

# North Dakota Public Service Commission

## 2005-2007 Biennial Report





## About the Cover

This cover displays a photograph of the North Dakota State Capitol Building. The photograph “Skyscraper of the Prairie,” was taken by Greg P. Stiefel, Bismarck, ND.

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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, [www.psc.state.nd.us](http://www.psc.state.nd.us).

The commission is comprised of three commissioners who are elected on a statewide basis to staggered six-year terms. The commission had 41 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 commission's regulatory and support divisions. These reports will be presented following a brief biographical profile of each commissioner.

## *Commissioners*

### **SUSAN E. WEFALD** **President (since January 2007)**

Commissioner Susan Wefald was appointed by Governor Ed Schafer to the North Dakota Public Service Commission in 1993, becoming the first woman to serve on the commission. In 2002, Susan was re-elected to serve a full six-year term with the commission. She brings a varied background to the work of the commission.

She is a licensed social worker and has worked as a certified consumer credit counselor. In 1992, she received from the National Foundation for Consumer Credit the Outstanding Counselor Award for Region VI, a six-state region. Prior to her appointment to the PSC, Commissioner Wefald served for four years as an elected member of the Bismarck Public School Board, including one year as President.

Susan has a long record of dedicated community service. She is a violinist and a charter member of the Bismarck-Mandan Symphony Orchestra. She served as President of the Sakakawea Girl Scout Council for six years and was awarded the Thanks Badge, the highest award for adult service. At present, Susan is on the Bismarck Public Library Board of Trustees.

Susan received a bachelor of arts degree from the University of Michigan in 1969. She received a master's degree in public administration from the University of North Dakota in 2002. A Michigan native, she has lived in Bismarck since 1970. Susan is married to Robert O. Wefald, former North Dakota Attorney General and presently a South Central District Judge. They have three grown children: Sarah, Kathryn, and Tom.

Commissioner Wefald is a member of the Electricity Committee and the Committee on Consumer Affairs of the National Association of Regulatory Utility Commissioners. She is past President of the Organization of MISO States (2003-2004) and she served as President of the Mid America Regulatory Commissioners (MARC) in 2002-03. Presently, she is a member of the Electric Power Research Institute Advisory Committee.

Her commission portfolio includes electric utilities and transmission, weights and measures, abandoned mine land reclamation, and consumer affairs.



## **KEVIN CRAMER**

### **Commissioner**

Kevin Cramer was elected to the North Dakota Public Service Commission on November 2, 2004, garnering over 65 percent of the vote. He has served on the commission since Governor John Hoeven appointed him to fill an unexpired term on August 1, 2003.

Prior to joining the commission, Cramer served as the first director of the Harold Schafer Leadership Foundation, a position he assumed on January 1, 2001. 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, with a goal of raising up a new generation of leaders and entrepreneurs who model the servant leadership principles of Jesus Christ.

Cramer has a distinguished career in public service in North Dakota, having served eight years on the cabinet of Governor Ed Schafer as the State Tourism Director from 1993 to 1997 and State Economic Development Director from 1997 to 2000.

Cramer has received the Republican endorsement to be his party's candidate for the U.S. House of Representatives twice, including accepting a draft in 1998. Prior to government service, he served as Chairman of the North Dakota Republican Party. At age 30, he became the youngest member of the Republican National Committee.

Cramer serves on many boards and commissions and is a regular host of the popular radio show Hot Talk heard on WDAY in Fargo. 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's commission portfolio includes gas utilities (including gas safety), active mine reclamation, and pipeline companies. Cramer has a bachelor of arts 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, an adult daughter, Rachel, and a teenage daughter, Annie.



## **TONY CLARK**

### **Commissioner**

**(President ending in December 2006)**

The people of North Dakota first elected Tony Clark to the Public Service Commission in November 2000. He was re-elected in 2006. Since joining the commission, he has been a strong advocate for North Dakota's interests in some of the state's most important industries.

As the holder of the telecommunications portfolio, he works to strengthen North Dakota's future by supporting policies that benefit consumers and promote investment in a world-class telecommunications infrastructure. He is a national leader in telecommunications policy and serves as Chairman of the influential Telecommunications Committee of the National Association of Regulatory Utility Commissioners. As such, he regularly interacts with government and industry leaders in the telecom field. He has testified as an expert witness on telecommunications policy before committees of both the U.S. Senate and the U.S. House of Representatives. He has been quoted on telecom related matters in publications such as *The Wall Street Journal*, *The New York Times* and the *USA Today* among others.



Clark also holds the 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 of dollars in savings to North Dakota farmers. He has actively lobbied for better rail service, both in state and before federal officials.

Clark places a high priority on energy issues. He advocates policies that help develop North Dakota's vast energy exporting potential and provide affordable, reliable electricity and natural gas to consumers. Clark has overseen regulatory proceedings that have facilitated tens of millions of dollars in new investment in the state's economy through expanded wind, coal and petroleum infrastructure.

Prior to his election he was Labor Commissioner, serving in the cabinet of former Governor 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 outstanding achievement and 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 and holds bachelors degrees from North Dakota State University. He holds a master's degree in public administration from the University of North Dakota. Clark 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. He 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. Having earned the Eagle Scout award as a youth, he maintains his involvement with and support of the Scouting program.

Tony and his wife, Amy, have three children.

## *Agency Overview/Executive Director*

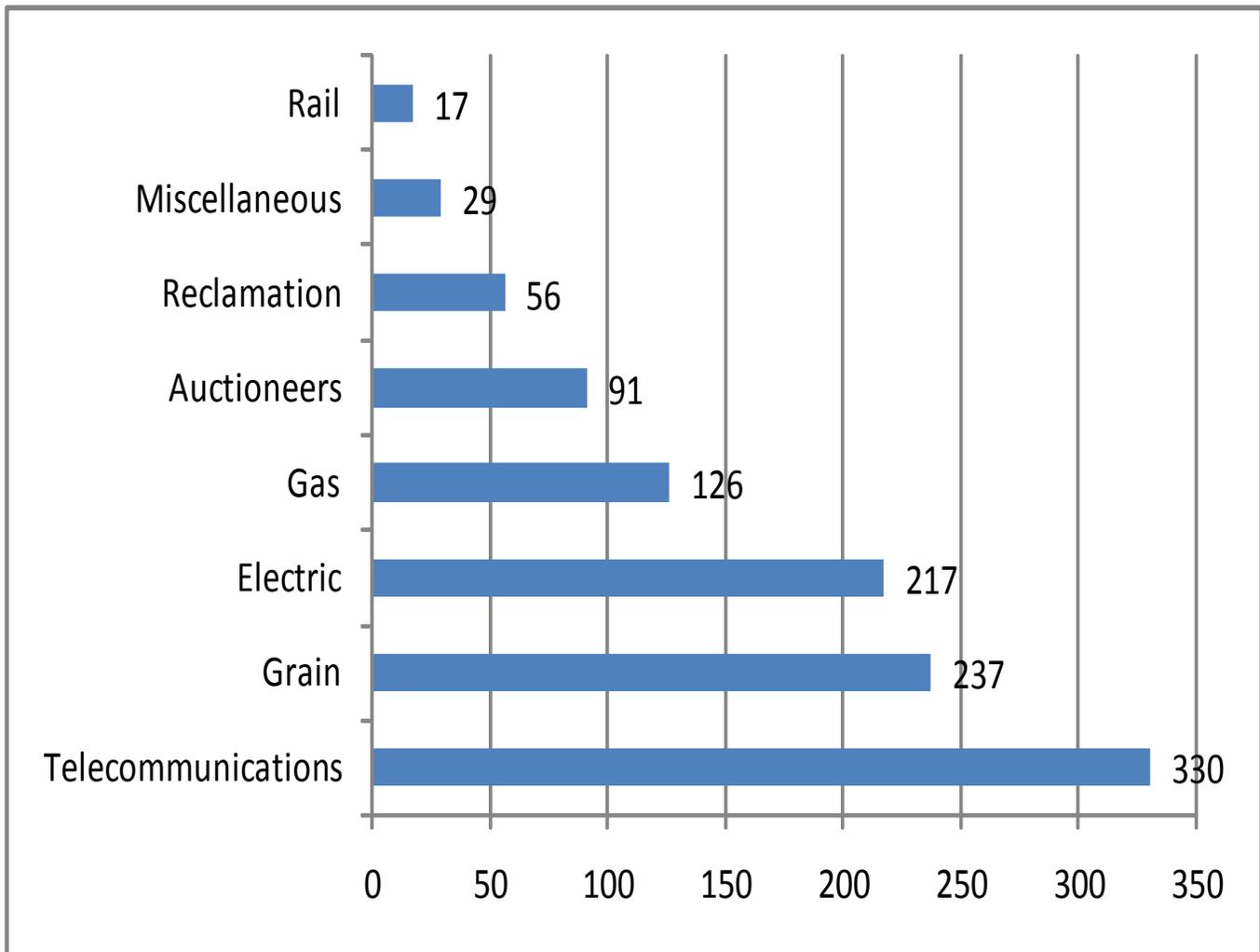
### **A. Statutory and Constitutional Responsibilities**

#### **Executive Director**

- The executive director administers the commission's day-to-day activities.
- The executive director serves as the point of contact for companies and individuals who are seeking information or want to make a formal filing in a particular case.
- The executive director's office also certifies, publishes, and maintains all official commission documents and case records.
- The executive director serves as the commission's personnel officer.
- The executive director provides timely recommendations and reports to the commission on operational and policy matters.
- The executive director coordinates efforts with other agencies and serves as the main informational liaison with other agencies on operational matters.

#### **Agency overview**

- 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.
- 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 the biennium, industry filings, complaint proceedings, and rulemakings caused the commission to open 1,188 cases, about 278 fewer than the number of cases that were opened during the preceding biennium. More than 97 percent of these cases were processed without the need for a formal hearing. About 45 percent were processed and closed in less than thirty days and about half of them were closed in sixty days or less. The following graph summarizes the number and types of cases that were processed by the commission during the biennium.

**Cases during the 2005-07 biennium****B. 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

## C. Public Outreach

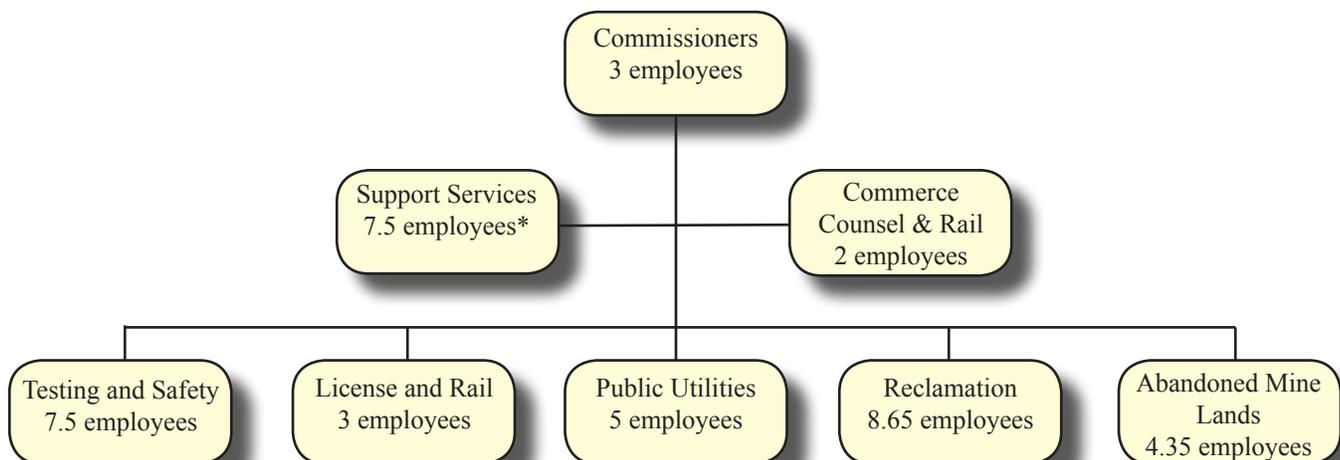
- The commission serves as a major resource for consumers who are having problems with the services provided by companies within the agency's areas of responsibility. Complaints or inquiries cover the gamut from utility billings to railroad lease rates and from grain protein tests to ground water near 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 1,700 complaints and inquiries during the biennium. The majority of incoming calls involved telecommunications. It is interesting to note, that this is one area of jurisdiction where federal and state lawmakers have taken steps to deregulate portions of the industry. These steps 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 broadcasts of the meetings from the Website.
- 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.state.nd.us](http://www.psc.state.nd.us).
- 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 Wimbledon, Ellendale, Ashley, Halliday, LaMoure, Lisbon, Flaxton, Turtle Lake and Rolette. Since those meetings, at least one wireless company has installed cellular service to meet consumer telecommunications needs in Ellendale, Lisbon and LaMoure.

**D. Financial Data**

**2005-2007 Budget**

| Line Item          | Appropriated        | Expended           | Unexpended         |
|--------------------|---------------------|--------------------|--------------------|
| Salaries and Wages | \$5,122,831         | \$4,994,345        | \$128,486          |
| Operating Expenses | \$1,408,154         | \$1,333,295        | \$74,859           |
| Equipment          | \$88,511            | \$87,170           | \$1,341            |
| Grants             | \$7,000             | \$7,000            | \$0                |
| Rail Fund          | \$945,000           | \$18,671           | \$926,329          |
| AML Construction   | \$3,668,492         | \$1,926,641        | \$1,741,851        |
| <b>Total</b>       | <b>\$11,239,988</b> | <b>\$8,367,122</b> | <b>\$2,872,866</b> |
|                    |                     |                    |                    |
| Funding Source     | Appropriated        | Expended           | Unexpended         |
| General            | \$4,302,837         | \$4,269,376        | \$33,461           |
| Federal            | \$1,070,000         | \$115,647          | \$954,353          |
| Special            | \$5,867,151         | \$3,982,099        | \$1,885,052        |
| <b>Total</b>       | <b>\$11,239,988</b> | <b>\$8,367,122</b> | <b>\$2,872,866</b> |

**Organizational Chart**



\*Includes Executive Director,  
Accounting/IT, General Office

***About the executive director:** The executive director position is held by Illona A. Jeffcoat-Sacco. Illona has an undergraduate degree in political science, a juris doctorate degree, and a master's degree in public administration. She has worked for the commission since 1987 and has held the position of executive director since March 1, 2004.*

## **Public Utilities Division**

### **A. 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 many of the services offered by investor-owned phone companies. The commission also works with consumers who are having phone-related problems.

### **B. 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, reasonable, safe, efficient and workable framework in which the transition from monopoly utility services to competitive utility services can evolve.
- Improve information flow to consumers and the public generally for the purpose of enhancing the public's understanding of the evolving industry, the commission's role, and the consumers' rights and responsibilities.
- Continue to protect North Dakota's environment by maintaining a high level of oversight of energy conversion and transmission facility siting and utility safety issues.

### **C. Key 2007 Legislation**

#### **Electricity**

- HB 1221 authorized jurisdictional electric utilities to file tariff schedules for commission approval that would implement retail rate adjustments for the recovery of costs for existing generating facilities to comply with federal environmental mandates. As of the close of the biennium, no such tariff schedules had been filed.
- HB 1506 established a voluntary renewable energy objective that 10 percent of all retail electric energy sold within North Dakota by the year 2015 be obtained from renewable energy and recycled energy sources. The objective must be measured by qualifying megawatt hours delivered at retail or by certificates representing credits purchased and retired to offset non-qualifying retail sales.
- SB 2031 authorized jurisdictional electric utilities to file tariff schedules for commission approval that would implement retail rate adjustments for the recovery of costs for new or modified electric transmission facilities. As of the close of the biennium, no such tariff schedules had been filed.

## **Siting**

- HB 1317 authorizes the commission to promulgate administrative rules for the decommissioning of commercial wind generating facilities when they reach the end of their useful life. A resulting rule proposal was under development at the close of the biennium.
- HB 1456 directed the Legislative Council to study the siting and decommissioning of commercial wind farms during the 2007-2008 interim and report its findings and recommendations together with any required legislation to the sixty-first legislative assembly.

## **Other**

- No legislation significantly affecting the telecommunications, gas or common pipeline carrier regulatory programs was enacted during the 2007 session.

## **D. Major Accomplishments and Activities**

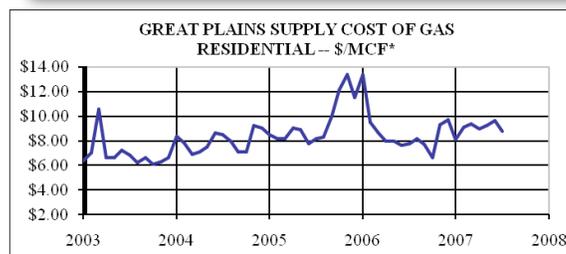
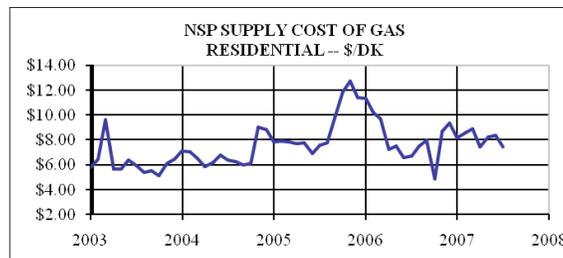
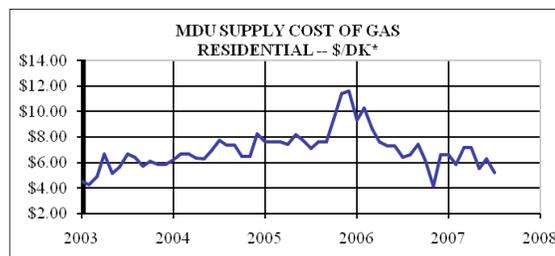
### **Telecommunications**

- As competition for telecommunications evolves in the state, the commission continues to receive requests to resolve negotiations between incumbent local exchange companies and competitive local exchange companies. Issues include the need and ability of competitors to interconnect to local exchange areas served by incumbent rural telephone companies, the list of interconnection services that will be provided, wholesale prices for services that may be resold by competitors, prices for interconnection of equipment, and terms and conditions of interconnection service.
- Qwest Corporation has numerous agreements with competitors for the resale of telecommunications services and interconnection of its telecommunications facilities with competitors' telecommunications facilities. With input from the states in its service area, Qwest has established standards for the quality and timely provision of interconnection services. The Commission continues to participate with the other states in Qwest's serving area in periodic reviews of the quality and timeliness of Qwest's interconnection services.
- 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.
- Under new rules adopted by the commission in 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. This information will support rural company certification to receive future universal service funds.
- Since July 1, 2005 the commission has designated VCI Company and Midcontinent Communications as the Competitive Local Exchange Carriers eligible to receive federal universal service funding. In addition, North Dakota Network Co.'s designation as a wireless carrier eligible to receive federal universal service funding was revised to include a larger service area, SRT Communications, Inc.'s designation was revised to include the Velva telephone exchange, and Red River Rural Telephone Association's designation was revised to include the Fairmount, Wyndmere, Hankinson, and Lidgerwood telephone exchanges.

- The commission continues to provide a web-based electronic self-registration system for telecommunications companies other than incumbent local exchange telecommunications companies. Approximately 227 telecommunications companies have self registered.

### Gas

- The commission decided one natural gas rate application during the biennium. Northern States Power Co. (NSP) proposed an increase to rates for distribution of natural gas service in North Dakota in order to generate additional annual revenue of approximately \$2.55 million. NSP had not increased distribution rates since July 2005. The commission's February 2007 decision granted an interim increase in rates under North Dakota Century Code Section 49-05-06. The commission's June 2007 decision accepted a settlement resulting in increased rates sufficient to increase annual revenue by approximately \$2.17 million effective July 2007.
- At the end of the year 2006, Montana-Dakota Utilities Co. (MDU) acquired the gas distribution system of the Minot Air Force Base. In this proceeding, a fixed monthly distribution system operation and maintenance fee was established and a transition fee from Minot Air Force Base for any immediate and necessary improvements.
- The following graphs reflect changes in the supply cost of gas paid by utilities for natural gas.



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

| Case No.      | Applicant                             | Description                                   | Filed    | Next Action   |
|---------------|---------------------------------------|---|----------|---|
| PU-380-95-377 | United Power Association              | 230-kV Ln-Relct Benson/Ramsey Co              | 8/21/95  | Case closed 12/07/2006                              |
| PU-401-99-586 | Otter Tail Power Co.                  | 230 kV Line / Pierce Wells Cty                | 10/27/99 | Case closed 11/02/2005                              |
| PU-593-96-11  | Dakota Gasification Co.               | CO2 Pipeline                                  | 1/5/96   | Reinspection/Tree Survival Oversight                |
| PU-401-00-200 | Otter Tail Power Co. / NSP            | 230 kV Line / Pierce, Rolette County          | 4/27/00  | Case closed 11/02/2005                              |
| PU-04-109     | Basin Electric Power Coop. Inc.       | AVS Cooling Line Replacement                  | 11/17/04 | Post construction inspections                       |
| PU-04-452     | MDU                                   | 175 MW Coal Plant at Gascoyne                 |          | Letter of Intent filed 9/1/04, Application Pending  |
| PU-05-47      | PPM Energy, Inc.                      | Rugby 150 MW Wind Farm                        | 6/16/05  | Permit Issued - No further activity                 |
| PU-05-184     | Plains Pipeline, L.P.                 | Trenton Extension                             | 6/20/05  | Post construction inspections                       |
| PU-05-185     | Plains Pipeline, L.P.                 | Buford Loop                                   | 6/20/05  | Post construction inspections                       |
| PU-05-205     | FPL Energy Burleigh County Wind, LLC  | 230 kV Line Burleigh/Oliver Counties          | 4/21/05  | Tree survival oversight                             |
| PU-05-274     | Enbridge Pipelines (North Dakota) LLC | Crude oil pumping stations                    | 5/3/2005 | Post construction inspections                       |
| PU-05-305     | PPM Energy, Inc.                      | 230 kV Line Pierce County                     | 6/16/05  | Permit Issued - No further activity                 |
| PU-05-527     | South Heart Coal, LLC                 | 500 MW Coal Coal Plant at South Heart         |          | Letter of Intent filed 8/18/05, Application Pending |
| PU-06-312     | FPL Energy Oliver County Wind, LLC    | 230 kV Line Oliver County                     | 7/25/06  | Tree survival oversight                             |
| PU-06-317     | Enbridge Pipelines (North Dakota) LLC | Crude Pump Station McKenzie/Williams Counties | 7/19/06  | Under Construction                                  |
| PU-06-330     | Enbridge Pipelines (North Dakota) LLC | Trenton to Beaver Lodge Crude Pipeline        | 7/26/06  | Under Construction                                  |
| PU-06-349     | Enbridge Pipelines (North Dakota) LLC | Crude Pump Station Mountrail/McHenry Counties | 8/4/06   | Under Construction                                  |
| PU-06-421     | TransCanada Keystone Pipeline, LP     | Crude Oil Pipeline Multiple Counties          | 4/11/07  | Hearings Held July 23-24, 2007                      |
| PU-06-443     | Tatanka Wind Power LLC                | 230 kV Transmission Line Dickey/McIntosh Ctys | 11/2/06  | Under Construction                                  |

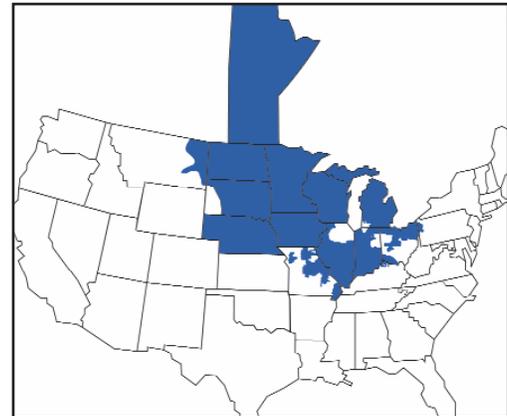
|           |   |   |         |                                |
|-----------|---|---|---------|--------------------------------|
| PU-07-26  | FPL Langdon Wind, LLC                   | 160 MW Wind Farm in Cavalier Cty                      | 1/23/07 | Under Construction             |
| PU-07-54  | Just Wind                               | 192 MW Wind Farm, Logan Cty                           |         | Letter of Intent Filed 2/8/07  |
| PU-07-75  | Enbridge Pipeline (Southern Lights) LLC | LP Pipeline, Pembina Cty                              | 4/16/07 | Hearing held 10/02/2007        |
| PU-07-108 | Enbridge Energy, LP                     | LP Pipeline, Pembina Cty                              | 7/16/07 | Hearing held 10/02/2007        |
| PU-07-169 | Basin Electric Power Coop. Inc.         | 230 kV Transmission Line Stark-Bowman Ctys            |         | Letter of Intent Filed 4/26/07 |
| PU-07-184 | Dakota Gasification Company             | CO2 Pipeline Reroute                                  | 5/11/07 | Under Construction             |
| PU-07-516 | Westmoreland Power, Inc.                | 500 MW Coal Plant at Gascoyne                         |         | Letter of Intent Filed 7/20/07 |
| PU-07-596 | Belle Fourche Pipeline Company          | 31- mile, 8-inch, crude oil pipeline, McKenzie County | 8/2/07  | Hearing on 10/30/2007          |
| PU-07-600 | Enbridge Pipelines (North Dakota) LLC   | 8-inch pipeline reroute/Williams County               | 8/9/07  | Under Construction             |
| PU-07-671 | Basin Electric Power Coop. Inc.         | 230 kV Williston to Tioga                             |         | Letter of Intent Filed 9/13/07 |

### Common Pipeline Carrier

- TransCanada Keystone Pipeline, LP, requested a certificate of public convenience and necessity to construct and operate a 218-mile, 30-inch crude oil pipeline (called the Keystone Pipeline) traversing the state in a southerly direction through parts of Cavalier, Pembina, Walsh, Nelson, Steele, Barnes, Ransom, and Sargent counties.

### Electricity

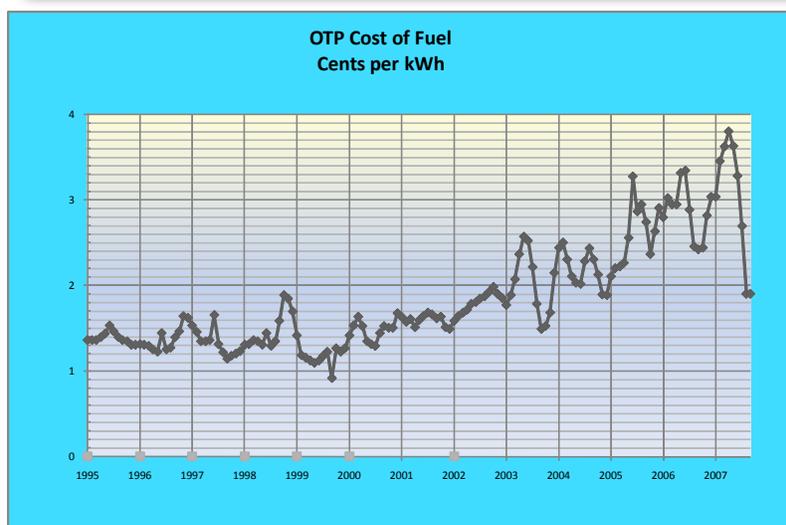
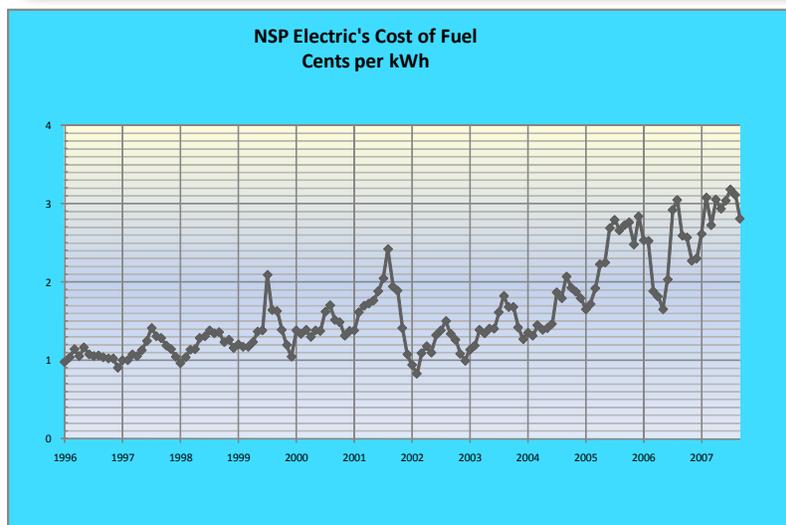
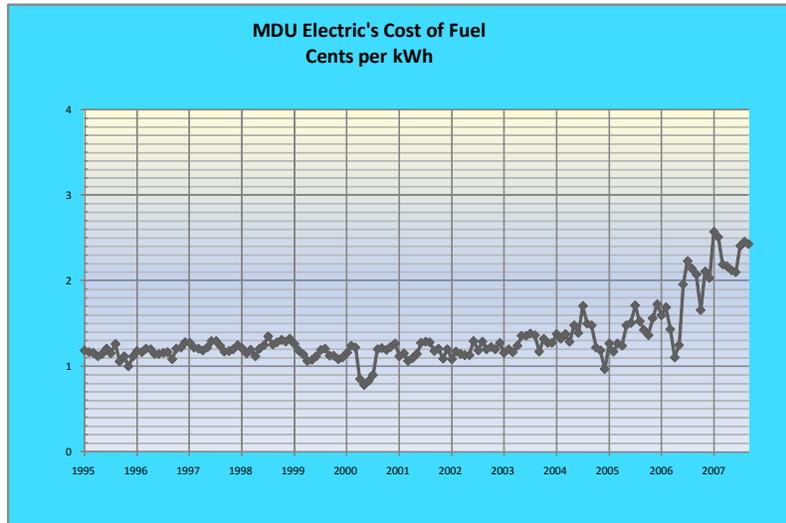
- Throughout the biennium the commission continued to participate as a member of the Organization of Midwest Independent Systems Operator States, Inc. The OMS is a nonprofit membership corporation consisting of one provincial and 15 state regulatory agencies having jurisdiction within the region served by MISO. MISO, 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.



**MISO Footprint**

- In Case No. PU-05-551 the commission decided a complaint by Capital Electric Cooperative that Montana-Dakota Utilities Co.'s extension of electric service into the Boulder Ridge 1st Addition to the City of Bismarck was interfering with Capitol Electric's service. After the hearing, the commission found for Capital Electric and ordered MDU to cease and desist from providing electric service to the Boulder Ridge 1st Addition. The commission's decision was appealed to the Supreme Court of North Dakota and the court's decision was pending at the close of the biennium. Also, at the close of the biennium, a similar complaint by Capital Electric regarding MDU's extension of electric service into the Promontory Point III Addition to the City of Bismarck was pending before the Commission in Case No. PU-06-278.
- In Case Nos. PU-06-481 and PU-06-482, Otter Tail Corporation and Montana-Dakota Utilities Co. filed applications for an advance determination of prudence for participation in a 530 MW baseload generating unit at the existing Bigstone site in South Dakota. Hearings were held and a Commission decision was pending at the close of the biennium.
- In Case No. PU-05-364 the Commission adopted administrative rules for participating in a regional program to track, record and verify the trading of credits for electricity generated from renewable and recycled heat sources. A regional Midwest Renewable Energy Tracking System (MRETS) remained under development throughout the biennium.
- The following charts show the cost of fuel for electricity for regulated power companies.

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



## **E. 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 3rd quarter of 2013. Based on that estimate, proceedings to determine a resolution are likely to begin the 3rd quarter of 2010.

### **Energy Conversion and Transmission Facility Siting**

- Robust activity in the energy industry resulted in a significant increase siting applications and increased workload during the biennium. This activity continues into the 2007-09 biennium.

### **Electricity**

- This biennium marks the first two years of operation and development for the initial stage of a new regional energy market for our area. On April 1, 2005 the MISO began operating a new wholesale energy market for all energy used to serve the loads of all MISO participants, including the three jurisdictional investor-owned electric utilities providing service in North Dakota.
- A centralized generating unit dispatch procedure was implemented to ensure that the lowest cost generators are always being used throughout the region regardless of utility control area boundaries.
- The new Midwest ISO energy market establishes Locational Marginal Prices (LMP's) for electric energy that are 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.
- The Midwest ISO and its new energy market have brought fundamental changes that affect almost every facet of regional electric service and the Commission's regulation of it. A second stage of market implementation is scheduled to begin with the summer of 2008 when an ancillary services market for system operating reserves and frequency regulation is scheduled to be overlaid on top of the energy market.

## *Testing and Safety Division*

### **A. Statutory and Constitutional Responsibilities**

- Supervise the installation and accurate operation of commercial weighing and measuring devices in the state through inspection and tolerance testing.
- Maintain the calibration of the state weights and measures standards that are traceable to the federal standards.
- Supervise and calibrate all working standards in the state.
- Enforce the state's minimum gas pipeline safety standards upon all of North Dakota's intrastate gas transmission and distribution system operators.
- Keep accurate records of all of the above responsibilities.

### **B. Mission Statement and Goals**

The Testing and Safety Division promotes fairness in the marketplace and enhanced public safety by enforcing state and federal laws governing gas pipeline safety and the installation and operation of commercial weighing and measuring devices. Tests and inspections are provided in an efficient, fair, and courteous manner taking into consideration an operator's cost to maintain compliance. Education programs are offered on a regular basis to promote understanding of and compliance with applicable laws and rules.

It's goals are:

- To meet the needs of both the buyer and seller in the commercial marketplace through the annual inspection and testing of commercial weighing and measuring devices such as supermarket scales, grain elevator truck scales, livestock scales, and gas station pumps via the division's Weights and Measures Program.
- Supervise the testing, licensing and monitoring of Registered Service Persons and Registered Service Companies that install, inspect, and test commercial weighing and measuring devices in North Dakota.
- To ensure that disputes resulting from inaccurate weighing and measuring devices are kept to a minimum by offering both the vender and the consumer current information on the state's weights and measures laws and rules.
- To investigate written complaints filed with the commission within 45 working days from the date they are reported.
- To maintain laboratory traceability and metrological competence, by participating in the National Institute of Standards and Technology (NIST) Laboratory Auditing Program, Regional Measurement Assurance Program, and an annual self-review process.
- To utilize these programs to assist in developing the metrology laboratory's areas of competence, measurement repeatability, as well as a method of comparing results among neighboring states.

- To ensure that state, industry, and registered service companies servicing commercial weighing or measuring devices in North Dakota are able to maintain traceability of their working standards to the state standards by providing fast and efficient metrology services at the Bismarck laboratory.
- To enhance public safety through the enforcement of the state’s minimum gas pipeline safety standards, as adopted by reference from the federal pipeline safety standards, upon all of North Dakota’s intrastate gas transmission and distribution systems.
- To maintain liaison with, and be available for special inspection assistance to the federal pipeline safety regional office in Kansas City, Missouri.

**C. Key 2007 Legislation**

- SB 2077, introduced by the commission and passed by the Legislature, amended North Dakota Century Code Section 64-02-02 adding language allowing variance permits to be issued on all weighing and measuring devices rather than on just weighing devices; and amended North Dakota Century Code Subsection one of section 64-02-07 adding language requiring that all secondary standards must be calibrated by a National Institute of Standards and Technology recognized metrology laboratory.

**D. Major Accomplishments and Activities**

- During the biennium, the Testing and Safety Division inspected and tested 26,516 weighing or measuring devices as illustrated by the following table:

| <b>W&amp;M Devices Tested and Inspected</b> |               |
|---|---------------|
| Gas Pump                                    | 15,194        |
| Counter/Platform Scale                      | 6,492         |
| Bulk Delivery Meter                         | 1,687         |
| Motor Truck Scales                          | 1,180         |
| LPG/NH3/AG Meters                           | 632           |
| Hopper Scale                                | 515           |
| Deck/Dormant Scale                          | 457           |
| Auxiliary Beam                              | 5             |
| Livestock Scale                             | 132           |
| Track/Hanging Scale                         | 174           |
| Onboard Weigh System                        | 3             |
| <b>Total</b>                                | <b>25,516</b> |

- During the biennium, the Testing and Safety Division monitored the documentation of 11,423 weighing or measuring devices installed or serviced by 159 registered service persons employed by 56 registered service companies that operate in North Dakota.
- During the biennium, the Testing and Safety Division conducted 92 quality control inspections and tests on the state’s registered service persons.
- The division conducted 70 complaint investigations as illustrated by the following table:

| <b>Weighing and Measuring Complaints Investigated</b> |           |
|---|-----------|
| Large Scales  | 12        |
| Small Scales  | 2         |
| Retail Fuel Dispensers                                | 16        |
| Delinquent Test Fees                                  | 40        |
| <b>Total</b>  | <b>70</b> |

- During the biennium, the state metrologist devoted 760 hours to certification of industry standards.
- North Dakota’s recognized metrology laboratory remains traceable to international standards by utilizing an unbroken chain of comparisons through the National Institute of Standards and Technology (NIST). For the biennium, the state metrologist devoted over 200 hours in the maintenance of that traceability.
- During the biennium, the Testing and Safety Division’s gas pipeline safety inspectors conducted 124 pipeline safety inspections of 15 distribution or transmission operators as illustrated in the following table:

| <b>Pipeline Inspections by Type</b> |            |
|-------------------------------------|------------|
| Comprehensive Records               | 32         |
| Onsite - Specialized                | 60         |
| Onsite - Followup                   | 2          |
| Onsite - Construction/Design        | 25         |
| Gas Explosion Investigation         | 0          |
| Operator Training (seminars)        | 5          |
| <b>Total</b>                        | <b>124</b> |

- As a result of the above pipeline safety inspections, 12 violations were found and were mitigated at the division level through the issuance of 7 compliance orders.

## **E. Major Challenges**

- Due to staffing and budget cuts imposed by the Legislature, the commission is no longer able to inspect or certify bulk LPG or bulk fuel dispensing devices, or high flow retail fuel dispensers. These device operators must now schedule their recertification with a registered service provider at least once every 15 months.
- Since the most of the work done by the division is in the field, a major challenge in the future is to keep travel expenses as low as possible considering the high cost of fuel while still fulfilling the commission mandate.
- Numerous metrology laboratory deficiencies have been noted by the National Institute of Standards and Technology over the past ten years, but more specifically during the onsite audit which took place in July 2004. As a result of that audit, the laboratory’s certification has been reduced to probationary

status. The challenge facing the commission now is to use the limited funds provided by the Legislature to try and mitigate as many of those deficiencies as possible and maintain at least probationary recognition while remaining in the current location.

## **F. Major Cases**

- None

## **G. Financial Data**

- For the biennium, the commission deposited a total of \$574,942.74 to the general fund generated from weights and measures inspection fees and metrology certification fees.

# **Licensing Division**

## **A. Statutory and Constitutional Responsibilities**

- The Licensing Division 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.
- Conducts 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 insolvencies when licensees are declared “insolvent” because of the inability to make payment for grain or hay purchased or marketed by the licensee upon proper demand or is unable to make redelivery or payment for grain stored upon proper demand.
- Oversees the licensing and bonding of all auctioneers and auction clerks.

## **B. 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, 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 to develop a greater cohesion in the industry and to work with industry and legislators on issues facing the industry.

### **C. Key 2007 Legislation**

- HB 1181 amended North Dakota Century Code Section 60-10-03 reducing the maximum on the credit-sale contract indemnity fund. The maximum was reduced from \$10 million to \$6 million and the minimum was reduced from \$5 million to \$3 million. HB 1181 also provided for the suspension of collections of the assessment at the end of the calendar quarter in which the credit-sale contract indemnity fund reaches the maximum fund level.
- HB 1360 amended North Dakota Century Code Section 60-10-02 to give the State Treasurer the authority to invest available monies in the credit-sale contract indemnity fund and to deposit any income earned through the investments into the fund. This change will result in the fund earning a higher rate of interest and growing at a faster rate.
- SB 2247 amended North Dakota Century Code Chapter 60-02.1 which provides an exception from licensing and bonding requirements when a roving grain buyer purchases, solicits or merchandises grain only from a licensed public warehouseman or a licensed facility-based grain buyer and only if the grain has been cleaned, processed, and made ready for consumption. If a roving grain buyer buys grain from a licensed public warehouseman or a licensed facility-based grain buyer and the grain has not been cleaned, processed, and made ready for consumption, the roving grain buyer must be licensed and bonded. A roving grain buyer is always required to be licensed and bonded when dealing directly with farmers/producers.

### **D. Major Accomplishments and Activities**

- The Licensing Division completed 308 grain warehouse and 44 roving grain buyer inspections, as well as 12 credit-sale contract indemnity fund reviews. The computer software program was upgraded and is a valuable asset to the inspection program as it provides indemnity fund functions, built in WinZip functions, volumetric storage input for all bin types, improved flat storage and the ability to handle multiple bagged commodities.
- The Licensing Division approved 199 capacity increase requests and 135 capacity decrease requests. The Licensing Division also granted 52 requests to discontinue business and issued 36 new licenses. At the beginning of the biennium, there were 320 licensed grain warehouses and 95 licensed facility-based grain buyers. The trend towards fewer and larger grain warehouses continued during the biennium ending with 304 licensed grain warehouses and 93 licensed facility-based grain buyers.
- There were 51 roving grain buyers licensed at the start of the biennium and by the end of the biennium the number of licensed roving grain buyers had increased to 69.
- At the start of the biennium there were 393 licensed auctioneers and 233 auction clerks and at the end of the biennium there were 410 licensed auctioneers and 233 licensed auction clerks.

- Licensing Division staff did not file any formal complaints during the biennium, although there was one cease and desist order filed against a company for violating grain buyer statutes by operating without the required license and corresponding bond.

### **E. Major Challenges**

- The Licensing Division continued its efforts to maintain state jurisdiction over merchandising activities despite attempts to pre-empt state protections for federally licensed grain warehouses.
- The Licensing Division continued its efforts to provide education and awareness on the importance of conducting business with only licensed and bonded grain buyers through the mailing of letters to unlicensed grain buyers to cease grain buying activities until they became licensed and through a Grain Buyer Presentation which took place in October 2006.
- The biennium saw a continued increase in the amount of licensed ground storage at its grain warehouses. As of the end of October 2005, ground storage capacity was at an all-time high in the state at 28.5 million bushels. This far exceeded the previous high of 18 million bushels set in November 2003.

### **F. Major Cases**

- The agency was involved in one hay buyer insolvency and one grain warehouse insolvency during the biennium. The hay buyer insolvency was initiated in January 2007 and involved Heartland Feed, Inc. out of Tioga, North Dakota. The grain warehouse insolvency was initiated in March 2007 and involved Minnesota Grain, Inc. The final resolution of this case was still pending at the end of the biennium.

### **G. Financial Data**

- Credit-sale contract indemnity fund collections during the biennium totaled \$2,181,053.58. There have been no claims paid against the credit-sale contract indemnity fund and as of June 30, 2007, the fund balance was just over \$4 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 \$406,980.

## **Reclamation Division**

### **A. 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) provides about sixty-five percent of the funding needed to run this regulatory program.
- Prior to issuing a mining permit, the commission also ensures the requirements of the Surface Owner's Protection Act, North Dakota Century Code Chapter 38-18, are met.

## **B. Mission Statement and Goals**

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:

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

Related goals are to:

- Continually carry out the mine permitting, inspection and enforcement, 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.
- Continually evaluate and adjust the regulatory program to achieve the optimum balance among environmental protection, least-cost industry operations, and landowner pursuit of agricultural activities.
- 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.
- Promote public awareness of the regulatory program through increased contact with relevant organizations and potentially affected landowners.
- Maintain maximum staff effectiveness by providing training and other opportunities for professional growth.

## **C. Key 2007 Legislation**

- No legislation directly affecting the coal regulatory program was enacted during the 2007 session.

## **D. Major Accomplishments and Activities**

Significant coal mine permitting activities during the biennium:

- New permit issued for the Freedom Mine covering 5,710 acres.
- New permit issued for the GeoResources Mine covering 160 acres.
- Five significant permit revisions were approved that added another 1,720 acres to existing permits.
- Sixty-seven other permit revisions were approved.
- Eleven permit renewals were approved.
- As of June 30, 2007, there were 105,207 acres under permit for surface coal mining and reclamation operations.

- At the end of the biennium, permits were held by nine companies for twelve mine sites. Of the twelve mines, six are active and the other six were inactive and under reclamation. The active lignite mining companies are: BNI Coal, Ltd., which owns and operates the Center Mine, 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 Perkins Mine and the GeoResources' Mine.

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

- 1,457 inspections on 40 inspectable units were conducted.
- 299 complete inspections were conducted (complete inspections cover all aspects of the mining and reclamation operations being conducted).
- 1,158 were considered partial inspections.
- Five Notices of Violation were issued to mining companies during the biennium and \$5,300 in civil penalties were assessed and collected for these violations.
- Shortly after the beginning of the biennium, staff completed a lengthy investigation of a complaint on the affects of blasting on a dwelling near a mine. The possible affect of mine blasting on a landowner's water wells was also thoroughly investigated during the biennium.

#### **Other Activities during the biennium:**

- Eight final bond release applications were approved during the biennium whereby the commission terminated its jurisdiction on 1,276 acres that had been under permit.
- A significant accomplishment during the biennium was work on developing a Geographic Information System (GIS) to store and manage much of the data received from mining companies. The GIS based data is then downloaded onto tablet pc's for use during mine inspections.
- Nearly all correspondence, reports and data now received by the Reclamation Division is being converted to an electronic format, if not filed electronically.
- Reclamation Division staff worked with Great Northern Power Development L.P. and its consultants on the baseline environmental studies that are needed for a mining permit for the coal project proposed near South Heart.
- Rule changes to revegetation success standards were adopted that should encourage mining companies to file final bond release applications sooner.
- The Reclamation Division continued to receive excellent evaluation reports 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.
- New staff members were hired to fill positions that became vacant due to the retirement of three long-

time staff members. However, one position was again vacant at the end of the biennium. The Reclamation Division director also became director of the Abandoned Mine Lands Division during the biennium and splits his time between the two programs.

- A public hearing was held on the rule changes that were adopted during the biennium that included changes to revegetation success standards, Case No. RC-05-591. This rulemaking case also included some proposals suggested by the Lignite Energy Council.
- No public hearings or informal conferences were held on any of the applications processed during the biennium nor on any Notice of Violation issued during that period.

## **E. Major Challenges**

- Several new coal projects are under consideration and the workload will increase significantly if new mining applications are filed for the mines associated with these projects.
- At least one company has started to investigate the feasibility of mining coal seams that are enriched in uranium. Additional rules will need to be developed to address concerns associated with handling radioactive materials and staff will need to become more familiar and receive training in these matters.
- Staff time needed for final bond release activities is expected to increase, especially for large acreage at the former Glenharold and Gascoyne Mines.
- There is also a concern that sufficient funds may not be provided by the Office of Surface Mining Reclamation and Enforcement to fully fund the federal share of the regulatory program costs.

## **F. Trends**

- The Reclamation Division plans to continue to add more data to the GIS to manage data and carry out its functions more efficiently.
- More final bond release activity is expected as additional reclaimed lands become eligible for release, especially lands at the former Glenharold and Gascoyne Mines.

## **G. Financial Data**

- The total expenditures for the Reclamation Division during the biennium were \$1,202,402. Of this total, the federal fund portion was \$796,114 and the remaining \$406,288 came from the General Fund.
- A further breakdown of the expenditures are the following:
  - Salaries and Fringe Benefits – \$1,056,579
  - Operating Expenses – \$131,523
  - Equipment – \$7,300
  - Grants to State Agencies – \$7,000

## **Abandoned Mine Lands Division**

### **A. 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.

### **B. Mission Statement and Goals**

The mission of the Abandoned Mine Lands (AML) Division is to eliminate potential or existing hazards associated with abandoned coal mines in North Dakota for which there is no continuing liability under state or federal law. The nature of this mission is not regulatory but rather service-oriented.

Related goals during the biennium were to:

- Reclaim abandoned mine land sites found on the North Dakota AML Inventory.
- Reclaim hazardous abandoned mine land sites not on the AML Inventory but discovered through exploratory drilling or public information.
- Reclaim emergency sites as the highest work priority. Develop emergency reaction plans that will reduce the time taken to eliminate the imminent hazard.
- Deposit funds in our state reclamation account so that when the federal program is over, the state will have the financial basis to address abandoned mine lands hazards.
- Seek to increase the gross amount of money received by the state for the purpose of reclamation through action in the National Association of AML Programs and through Congressional contacts.

### **C. Key 2007 Legislation**

- No legislation enacted by North Dakota's 2007 session directly affected the AML program.

### **D. Major Accomplishments and Activities**

- A federal law enacted by Congress in late 2006 included provisions to re-authorize the Abandoned Mine Land Program and extend the federal reclamation fee that is used to fund the program until 2022. This legislation will result in a significant increase in the amount of federal funding that North Dakota receives for its AML program starting in calendar year 2008.
- During the biennium, major construction projects were carried out in and near Garrison, south of Zap, and east of Williston to inject pressurized grout into abandoned underground mine voids that were under public roads and homes.

- Major construction projects to backfill dangerous highwalls at abandoned surface mines were completed near Leith and Columbus.
- Smaller projects to fill sinkholes caused by past underground mining were carried out at numerous locations in western North Dakota.
- Emergency projects were completed to fill sinkholes near Garrison and Haynes and to extinguish a coal fire near Beulah.
- Maintenance work, such as tree planting and fencing, was carried out at previously reclaimed sites.
- A project was completed in early 2007 to extinguish coal outcrop fires at several locations in western North Dakota.
- The AML Division received a national AML reclamation award from OSM in 2006 for outstanding reclamation work in locating, mapping, and filling underground mine voids in and around Garrison.
- In early 2006, an additional \$118,500 was added to the state 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 \$2,410,282 on June 30, 2007 (states are no longer allowed to place additional federal grant funds into the set-aside account as a result of federal legislation enacted in December 2006 that re-authorizes and extends the AML program.)
- A cooperative agreement was entered into with OSM for the scanning of historic mine maps.
- A plan was prepared for the development of a geographic information system (GIS) containing spatial data, including the scanned mine maps, on the abandoned mine sites in North Dakota. One of the goals of this project is to post much of this information on the commission's website so it is readily available to the public.
- The AML Division continued to receive excellent evaluation reports from OSM's Casper Field Office during the biennium.
- Staff attended several OSM sponsored training classes and technical conferences during the biennium.
- Following the retirement of the long-time AML Division director in 2006, the director of the Reclamation Division also became director of the AML Division splitting his time between the two programs. An assistant director for the division was named and a position was converted from an environmental scientist to a GIS specialist.
- One long-time staff member transferred from the AML Division to the Reclamation Division and the vacated position was filled in the spring of 2007.

## **E. Major Challenges**

- Develop more and larger construction projects due to the increased federal funding that is expected as the result of the legislation that re-authorizes and extends the AML program.
- Work will continue on the development of a GIS containing abandoned mine information and to post detailed mine information on the commission's website.

**F. Trends**

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

**G. Financial Data**

- The total expenditures for the Abandoned Mine Lands Division during the biennium were \$2,648,266, all federal funds.
- A further breakdown of the expenditures are the following:
  - Salaries and Fringe Benefits – \$562,249
  - Operating Expenses – \$151,876
  - Equipment – \$7,500
  - AML Contracting Services – \$1,926,641

## **Rail**

**A. 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 not inconsistent 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.

**Goals**

- Regulate railroads as provided for by state law and represent ND's railroad shipping interests in federal proceedings and in direct negotiations with the rail carriers that serve the state.

**B. Key 2007 Legislation**

- The commission requested funding from the 2005 Legislature to pursue a grain rail rate complaint case before the federal Surface Transportation Board ("STB"). With the Governor's support and support of the grain industry and farm and commodity groups, the Legislature authorized the expenditure of up to \$945,000 to pursue a rail rate complaint proceeding before the STB during the biennium.
- The 2007 Legislature authorized the expenditure of \$900,000 for a rail rate complaint before the STB during the 2007-2009 biennium. The amount of \$800,000 was appropriated for the rail rate complaint case from the beginning farmer revolving fund.

**C. Major Accomplishments and Activities**

- The commission with the support of the grain industry and farm and commodity groups initiated the process for filing a grain rail rate complaint under the STB's small rate case proceedings. Prior to the filing of a complaint case, Burlington Northern Santa Fe Railway cut its grain shipping rates. Then in July, 2006, the STB issued its Notice of Proposed Rulemaking on Simplified Standards for Rail Rate

Cases, STB Ex Parte No. 646 (Sub-No. 1). Following these actions, the commission, grain industry and farm and commodity groups decided not to pursue the filing of a rate case because of uncertainty regarding the potential for a successful result as well as the potential for a change in the STB's small case proceedings that could effectively negate the precedent established by a successful case under the existing rules.

#### **D. Major Challenges**

- Abandonments continue to occur on branch lines throughout the state. However, during the biennium, there was only one abandonment. That abandonment was by the BNSF from Bottineau, ND to Souris, ND, a total of 11.9 miles. North Dakota's rail network declined to 3,549 miles during the biennium. Since the 1920s, the size of the state's rail network has declined from 5,370 miles to the current 3,549 miles; a decline of 33.9 percent. Much of the decline has occurred since 1980.
- Service issues exist with rail car supply especially during harvest time.

#### **E. Trends**

- There are major trends underway that will impact North Dakota's rail system and, correspondingly, its grain elevator industry and its local road and highway system for the foreseeable future. These trends include the rail industry's transition from 268,000 pound to 286,000 pound cars and the move from consignment sizes of up to 110 cars. These changes are precipitating continuing concentrations in the grain elevator industry, the abandonment of additional branch lines, heavier farm trucks, longer farm to market hauls, and increased stress on roads.
- There are currently twenty-nine 110 car shuttle train facilities in the state. A recent Upper Great Plains Transportation study indicated that these facilities may require volumes of 12 to 15 million bushels per year to be viable. These facilities are capable of handling volumes up to 300 million bushels or more; approximately sixty percent of all grain shipped each year by the state's grain elevators. In addition to the 110 car shuttle train facilities, there are numerous grain elevator facilities in the state that have the capability of loading 75 or 100 car trains.
- Current and historic grain shipping trends are available from the Upper Great Plains Transportation Institute at <http://www.ugpti.org/>.

#### **F. Major Cases**

- The Commission participated in the STB's Rulemaking on Simplified Standards for Rail Rate Cases, STB Ex Parte No. 646 (Sub-No. 1) and filed comments on behalf of the commission, and the North Dakota Grain Dealers Association, North Dakota Wheat Commission, North Dakota Grain Growers Association, North Dakota Farmers Union, and North Dakota Farm Bureau. The commission also joined in comments filed by the National Grain and Feed Association and 39 other organizations representing various facets of the agricultural production and processing community.

## *Personnel and Directory*

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|                                       |   |          |
|---------------------------------------|---|----------|
| <b>Commissioners</b>                  |   |          |
| Susan Wefald                          | President   | 328-2400 |
| Tony Clark                            | Commissioner  | 328-2400 |
| Kevin Cramer                          | Commissioner  | 328-2400 |
| <b>Administration</b>                 |   | 328-2400 |
| Illona A. Jeffcoat-Sacco              | Executive Director  | 328-2407 |
| Lori Anderson                         | Administrative Assistant III (through Dec. 2006)  |          |
| Shelly Bauske                         | Administrative Assistant II   | 328-4070 |
| Kathy Fortney                         | Administrative Assistant III (through April 2006)   |          |
| Sharon Helbling                       | Administrative Assistant III (through Dec. 2006)  |          |
| Charlene Magstadt                     | Administrative Assistant III (through Feb. 2007)<br>Administrative Officer I (beginning March 2007)                               | 328-4091 |
| Tom Rafferty                          | Administrative Officer I (beginning Sept. 2006)   | 328-4078 |
| <b>Abandoned Mine Lands</b>           |   |          |
| James Deutsch                         | Director (beginning Sept. 2006)   | 328-2251 |
| Louis Ogaard                          | Director (through Aug. 2006)  |          |
| William Dodd                          | Assistant Director and Environmental Science Administrator I (since Nov. 2006)<br>Environmental Scientist III (through Oct. 2006) | 328-4101 |
| Bruce Beechie                         | Environmental Scientist III (through Dec. 2006)   | 328-4104 |
| Sheila Hibl                           | Administrative Assistant II   | 328-4096 |
| Mark Knell                            | Environmental Engineer III  | 328-4095 |
| Kraig Nelson                          | GIS Specialist II (beginning June 2007)   | 328-1208 |
| Timothy Oswald                        | Environmental Scientist III (beginning April 2007)  | 328-2445 |
| <b>Accounting and Data Processing</b> |   |          |
| Mike Diller                           | Director  | 328-4079 |
| Gloria Geiger                         | Administrative Staff Officer II   | 328-2401 |
| Steven Kahl                           | Data Processing Administrator I   | 328-4087 |
| Paul Klebe                            | Programmer Analyst II   | 328-4075 |
| <b>Legal</b>                          |   |          |
| William Binek                         | Attorney III  | 328-4088 |
| Lori Anderson                         | Administrative Officer I (Dec. 2006-Oct. 2007)  |          |

|                             |   |          |
|-----------------------------|---|----------|
| Sandi Scott                 | Administrative Assistant III (through Dec. 2006)  |          |
| <b>Licensing</b>            |   |          |
| Sue Richter                 | Director  | 328-4097 |
| Tim Erdmann                 | Grain Warehouse Inspector   | 328-4103 |
| Rick Fillbrandt             | Grain Warehouse Inspector   | 328-4103 |
| <b>Public Utilities</b>     |   |          |
| Illona A. Jeffcoat-Sacco    | Director  | 328-2407 |
| Annette Bendish             | Public Utility Analyst II (through Sept. 2007)  |          |
| Michael Diller              | Director of Accounting  | 328-4079 |
| Patrick Fahn                | Chief Engineer and Public Utility Analyst III   | 328-4077 |
| Sharon Helbling             | Administrative Assistant III (through Dec. 2006)  |          |
| Jerry Lein                  | Public Utility Analyst II   | 328-1035 |
| Tom Rafferty                | Administrative Officer I (beginning Sept. 2006)   | 328-4078 |
| <b>Reclamation</b>          |   |          |
| James Deutsch               | Director (beginning Sept. 2006)   | 328-2251 |
| Dean Moos                   | Assistant Director and Environmental Science Administrator I (since July 2006);<br>Environmental Scientist III (before July 2006) | 328-4099 |
| Nirander Safaya             | Assistant Director and Environmental Science Administrator I (through April 2006)   |          |
| Bruce Beechie               | Hydrologist III (beginning Dec. 2006)   | 328-4104 |
| Mike Berg                   | Environmental Engineer III (beginning Sept. 2006)   | 328-4779 |
| David Bickel                | Environmental Scientist III (through Sept. 2006)  |          |
| Sheila Hibl                 | Administrative Assistant II   | 328-4096 |
| Bruce Johnson               | Environmental Engineer III  | 328-4094 |
| Larry Larson                | Environmental Engineer III (through June 2006)  |          |
| Stephan Schroeder           | Environmental Scientist III   | 328-3403 |
| Melissa Toepke-Peterson     | Environmental Scientist III (Sept. 2006-June 2007)  |          |
| Guy Welch                   | Environmental Scientist III   | 328-2298 |
| <b>Testing &amp; Safety</b> |   |          |
| Al Moch                     | Director  | 328-2413 |
| Kevin Hanson                | Assistant Director and State Metrologist  | 328-3337 |
| Bill Eide                   | Weights and Measures Inspector  | 328-2400 |
| Wayne Grangaard             | Weights and Measures Inspector  | 328-2400 |
| Leo Praus                   | Weights and Measures Inspector  | 328-2400 |
| Phyllis Richter             | Weights and Measures Inspector  | 328-2400 |
| J.P. Robbins                | Weights and Measures Inspector  | 328-2400 |

## *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, Wm. H.....         | 1909-1916         |
| 24. Anderson, O. P. N.....   | 1909-1916         |
| 25. Stutsman, W. H.....      | 1909-16 & 1921-22 |
| 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.....     | 1921-36 & 1940-50 |
| 33. McDonald, S. S.....      | 1937-1948         |
| 34. Larkin, Ben G.....       | 1928-1949         |
| 35. Cart, Elmer W.....       | 1935-40 & 1949-54 |
| 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 A.....    | 1967-1983         |
| 43. Sandstrom, Dale V.....   | 1983-1992         |
| 44. Hagen, E. Bruce.....     | 1961-2000         |
| 45. Reinbold, Leo M.....     | 1981-2003         |

