

**PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA**

NEWS RELEASE

December 28, 2009

Commissioners Cramer, Clark and Kalk

****For Immediate Release****

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PSC Opposes Obama Administration Initiatives

The Public Service Commission has sent letters to Senators Kent Conrad and Byron Dorgan and Congressman Earl Pomeroy encouraging them to work with the Obama Administration to stop unnecessary actions that will increase costs to North Dakota electricity consumers and undercut state regulatory authority.

The Environmental Protection Agency (EPA) is considering a new regulatory proposal to classify some or all coal ash as a hazardous waste under the federal Resource Conservation and Recovery Act. Such an action would impose a much higher degree of regulation and would greatly increase the costs for disposing of coal ash than currently required under special waste disposal permits issued by the North Dakota Department of Health.

Commission Chairman Kevin Cramer says these proposed actions, along with EPA's recent announcement to regulate carbon dioxide as a pollutant, will increase energy costs, especially the cost of electricity, for nearly all North Dakotans. "We strongly encourage Senators Conrad and Dorgan and Congressman Pomeroy to work with their colleagues and the Obama Administration to stop these unnecessary and wasteful actions" Cramer said.

Commissioner Brian Kalk said "We understand EPA plans to reverse its May 22, 2000 regulatory determination that coal ash is not hazardous." That determination under the Clinton Administration was made following more than twenty years of study and analyses by EPA.

"The EPA seems poised to throw out decades of research and science and instead make a decision based on their own political opposition to coal as a fuel source," said Commissioner Tony Clark. The designation of coal ash as a hazardous waste would also eliminate many beneficial uses of coal combustion by-products, such as the use of flyash in concrete mixtures for highway and other construction projects.

In a separate action, the Department of the Interior and the federal Office of Surface Mining (OSM) plan to make major changes to Clinton era policies for the federal oversight of state programs for regulating surface coal mining and reclamation operations under the federal Surface Mining Control and Reclamation Act.

Under the federal reclamation law, a state regulatory authority is to have exclusive jurisdiction, or primacy, for regulating surface coal mining and reclamation operations in its state upon approval by the Department of the Interior. The North Dakota coal regulatory program is administered by the PSC and it was approved by OSM nearly thirty years ago.

However, based on statements in a recent press release and a notice of advanced rulemaking, OSM now plans to become directly involved in state permitting processes by coordinating the review of state issued mine permits with other permits required under the Clean Water Act, including more involvement by the EPA and U.S. Army Corps of Engineers. Cramer said "OSM's new plans under the Obama Administration will weaken state primacy as required under federal law."

Also, for the first time since coal-producing states have had fully approved regulatory programs, OSM plans to conduct independent federal inspections of state issued coal mine permits without the presence of state inspectors. "This is likely to result in the federal inspectors trying to overrule determinations by the state inspectors and it will create uncertainty and confusion for the mining companies," said Kalk.

"For years, North Dakota has received accolades for its coal reclamation program," said Commissioner Tony Clark. "Having federal regulators duplicating the work of the state is a wasteful government solution in search of a problem that does not exist."

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