24,000,000
PU-11-69	Meadowlark Wind I, LLC	Wind-to-electricity; 99 MW; McHenry County	8/22/11	Hearing Scheduled for 12/15/11	180,000,000
PU-11-99	Arrow Field Services, LLC	Pipeline; Crude Oil; McKenzie County	6/22/11	Hearing held 10/24/11	2,000,000

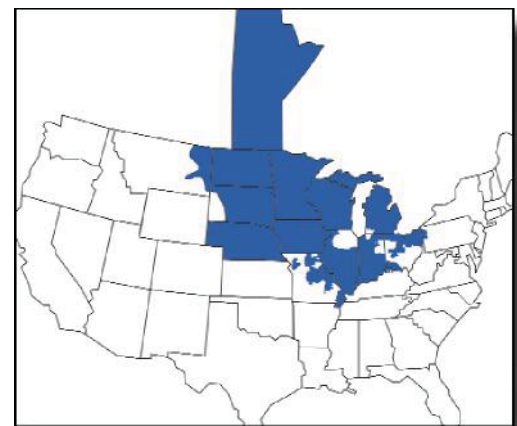
Case No.	Applicant	Description	Date of App.	Status	Estimated Investment
PU-11-102	Whiting Oil and Gas Corporation	Pipeline; Crude Oil; Billings County	7/11/11	Order issued 10/19/11	3,360,000
PU-11-104	Hess Corporation	Pipeline; LPG pipeline; Williams County		Letter of Intent received 4/1/11. Awaiting application	5,000,000
PU-11-109	Vantage Pipeline US LP	Pipeline; Natural Gas; Williams and Divide Counties		Letter of Intent received 4/6/11. Awaiting application	60,000,000
PU-11-162	Allete, Inc. Bison 3 Wind Project	Wind-to-electricity; 105 MW; Oliver and Morton Counties	7/7/11	Order issued 10/12/11	160,000,000
PU-11-561	Oliver Wind III, LLC	Wind-to-electricity; 48 MW; Morton County		Letter of Intent filed 8/22/11. Awaiting Application	81,000,000
PU-11-601	Thunder Spirit Wind, LLC	Wind-to-electricity; 150 MW; Adams County		Letter of Intent filed 8/12/11. Awaiting Application	300,000,000
PU-11-620	Allete, Inc.	Electric Transmission; 230 kV; Oliver County		Letter of Intent filed 9/14/11	10,000,000
PU-11-631	Montana-Dakota Utilities Co.	Wind-to-electricity; 88 MW; Simple Cycle Combustion Turbine		Letter of Intent filed 9/23/11. Awaiting Application	56,600,000
PU-11-646	Wilton Wind IV, LLC	Wind-to-electricity; 99 MW; Burleigh County		Letter of Intent filed 9/30/11. Awaiting Application	165,000,000
PU-11-662	Allete, Inc.	Wind-to-electricity; 100 MW; Mercer & Morton Counties		Letter of Intent filed 10/17/11. Awaiting Application	200,000,000

## Common Pipeline Carrier

In Case No. PU-08-194, NuStar Pipeline Operating Partnership, L.P. filed an application for certificate of public convenience and necessity to operate its North Product System between Mandan and Jamestown. A hearing on this matter was requested by the City of Fargo. A hearing was held for the purposes of determining whether NuStar is a public utility within the meaning of North Dakota Century Code section 49-03.1-02(2) and, regardless whether NuStar is a public utility under that code, whether NuStar must obtain a certificate of public convenience and necessity. The Commission's December 10, 2009 decision was that NuStar is not a public utility and is not required to obtain a certificate of public convenience and necessity.

## Electricity

Throughout the biennium the Commission continued to participate as a member of the Organization of MISO States, Inc. The OMS is a nonprofit membership corporation consisting of one provincial and 15 state regulatory agencies having jurisdiction within the region served by the Midwest ISO. The Midwest ISO, which is headquartered in Carmel, Indiana, is an independent, nonprofit organization responsible for reliable operation of the regional electric grid owned by member utilities in 15 states and the Canadian province of Manitoba. The OMS provides a means for these regulatory agencies to share resources and to act in concert when deemed to be in their common interest.



Midwest ISO Footprint

In addition to the OMS, the Commission participates in regional electric transmission development efforts including the Eastern Interconnection States Planning Council (EISPC), an ARRA funded interstate transmission planning effort with representation from the governors and utility regulatory agencies of 39 states plus the District of Columbia and the City of New Orleans.

In Case Nos. PU-06-481 and PU-06-482, Otter Tail Power Company and Montana-Dakota Utilities Co. filed applications for an advance determination of prudence for building a second coal-fired electric generation facility at the existing Big Stone site in South Dakota. Hearings were held and the Commission approved the applications. The decision was appealed to District Court, but ultimately became moot when the Commission granted requests filed by Otter Tail (Case No. PU-10-30) and MDU (Case No. PU-09-731) to discontinue the finding of prudence due to uncertainties in potential environmental regulations and due to down turns in the economy and regional energy markets. The Big Stone II generating project has since been abandoned.

In Case Nos. PU-11-163 and PU-11-165, Montana-Dakota Utilities Co. and Otter Tail Power Company filed applications for advanced determinations of prudence regarding investments for emissions control equipment to be installed at the Big Stone I generating station. The environmental upgrades to Big Stone 2 are being driven primarily by the Environmental Protection Agency and will cost about \$489 million. The project is expected to increase electric rates to the customers of both companies by about 16%. A hearing is scheduled and a commission order is expected in early 2012.

During the biennium the Commission continued receiving electric service providers' annual progress reports under section 49-02-34 of the North Dakota Century Code, toward meeting the North Dakota voluntary goal of providing 15 percent of retail electric energy sales from renewable resources by the year 2015.

In Case Nos. PU-10-657 and PU-11-55, Northern States Power Company filed on December 20, 2010, for an annual revenue increase of \$19.8 million or an increase in rates of about 12% for the year ending 2011. The filing also included a proposed annual revenue increase of an additional \$4.2 million or an increase in rates of about 2.5% for the year ending 2012. On August 11, 2011, NSP filed in Case No. PU-11-557 a petition to refund proceeds from a settlement with the Department of Energy over DOE's breach of contract to accept spent nuclear fuel from NSP's two nuclear power plants. A settlement was reached between the parties of the case to dispose of all matters related to the three cases. The Settlement Agreement provides for a \$13.7 million revenue increase for 2011 and an additional \$2 million revenue increase for 2012. In addition, the Settlement Agreement calls for a refund of \$7 million to account for the DOE Settlement Agreement, interim rate refund and an offset for the expenses related to the Minot Flood of 2011. A hearing was held on the Settlement Agreement to dispose of all three cases. A commission decision on the Settlement Agreement is expected in late 2011.

In Case No. PU-10-124 Montana-Dakota Utilities Co. filed an application for an increase of \$15.396 million or 14% of total annual ND electric revenues. The commission accepted settlement agreements providing an annual revenue increase of \$7.614 million.

In Case Nos. PU-08-907 and PU-08-908, the Commission granted applications filed by Northern States Power Company for an advance determination of prudence for building two large wind farms. The Nobles Wind Project is located in the state of Minnesota and includes 201 MW's of installed capacity. The Merricourt Wind Project is located in McIntosh and Dickey Counties, North Dakota, and includes 150 MW's of installed capacity. On April 1, 2011, NSP terminated its contracts with enXco Development Corporation for the development and building of the Merricourt Wind Project.

In Case Nos. PU-09-676 and PU-09-678, Otter Tail Power Company and Northern States Power Company filed applications for an advanced determination of prudence to participate in construction of four high-voltage Cap-X 2020 regional electric transmission lines. Those applications were pending before the Commission at the close of the biennium.

In Case No. PU-10-127, on April 19, 2010, Northern States Power Company filed an advance determination of prudence application for the replacement of Unit 2 steam generators (cost about \$259 million) and the expansion of electric generation capacity at its Prairie Island nuclear facility by 164 MW (cost about \$330 million). NSP has requested additional time to re-estimate the cost of the projects. Once that is complete, the commission will hold and hearing and issue an order granting or denying the request for an advance determination of prudence.

In Case Nos. PU-08-862 and PU-08-742, Otter Tail Power Corporation filed applications requesting a rate increase of 5.14%; Advance Determination of Prudence for its Ashtabula Wind Energy Center, and a Rider to recover costs associated with its Ashtabula wind farm including updated costs associated with its Langdon Wind Energy Center. The Commission accepted a Settlement Agreement filed by the parties to the case that included a 3.04% rate increase, a determination that the Ashtabula wind farm investment is prudent, and a recovery mechanism for recovery of costs associated with the two wind farms.

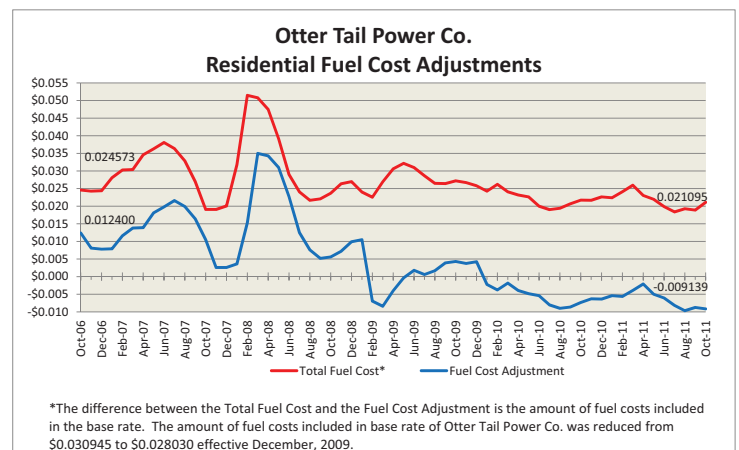
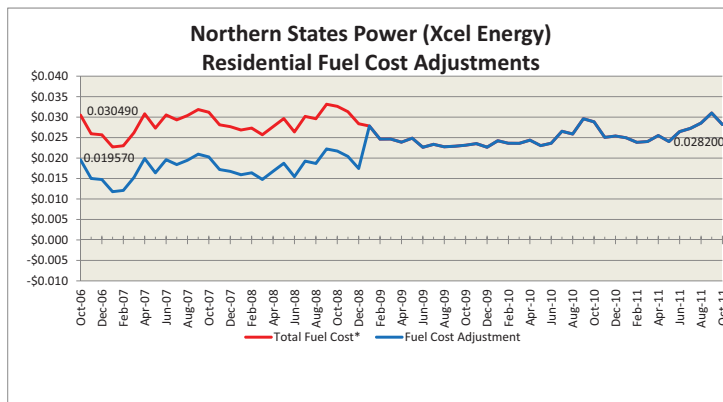
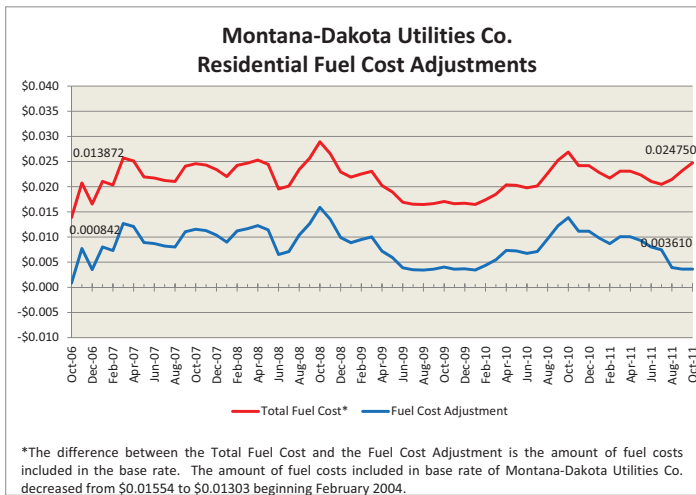
In Case No. PU-11-395 and PU-11-396 Montana Dakota Utilities Co. filed applications for an advance determination of prudence and a certificate of public convenience and necessity to construct an 88 MW simple cycle combustion turbine electric generator in Morton County. Those applications were pending before the Commission at the close of the biennium.

The following charts show the cost of fuel and purchased energy for the regulated electric utilities:

**Cost of Fuel for Electricity**  
Montana-Dakota Utilities Co., Northern States Power Co. and Otter Tail Power Co.

**About the Fuel Cost Adjustment**

- **The Total Fuel Cost** reflects the cost of fuel to produce electricity and the cost to purchase electricity on the market.
- **Utilities are allowed to pass the cost of fuel onto the consumer and they do not make a profit from it.**
- **The Fuel Cost Adjustment** appears on your bill each month and is applied to each kilowatt-hour of electricity consumed.



## Weights and Measures Program

The Commission adopted administrative rules during the biennium:  
Rule changes related to the closing of the North Dakota Metrology Laboratory.

For the 2009-2011 biennium, the Weights and Measures Program inspected and tested 21,543 weighing or measuring devices as illustrated by the following table:

TYPE OF DEVICE	NUMBER
GAS PUMP	12,543
COUNTER/PLATFORM SCALE	6,385
BULK DELIVERY METER	21
MOTOR TRUCK SCALE	1,012
HOPPER SCALE	443
DECK/DORMANT SCALE	485
AUXILIARY BEAM	31
LIVESTOCK SCALE	113
TRACK/HANGING SCALE	151
ONBOARD WEIGH SYSTEM	1
<b>TOTAL:</b>	<b>21,185</b>

For the 2009-2011 biennium, the Weights and Measures Program monitored the documentation of 17,940 weighing or measuring devices installed or serviced by 168 registered service persons employed by 53 registered service companies that operate in North Dakota.

For the 2009-2011 biennium, the Weights and Measures Program conducted 50 quality control inspections and tests on the state's registered service persons.

For the 2009-2011 biennium, the Weights and Measures Program conducted 29 complaint investigations as illustrated by the following table:

TYPE OF DEVICE	NUMBER
LARGE SCALES	0
SMALL SCALES	0
LPG DEVICES	0
RETAIL FUEL DISPENSERS	10
DELINQUENT TEST FEES	19
<b>TOTAL:</b>	<b>29</b>

For the 2009-2011 biennium, the Commission deposited a total of \$409,508 to the general fund generated from weights and measures inspection fees, and \$9,826 to the general fund from metrology certification fees through June 30, 2010.

## Major Challenges

### Telecommunications

At the national level, the Commission has presented the challenges unique to a rural state concerning the deployment of broadband and wireless services.

The Commission has voiced state concerns as the Federal Communications Commission determines the appropriate monetary compensation to owners of telecommunications networks used by other companies originating or terminating communications on those networks.

As the number of telecommunications consumers and competition in the state increases, and as types of telecommunications services provided to those consumers expands, the supply of telephone numbers for the 701 area code dwindles. The current projection is that the 701 area code will exhaust in the 2nd quarter of 2018. Based on that estimate, proceedings to determine a resolution are likely to begin the 2nd quarter of 2015.

### Energy Conversion and Transmission Facility Siting

Robust activity in the energy industry continues to spur increased siting applications and requests to determine the application of siting laws and rules. During the biennium, the Commission received siting applications for 17 pipelines, 3 gas processing plants, 7 wind farms, 4 electric transmission lines and 1 electric power plant. The Commission received 8 filings under the abbreviated siting process defined in North Dakota Century Code section 49-22-03 for construction of facilities wholly within the geographic area for which the utility had previously obtained a certificate or permit or on which a facility was constructed before April 9, 1975. The Commission also received formal requests for jurisdictional determination from Ashtabula Wind III, LLC and North Dakota Winds, LLC. For the first 4 months of the 2011-2013 biennium, the Commission has already received siting applications for 2 pipelines, 4 wind farms, 1 gas-fired electric power plant, and 1 electric transmission line.

### Midwest ISO

The Midwest Independent System began operating a regional energy market in 2005 that continues to serve the loads of all Midwest ISO participants, including the three jurisdictional investor-owned electric utilities providing service in North Dakota. A centralized generating unit dispatch procedure that co-optimizes the energy and ancillary services markets was implemented to ensure that the lowest cost generators are always being used throughout the region regardless of utility control area boundaries. The Midwest ISO energy market establishes Locational Marginal Prices (LMP's) for electric energy that is updated every five minutes at local pricing nodes throughout the Midwest ISO footprint. All energy must be provided through the market. Producers are paid the LMP for their energy at the time and node where it enters the market. The load pays the LMP at the time and node where the energy is delivered.

### Weights and Measures Program

Due to the metrology laboratory closing June 30, 2010, the Commission will need to schedule extra time and dollars to send its working standards to the NIST-accredited metrology laboratory in St. Paul, Minnesota once per year in order to maintain traceability as required by the North Dakota Century Code.

Since most of the work done by the division is in the field, a major challenge in the future, considering the high cost of fuel, is to keep travel expenses as low as possible while fulfilling the Commission mandate.

## Environmental Regulation

Beginning in 2010 the U.S. Environmental Protection Agency (EPA) started issuing several rules that will impact the electric power industry. These regulations are designed to tighten controls on NOX, ozone, SO<sub>2</sub>, particulates, mercury, cooling water intake and discharge, and fly ash. These EPA rules will require some existing coal units to either be retrofit with environmental control equipment or retired. There have also been efforts made by the EPA towards regulating greenhouse gases, for instance CO<sub>2</sub>. The total magnitude of the effects on reliability and costs from these rules has yet to be completely analyzed.

Montana-Dakota Utilities Co. and Otter Tail Power Company filed an advance determination of prudence case, PU-11-163 and PU-11-165 respectively, with the Commission in May 2011 to install an air quality control system (AQCS) on their jointly owned Big Stone coal plant to comply with EPA's Regional Haze Program. The Regional Haze Program is in place to improve visibility in specific "Class I" areas, in particular to the Big Stone plant are the Badlands National Park, Theodore Roosevelt National Park, Isle Royale National Park, Voyageurs National Park, and Boundary Waters Canoe Area. The estimated capital cost for the AQCS is approximately \$489 million with both MDU and Otter Tail North Dakota customers seeing an approximately 16 percent increase in rates as a result.

## Uncertainty

Utility companies and the Commission are tasked with determining the prudence of resource additions prior to construction and currently all resource options are surrounded with large uncertainties. Coal faces the above rules and the potential for greenhouse gas regulation. Natural gas faces fracking concerns, historically volatile fuel prices, and the potential for greenhouse gas regulation. Nuclear faces unanswered waste storage, permitting concerns, and high cost. Renewable resources face their intermittent nature and price uncertainty given potential changes in the Federal Production Tax Credit. With hundreds of millions of ratepayer dollars at stake, making an advance determination of prudence is a major challenge.



Reclaimed land at the former Glenharold Mine



## **Licensing Division**

### **Statutory and Constitutional Responsibilities**

Oversees the licensing and bonding of all grain elevators, facility-based grain buyers, roving grain buyers, and hay buyers. These entities serve as the initial market for much of the grain produced by North Dakota farmers. Regulation of these entities is intended to protect the people who sell grain to or store grain in the warehouses and is enforced within a framework that minimizes negative economic impacts on related industries and individual entities.

Conduct grain elevator and grain buyer examinations to ensure licensees: are adhering to generally accepted business practices; are adequately bonded; and have sufficient grain inventories on hand to cover their cash and grain storage obligations.

Processes all grain elevator, grain buyer, and hay buyer insolvency cases when a licensee is declared “insolvent.” A licensee is insolvent when the licensee is unable to make payment for grain or hay purchased or marketed by the licensee or is unable to make redelivery or payment for grain stored or purchased.

Oversees the collection of credit-sale contract indemnity fund assessments and the disbursement of monies from the fund in the event of a grain warehouse or grain buyer insolvency.

Oversees the licensing and bonding of all auctioneers and auction clerks.

### **Mission Statement and Goals**

The mission of the Licensing Division is to fulfill statutory mandates by protecting the public interests of North Dakota patrons while regulating grain warehouses, grain buyers, hay buyers, auctioneer and auction clerk licensees in a fair, efficient, responsive, cooperative, and timely manner. The goals of the division are:

Enhance the grain warehouse examination program by providing co-examinations with bordering states, adjusting schedule to allow more joint examinations, sharing examination information with federal examiners, and expanding the examination program to provide an examination process for out of state roving grain buyers.

Establish a compatible electronic data interchange (EDI) with licensees in an effort to streamline the inspection program.

Stay apprised of issues on the federal level that will affect the state’s grain industry and provide assistance in reaching resolution.

Provide education on license requirements to other agencies and commodity groups through the use of presentations to address issues facing industry in an effort toward a greater cohesion in the industry and work with industry and legislators on issues facing the industry.

### **Key Legislation**

2011 Senate Bill 2086 amended North Dakota Century Code Chapter 51-05.1 to exempt Internet auctions from state auctioneer and clerk licensing requirements when selling real or personal property exclusively via the internet.

### **Major Accomplishments and Activities (and Trends)**

The Licensing Division completed 393 grain warehouse inspections and 25 roving grain buyer inspections.

The Licensing Division approved 222 capacity increase requests and 138 capacity decrease requests. The Licensing Division also granted 44 requests to discontinue business and issued 52 new licenses. At the start of the biennium, there were 292 licensed grain warehouses and 102 licensed facility-based grain buyers. The trend towards larger grain warehouses continued during the biennium. There were 290 grain warehouses and 111 facility-based grain buyers licensed at the end of the biennium.

There were 70 roving grain buyers licensed at the start of the biennium and 82 roving grain buyers licensed at the end of the biennium.

At the start of the biennium there were 384 licensed auctioneers and 221 licensed auction clerks and at the end of the biennium there were 373 licensed auctioneers and 201 licensed auction clerks.

## Major Challenges

Grain warehouse and grain buyer insolvencies caused by volatile market conditions in the grain industry prompted discussions within the agriculture community on the adequacy of current bond and credit-sale contract indemnity fund protections and whether the protections offered should be changed.

The Licensing Division continued its efforts to provide education and awareness on the importance of conducting business with only licensed and bonded grain buyers.

**Trends** (included in D above)

### Major Cases - Six Insolvencies

The agency was involved in six grain warehouse or grain buyer insolvencies during the biennium. The first insolvency was filed in January 2009 and involved Northwood Mills, Inc. of Northwood, North Dakota. Northwood Mills, Inc. was operated as a processing plant to crush grain into oil. There were no grain assets or unencumbered proceeds available to pay claims. The \$50,000 bond proceeds on file with the Commission, plus accrued interest, were the only proceeds available in this insolvency. Eleven cash claims totaling \$880,010 were filed with the Commission. Checks were mailed to the eleven valid cash claimants in October 2009, representing approximately 5.8% of all eleven valid cash claims.

The second insolvency was filed in March 2009 and involved Sustainable Systems, LLC dba Montola. Sustainable Systems, LLC dba Montola was licensed as a roving grain buyer in North Dakota and receiving safflower from North Dakota producers for crushing into oil at their crushing in Culbertson, Montana. Nineteen cash claims totaling \$617,663 were filed with the Commission. The Montana Department of Agriculture liquidated the assets on hand at Sustainable System, LLC's facility in Culbertson, Montana. Each valid North Dakota claimant received 77% of his or her valid claim from the Montana liquidation proceeds. The \$130,000 North Dakota bond proceeds, plus accrued interest, provided sufficient funds to pay each claimant the remaining 23% of his or her valid cash claim. Checks were mailed to the 19 valid cash claimants in December 2009.

The third insolvency was filed in March 2009 and involved VeraSun Hankinson, LLC of Hankinson, North Dakota. VeraSun Hankinson, LLC operated its grain warehouse at Hankinson for the purpose of processing corn into ethanol. VeraSun Hankinson, LLC was a subsidiary or affiliate of VeraSun Energy Corporation who filed a Petition for Reorganization under Chapter 11 of the United States Bankruptcy for the District of Delaware. In March 2009, the Commission filed a motion for relief from the automatic stay with the U.S. Bankruptcy Court and in September 2009, the Commission was granted partial relief. Two cash claims totaling \$132,784.85 were filed with the Commission. In May 2011, letters withdrawing claims were received from each of the two claimants. This insolvency was pending at the end of the biennium.

The fourth insolvency was filed in June 2010 and involved Organic Grain and Milling, Inc. of Clyde, North Dakota. Organic Grain and Milling, Inc. dealt primarily in organic grain. One cash claim totaling \$17,276.88 and four credit-sale contract claims totaling \$160,829.65 were filed with Commission. There were no grain assets available for the Commission to liquidate, however, the Commission collected \$28,148.74 in outstanding accounts receivable. This insolvency was pending at the end of the biennium.

The fifth insolvency was filed in July 2010 and involved Grabanski Grain, LLC of Grafton, North Dakota. Grabanski Grain, LLC filed for bankruptcy under Chapter 11 in July 2010. In January 2011, the Commission filed a motion for relief from the automatic stay with the U.S. Bankruptcy Court for the District of North Dakota and on January 24, 2011, relief from stay was granted. The Commission was appointed trustee in state district court and this insolvency was pending at the end of the biennium.

The sixth insolvency was filed in February 2011 and involved Mitchell Feeds, Inc. Mitchell Feeds, Inc. was licensed as a roving grain buyer in North Dakota. The Commission was appointed trustee in state district court and this insolvency was pending at the end of the biennium.

## Financial Data

During this biennium, no payments were paid from the credit-sale contract indemnity fund. As of the end of the biennium, the credit-sale contract indemnity fund balance was approximately \$6.9 million.

Revenues generated for the general fund for all grain warehouse, grain buyer, hay buyer, auctioneer, and auction clerk license fees received during this same period of time total \$442,370.

The following table shows the insolvency activity during the biennium:

**NORTH DAKOTA PUBLIC SERVICE COMMISSION**  
**Active Grain Warehouse & Grain Buyer Insolvencies During Biennium**

Licensee Name, Location(s), Case Filed, & Case Closed	Total Claims Filed	Valid Cash Claims Filed	Valid CSC I-Fund Claims Filed	Invalid Claims Filed	Grain Sales Proceeds	Bond on File & Proceeds Used	Interest Earned on Trust Account	Valid Cash Claim Payments (Payment %)	*Interest Paid To Cash Claimants	CSC I-Fund Claim Payments (80%)	Total Claims Paid & **PSC Expenses Reimbursed
Northwood Mills, LLLP, Northwood, ND (GW) January 2009 October 2009	\$880,009.90	\$880,009.90 11 Claims	\$0	\$19,477.95	\$0	\$50,000 \$50,000	\$129.05	\$50,129.05 5.8%	\$0	\$0	\$50,129.05 \$0
Sustainable Systems, LLC dba Montola Culbertson, MT (RGB) March 2009 December 2009	\$617,663.45 19 Claims	\$561,629.40 19 Claims	\$0	\$54,095.83	\$0	\$130,000 \$130,000	\$241.66	\$130,241.66 ***77% + 23%	\$241.66	\$0	\$130,241.66 ***\$1,307.11
VeraSun Hankinson, LLC Hankinson, ND (GW) March 2009	\$132,784.85	\$132,784.85 2 Claims	\$0	\$0	\$0	\$380,000 ****\$3,908.83	\$0	N/A	N/A	\$0	N/A \$3,908.83
Organic Grain & Milling, Inc., Clyde, ND (GW) June 2010	\$193,467.24	\$17,276.88 1 Claim	\$160,829.65 4 Claims	\$8,276.62 1 Claim	***** \$28,148.74	\$62,500 \$0	\$41.43	\$17,276.88 100%	\$531.05	\$128,663.72	\$147,607.24 \$1,135.60
Grabanski Grain, LLC, Grafton, ND (GW) July 2010						\$340,000					
Mitchell Feeds, Inc., Fargo, ND (RGB) February 2011						\$70,000					

GW – Grain Warehouse    GB – Grain Buyer    RGB – Roving Grain Buyer

\* If funds are available, cash claimants can be paid interest at the weighted average prime rate charged by the Bank of North Dakota since the date of insolvency.

\*\* Statute provides for the reimbursement of expenses incurred by the Commission in the administration of the insolvency.

\*\*\* Montana Dept. of Ag. liquidated the assets. Valid ND claimants received 77% of his/her valid claim from MT liquidation proceeds, 23% from ND trust fund proceeds, and a proportionate share of interest earned on the ND trust fund. Commission was reimbursed for expenses incurred in the administration of the insolvency.

\*\*\*\* Two claims were filed and both claimants withdrew their claims. Therefore, the only reimbursement of Commission expenses was included in the Court's Order.

\*\*\*\*\* \$9,246.64 was returned to Organic Grain & Milling

## **Reclamation Division**

### **Statutory and Constitutional Responsibilities**

The Reclamation Division administers and enforces North Dakota's law and rules governing surface coal mining and reclamation operations under North Dakota Century Code Chapter 38-14.1.

North Dakota's reclamation law is based on the federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) and the federal Office of Surface Mining Reclamation and Enforcement (OSM) provided sixty-four percent of the funding needed to run this regulatory program during the 2009-11 biennium.

Prior to issuing a mining permit, the commission also ensures certain requirements of the Surface Owner's Protection Act, North Dakota Century Code Chapter 38-18, are met.

### **Mission Statement and Goals (from the strategic plan)**

The mission of the Reclamation Division is to administer the surface coal mining and reclamation program mandated by state and federal law to achieve optimum results in a cost effective and fair manner; and to ensure that mining operations subject to this program are conducted in such a way that they:

- 1) Are environmentally sound and minimize adverse effects;
- 2) Protect public interest and the rights of property owners;
- 3) Return mined lands to beneficial uses; and,
- 4) Restore the productivity of mined agricultural lands to premine levels.

Related goals are to:

- 1) Continually carry out the mine permitting, inspection and bond release activities in a manner that provides the required protection to the environment and property owners while being responsive to needs of the mining industry;
- 2) Continually evaluate and adjust the regulatory program to achieve the optimum balance among environmental protection, least-cost industry operations and landowner pursuit of agricultural interests;
- 3) Continue to explore the scientific, engineering and statistical underpinnings of the regulatory program and make every effort to see that improvements resulting from that exploration are made at both the state and federal level;
- 4) Promote public awareness of the regulatory program through increased contact with relevant organizations and potentially affected landowners; and,
- 5) Maintain maximum staff effectiveness by providing training and other opportunities for professional growth.

### **Key 2011 Legislation**

No legislation was passed during the 2011 session that affected the coal regulatory program.

Major Accomplishments and Activities

Significant coal mine permitting activities during the 2009-11 biennium:

- 1) Fifteen significant permit revisions were approved and two of those added another 1567 acres to existing permit areas. Significant revisions are subject to the same public notice and comment period as new permit applications.
- 2) Thirty three insignificant permit revisions were approved.

- 3) Nine permit renewals were approved.
- 4) As of June 30, 2011, there were 104,915 acres under permit for surface coal mining and reclamation operations.
- 5) At the end of the biennium, permits were held by eight companies for eight mines. Of the eight mines, six are active and the other two were inactive and under reclamation. The active lignite mining companies are: BNI Coal, Ltd. which owns and operates the Center Mine, The Coteau Properties Company which owns and operates the Freedom Mine, Dakota Westmoreland Corporation which owns and operates the Beulah Mine, and The Falkirk Mining Company which owns and operates the Falkirk Mine. Two small mines that produce leonardite, an oxidized lignite, are also active. These are American Colloid Company's Page\Perkins Mine and the Stony Creek Mine owned by Leonardite Products, LLC. Reclaimed acreage was also still under permit at the former Glenharold Mine that was owned and operated by Basin Cooperative Services and the Gascoyne Mine that was owned and operation by the Knife River Corporation.

Routine mine inspections are conducted and reported based on inspectable units. Each permit is considered an inspectable unit and a single mine may have more than one mining permit. The following inspections were conducted during the 2009-11 biennium:

- 1) 1,310 inspections on 34 inspectable units were conducted.
- 2) 235 complete inspections were conducted (complete inspections cover all aspects of the mining and reclamation operations being conducted).
- 3) 1,075 were considered partial inspections.

Three Notices of Violation (NOV) were issued to mining companies during the 2009-11 biennium and \$3,250 in civil penalties were assessed and collected for these violations. Final action was completed for one NOV that was issued at the end of the 2007-09 biennium and that NOV was vacated in October 2009 following the formal hearing. In addition, a NOV that was issued in September 2010 was vacated after the formal hearing in this case in December 2010.

Fourteen final bond release applications were approved during the 2009-11 biennium whereby the commission terminated its jurisdiction on 3,877 acres that had been under permit. In addition, one partial bond release for the completion of grading and soil replacement on 615 acres was approved during the biennium.

A permit application for one new surface coal mine was received during the 2009-11 biennium and staff continued work on another that was filed in late 2008.

- 1) An application from South Heart Coal, LLC, to permit 4581 acres southwest of South Heart was filed in March 2010 and staff conducted completeness and technical reviews of that application. The Reclamation Division was waiting for the company response to the technical deficiency letter as the 2009-11 biennium ended. An informal conference was held on this application on June 28, 2011. This conference will be re-convened after the applicant addresses all of the technical deficiencies that were noted by Reclamation Division staff.
- 2) The Otter Creek Mining Company, a subsidiary of the North American Coal Corporation, filed an application in December 2008 to permit 5,490 acres for a proposed mine northwest of Center. The Reclamation Division sent a technical deficiency letter to Otter Creek in June 2010 and was awaiting a response to that letter when the biennium ended.

Reclamation Division staff had worked with BNI Coal, Ltd. and its consultants on the baseline environ-

mental studies for a new mine area they plan to permit during the 2011-13 biennium. BNI plans to file that application in late 2011.

In late 2008, the Dakota Resource Council and several landowners near South Heart filed a complaint on the staff determination that GTL Energy's coal beneficiation facility in that area does not have to be permitted as a surface coal mining operation. After numerous legal filings in the case, the Commission dismissed the complaint in February 2010.

Additional information was added to the Reclamation Division's Geographic Information System (GIS) during the 2009-11 biennium to store and manage much of the data received from mining companies. GIS data is downloaded onto tablet laptop computers equipped with GPS for use during mine inspections.

The commission continued to receive excellent evaluation reports on the coal regulatory program from OSM's Casper Field Office during the biennium.

Staff attended numerous OSM sponsored training classes, local training courses and technical conferences during the biennium.

The Reclamation Division also helped sponsor and host the American Society for Mining and Reclamation 2011 annual meeting and conference. This conference was held in Bismarck from June 11 to 16, 2011.

A new staff member was hired to fill the additional position that was authorized by the 2009 Legislature beginning the second year of the 2009-11 biennium. After a lengthy recruitment process, the Environmental Scientist position was filled in June 2011.

## **Major Challenges**

An ongoing concern is the amount of federal funding that the commission will receive to cover the federal share of the coal regulatory program. OSM currently covers 64% of the program and the other 36% is State general funds. As part of OSM budget requests for the past two years, the administration has proposed reducing the amount of federal dollars that states receive nationwide for their coal regulatory programs. While the proposed reductions have not been enacted by Congress, the adequacy of future federal funding continues to be a concern due to the large federal deficit.

The Reclamation Division has seen a significant increase in the permitting workload due to applications to permit additional areas for surface coal mining activities and this will continue into the 2011-13 biennium. Staff has conducted technical reviews of permit application for two new mines, the Otter Creek and South Heart Mines. The applications propose to permit 5,490 acres and 4,581 acres, respectively. In late July 2011, the commission issued a significant revision for a permit at the Falkirk Mine which added nearly 17,000 acres to that permit. BNI Coal, Ltd. also plans to submit an application to permit approximately 9,000 acres for a new mine area at the Center Mine. The review of these applications has greatly increased that amount of time that staff spends on permitting matters. Also, assuming permits will be issued for two new mines, the inspection workload will increase once mining operations begin at these mines.

Staff workload for the review of final bond release applications will increase as more applications are filed for reclaimed lands at the four large active mines and for reclaimed lands at the former Gascoyne Mine. These reviews must ensure all reclamation requirements have been met since commission jurisdiction over the reclaimed lands ends once final bond release is granted.

## **Trends (optional and/or incorporate into C or D above)**

The Reclamation Division plans to continue to add more data to the GIS to manage data and carry out its permit review and inspections more efficiently and effectively.

Final bond release activity is expected to increase as additional reclaimed lands become eligible for release, especially at the four large active mines.

## **Major Cases**

The Dakota Resource Council, Sierra Club, Plains Justice, Neighbors United and others are objecting to the permit application for the proposed South Heart Mine. An informal conference was held on this application in June 2011 and it will be reconvened once the applicant addresses all of the technical deficiencies that were noted in the application by staff. It seems likely that a formal hearing will be requested once the commission makes a decision on this permit application.

A public hearing was held on September 16, 2009 for the rule changes, Case No. RC-09-543, associated with legislation that was passed during the 2009 Session. These changes that pertain to re-mining previously mined lands became effective on April 1, 2011 after approval by the federal Office of Surface Mining.

At the request of the Dakota Resource Council, a formal hearing was held on a significant revision application, Case No. RC-08-640, for the Falkirk Mine that including the changing of the approved postmining land use from cropland to recreation. Following the formal hearing, on August 24, 2010, the Commission affirmed the decision to approve the revision. The Dakota Resource Council then appealed that decision to District Court and, on June 2, 2011, the District Court affirmed the commission's formal hearing order. In August 2011, the commission received notice that the Dakota Resource Council was appealing the District Court decision to the North Dakota Supreme Court.

Informal conferences were held on two revision applications as well as the South Heart permit application. Formal hearings were also held on two Notices of Violation during the 2009-11 biennium.



**RECLAIMED LANDS**

## **AML Division**

### **Statutory and Constitutional Responsibilities**

The Abandoned Mine Lands Division is responsible for administering North Dakota's abandoned mine land reclamation law, North Dakota Century Code Chapter 38-14.2, for eliminating hazards associated with abandoned surface and underground coal mines.

This program covers lands that were mined prior to the federal Surface Mining Control and Reclamation Act (P.L. 95-87) that was enacted in 1977.

The program is totally funded by the federal Office of Surface Mining Reclamation and Enforcement (OSM) within the Department of the Interior.

### **Mission Statement and Goals**

The Abandoned Mine Lands (AML) Division seeks to enhance the public's safety by using available funds in an efficient and effective manner to prioritize and reclaim abandoned coal mine sites that pose health, safety, and general welfare hazards. Projects are selected based on public input and an analytical review of all known abandoned mine sites and are completed using the most cost-effective manner possible to insure maximum returns for the monies expended.

Related goals were:

- 1) Reclaim abandoned mine land sites found on the North Dakota AML Inventory;
- 2) Reclaim hazardous abandoned mine sites not on the AML Inventory but discovered through investigation, exploratory drilling, or reports from the public;
- 3) Ensure rapid response to AML Emergencies and prompt reclamation of emergency sites to eliminate imminent mine-related hazards as the AML Division's highest work priority;
- 4) Use AML funds as efficiently as possible, seek additional funding sources, engage in partnerships, increase public awareness, and maintain professional contacts through continued membership in organizations such as the National Association of Abandoned Mine Lands, Interstate Mining Compact Commission, and the Interstate Group on Abandoned Underground Mines.
- 5) Maintain funds in our State reclamation set-aside account so that when the federal program is over, the State will have financial resources to address abandoned mine lands hazards.

### **Key 2011 Legislation**

No legislation was passed during the 2011 session that affected the abandoned mine land program.

### **Major Accomplishments and Activities**

A federal law enacted by Congress in late 2006 included provisions to re-authorize the Abandoned Mine Lands Program and extend the federal reclamation fee that is used to fund the program until 2022. This legislation resulted in a significant increase in the amount of federal funding that North Dakota receives for its AML program starting in calendar year 2008. In calendar years 2008 and 2009, the commission received approximately 3 million dollars per year compared to the 1.6 million dollars per year that had been received for many years. For calendar years 2010 and 2011, the commission received about 3.5 million dollars per year. The amount for 2012, 2013, and 2014 will be about 4 million dollars per year before dropping to 3 million dollars per year for the remaining life of the program.



During the 2009-11 biennium, major drilling and grouting projects were conducted to inject cementitious grout into underground mine voids beneath residential areas and public roads near Williston, Beulah and Zap in order to stabilize them and prevent mine collapse that could endanger people and damage property.

Major construction projects to backfill dangerous, nearly vertical, surface mine highwalls west of Hazen and south of Sawyer. At the Hazen-West Project a 70-foot highwall was backfilled that was located within 100 feet of North Dakota Highway 200. The contractor that was awarded the Buechler/Velva project south of Sawyer completed about one-third of work before abandoning it. A claim was made on the contractor's performance bond and the bonding company arranged for a completion contractor to finish the project during the 2011 construction season.

Maintenance projects to fill approximately 360 hazardous sinkholes caused by underground mine collapse at numerous sites in western North Dakota.

Emergency projects to fill extremely hazardous sinkholes caused by underground mine collapse near homes and public roads at sites near Beulah, Garrison and Wilton.

Maintenance work, such as tree planting and erosion control, was carried out at previously reclaimed sites.

A project was completed in October 2010 to extinguish more four dangerous coal outcrop fires mainly on U.S. Forest Service properties in Slope County in western North Dakota.

Funds are being held in a set-aside account that will be available for use when the State no longer receives any AML funding from OSM. The balance in this interest bearing account was \$2,683,338 on June 30, 2011. (States are no longer allowed to place additional federal grant funds into the set-aside account as the result of the federal legislation enacted in December 2006 that re-authorized and extended the AML program.)

Progress was made on adding available abandoned mine data to the division's Geographic Information System (GIS) for all known abandoned mine sites in North Dakota. The AML Division plans to post much of this information on the commission's website so it is readily available to the public.

A third cooperative agreement was entered into with OSM which provided funds to cleanup scanned maps and compile other data for the AML Division's mine map database.

The AML Division continued to receive excellent evaluation reports from OSM's Casper Field Office during the 2009-11 biennium.

Staff attended several OSM sponsored training classes and technical conferences during the biennium.

## **Major Challenges**

Staff will need to design and manage larger and additional construction projects each year since federal funding will increase to approximately four million dollars per year in 2012 and 2013 due to the federal legislation that re-authorized and extends the AML program. As work at the larger AML sites is completed, the number of projects will increase and project managers will need to design and manage more projects.

Work will continue on the development of a GIS containing abandoned mine information and to post detailed mine information on the commission's website.

### **Trends (optional and/or incorporate into C or D above)**

With re-authorization and the increased federal funding, many construction projects to eliminate mine hazards should be completed much sooner.

As construction work is completed at the larger AML sites, staff will need to design and manage more reclamation projects each year to use the available funds.

### **Major Cases**

The most significant case involved the Buechler/Velva project south of Sawyer where the contractor only completed about one-third of work before abandoning it. The AML Division made a claim on the contractor's performance bond and the bonding company arranged for a completion contractor to finish the project during the 2011 construction season. While the construction work was being completed, the original contractor filed a complaint against the Commission in September 2011 with his intent to sue for damages over the terms in the original contract.



**Sink Hole East of Beulah**

## *Railroad*

### **Statutory and Constitutional Responsibilities**

State law provides that the Public Service Commission is the state agency charged with representing North Dakota's rail interests before federal agencies and in direct negotiations with rail carriers. The Commission, to the extent consistent with federal law, may regulate railroads within the state in activities that constitute intrastate commerce. The Commission also has jurisdiction over some specific safety and landowner rights matters.

### **Railroad crossings**

During the 2009 Legislative Session House Bill 1342 amended the North Dakota Century Code Section 49-11-22 giving the Public Service Commission jurisdiction to hear and decide petitions requesting that a horn be sounded at a private railroad crossing based on safety concerns of the public. During the 2009-2011 biennium the commission heard three such requests involving ten railroad crossings. A request regarding one crossing was withdrawn. For eight of the crossings the commission ordered audible warnings to continue and for one crossing, the commission ordered the audible warnings to cease.

### **Major Challenges**

Abandonments continue to occur on branch lines throughout the state. During the 2009-11 biennium, there was one abandonment by BNSF Railway Company, a total of 17.75 miles from Bisbee to Rolla, North Dakota. North Dakota's rail network declined to 3,418.79 miles during the biennium. Since the 1920s, the size of the state's rail network has declined from 5,370 miles to the current 3,418.79 miles; a decline of 36%. Much of the decline has occurred since 1980.



**BNSF RAIL ROAD**

## *Former Commissioners*

1. Bartlett, David.....	1889-1890
2. Underhill, T.S.....	1889-1890
3. Walsh, Geo. H.....	1891-1892
4. Sletten, Andrew.....	1891-1892
5. Stevens, Ben.....	1893-1894
6. Cameron, Peter.....	1893-1894
7. Rasmussen, Nels P.....	1893-1894
8. Keyes, Geo. H.....	1895-1898
9. Wamberg, John.....	1895-1896
10. Currie, John W.....	1895-1896
11. Gibson, J.R.....	1897-1898
12. Erickson, Henry.....	1899-1900
13. Simons, John.....	1899-1900
14. Walton, L.L.....	1897-1900
15. Youngblood, J.....	1901-1902
16. Shea, J.F.....	1901-1904
17. Schatz, A.....	1903-1904
18. Lord, O.J.....	1901-1904
19. Christianson, John.....	1905-1906
20. Diesem, C.S.....	1905-1908
21. Stafne, Erick.....	1905-1908
22. Westby, Simon.....	1907-1908
23. Mann, William H.....	1909-1916
24. Anderson, O.P.N.....	1909-1916
25. Stutsman, W.H.....	1909-1916 & 1921-1922
26. Johnson, N.P.....	1917-1918
27. Bleick, Chas.....	1917-1918
28. Aandahl, S.J.....	1917-1920
29. Dupuis, C,F.....	1919-1920
30. Milhollan, Frank.....	1919-1932
31. Harding, Fay.....	1923-1934
32. McDonnell, G.W.....	1921-1936 & 1940-1950
33. McDonald, S.S.....	1937-1948
34. Larkin, Ben G.....	1928-1949
35. Cart, Elmer W.....	1935-1940 & 1949-1954
36. Brant, E.H.....	1951-1954
37. Anderson, Anson J.....	1955-1960
38. Nelson, Ernest D.....	1949-1961
39. Vaaler, Martin.....	1954-1962
40. Thompson, Richard J.....	1961-1966
41. Wolf, Ben J.....	1963-1980
42. Elkin, Richard.....	1967-1983
43. Sandstorm, Dale.....	1983-1992
44. Hagen, Bruce E.....	1961-2000
45. Reinbold, Leo M.....	1981-2003
46. Wefald, Susan E.....	1993-2008