



# Public Service Commission



Julie Fedorchak  
Chairman



Randy Christmann  
Commissioner



Brian P. Kalk  
Commissioner

**2013-2015**

***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 [www.psc.nd.gov](http://www.psc.nd.gov).



1936 Public Service Commissioners

The Commission is comprised of three commissioners who are elected on a statewide basis to staggered six-year terms. The Commission had 43 authorized full time employees throughout the biennium.

## **History of the Public Service Commission**

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. However, this trend has been reversed in some areas 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 policymakers will ultimately decide how much regulation is required in various industries.



1926 Commission Staff

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.

## Commissioner Julie Fedorchak



Julie Fedorchak was appointed to the Public Service Commission in December 2012 by Gov. Jack Dalrymple to fill out the term vacated by U.S. Congressman Kevin Cramer. She successfully ran for election in November 2014 to fill out the remainder of the term, which expires in 2016. She currently serves as Chairman of the Commission.

A third generation North Dakotan and the youngest of eight children, Julie was born in Williston and had the great fortune of growing up in several regions of the state. She completed elementary and junior high school in Fargo, spent many summers on her family's farm and ranch south of Stanley, N.D., and graduated from Bismarck Century High School in 1986.

Julie earned a bachelor's degree in journalism from the University of North Dakota in 1990 then launched her professional career with the University of North Dakota Alumni Association and Foundation where she was director of communications and editor of alumni publications.

Julie ventured to the East Coast for a couple years, living in Washington, D.C., and working at the University of Maryland College Park. In 1995, North Dakota Governor Ed Schafer invited her back home to serve as communications director. As a senior member of his team, Julie advised on all budget and policy decisions and was Governor Schafer's principal speech writer, spokesperson and media liaison. She held that position until he retired from office in 2000.

Following this period in government, Julie started her own business, Liffrig Communications, a small firm that provided marketing, communications, media relations and government relations services. Through a diverse base of public and private sector clients, Julie deepened her involvement in and understanding of state government, economic development and North Dakota's key industries including energy and agriculture. She also expanded her writing credentials, publishing a bi-weekly column in the Bismarck Tribune and collaborating with her mother on three books: *I'm Strong. I can Make It* and *Growing Up Rich in a Poor Family Volumes I and II*.

After 10 years in the private sector, John Hoeven's election to the U.S. Senate in 2010 called Julie back to public service, first as Deputy Director of Senator Hoeven's state operations. She was promoted to State Director in 2011. In that capacity, Julie managed statewide issues and staff including five state offices while advancing Senator Hoeven's top priorities including national energy policy.

Julie is married to Mike Fedorchak of Minot. They have three children and live in Bismarck where they are involved in a number of activities and organizations including youth soccer, football and baseball, the Bismarck Figure Skating Club, and Cathedral of the Holy Spirit school and parish. Julie also serves on the Board of Trustees for the University of Mary.

In her free time, Julie runs and swims and enjoys traveling, outdoor activities, entertaining, reading, family gatherings and escaping to their farm and ranch northwest of Bismarck.

## Commissioner Randy Christmann

Randy Christmann was elected to the North Dakota Public Service Commission in November of 2012. He brings to the Commission a background in agriculture, telecommunications, and 18 years in the North Dakota Senate representing energy country. Most of all, he brings what the Minot Daily News called a “let’s work together attitude.”

Outside of government service, Randy operated a 108-year-old third generation cattle ranch west of Hazen, North Dakota. His wife, Bethanie, is a mortgage loan underwriter at American Bank Center.

Before graduating from Hazen High School in 1978, Randy enlisted in the North Dakota Army National Guard. He also enrolled at North Dakota State University and graduated from there in 1982 with a bachelor’s degree in business administration.

Randy was elected to the North Dakota Senate in 1994 when he upset a long-time incumbent Democrat committee chairman, helping Republicans achieve majority status in the North Dakota Senate. He initially focused mostly on energy, taxation, and natural resources issues.

Governor Ed Schafer appointed Randy to serve as one of the two legislative appointees on the Lignite Research Council. He continued to serve in that position under Governor John Hoeven and Governor Jack Dalrymple.

Following the statewide general election in 2000, Senate Republicans chose Randy to serve as their Assistant Majority Leader. He was re-elected to that post every two years through 2012. He also served on the Senate Appropriations Committee.

In 1999 the members of West River Telecommunications (WRT) Cooperative elected Randy to serve on its board of directors. From then through 2012 WRT nearly doubled in size, growing into a \$100 million company with more than 70 employees. They provide telephone and broadband service to part or all of 17 counties in North and South Dakota. West River is also a leader in the development of cellular service in North Dakota. During part of this time, Randy also served as the president of the North Dakota Association of Telecommunications Cooperatives.

Randy now brings his agriculture, telecommunications, and energy industry background to the Public Service Commission.

His portfolios include:

- Coal mining, reclamation, and abandoned mine lands
- Licensing (grain dealers and auctioneers)
- Weights and measures
- Telecommunications



## Commissioner Brian P. Kalk

Dr. Brian Kalk was re-elected Public Service Commissioner in the November 2014 election, and is currently serving his second term for the PSC, which will expire in 2020. Kalk also serves as President of the Mid-American Regulatory Commissioners (MARC) and serves as Chair of the Clean Coal Subcommittee for the National Association of Regulatory Utility Commissioners (NARUC).

Brian brings a wealth of education, experience, and expertise to the Public Service Commission. During his first 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 Bachelor's 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. He returned to North Dakota and earned his Master in Environmental Engineering degree 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 daughter Jordee Sue.



Public Service Commissioners

# 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.

This biennium there were 1,750 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 89 formal hearings either in the Commission hearing room at the State Capitol or in the area directly affected.

- 95% of all formal cases were processed without the need for a formal hearing
- 20% of all formal cases were closed in less than 30 days
- 23% of all formal cases were closed in 60 days or less

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

## 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; coordinate efforts with other agencies; and serve 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 is responsible for ensuring all meetings are noticed; and agendas and minutes are prepared and distributed appropriately.

## 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.

	<b>Docketed Cases</b>				
	2005-2007	2007-2009	2009-2011	2011-2013	2013-2015
Railroad	17	23	24	17	18
Reclamation	56	59	55	34	34
Abandoned Mines	0	0	0	14	9
Grain Elevator	237	633	603	570	600
Gas/Pipeline	126	180	144	148	233
Electric	217	284	225	246	226
Telecommunications	330	346	244	545	368
Auctioneers	91	91	69	89	57
Weights and Measures	1	1	2	23	131*
Miscellaneous	19	28	6	20	74**
<b>Total</b>	<b>1094</b>	<b>1645</b>	<b>1372</b>	<b>1706</b>	<b>1750</b>

\* Beginning in 2013-15 biennium, program began docketing registered service company applications and variance requests.

\*\* Increase in the internal informational cases

## 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 issues 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 more than 1,500 complaints and inquiries during the biennium. The majority of incoming calls involved gas/electric utilities, telecommunications, and public comments regarding siting applications submitted to the Commission. The majority of the concerns involve billing disputes, electric disconnects, and quality of service complaints. The Commission also receives a large number of phone calls related to questions about the LifeLine Program. Although the PSC does not administer this program, the PSC's number is listed on information sent to those who qualify and staff are available to answer general questions about the program and help people with the information they need to get signed up.

The PSC reinstated a Consumer Affairs Portfolio in 2014, which provides additional focus on consumer issues and complaints and on improving communication with the public through traditional public information channels, public meetings and social media. Commissioner Fedorchak was assigned this portfolio and works closely with the PSC's Public Outreach and Consumer Affairs Specialist to strengthen the Commission's

relationship with consumers in North Dakota. “Serving the public is central to our mission at the Public Service Commission. It’s even in our name,” said Commissioner Fedorchak in a news release announcing the new portfolio.

As part of this strengthened focus on communications, the following tools were implemented during this biennium:

- A 2014 public contact report was released showing data and trends relating to complaints and input received for that year. This report will be released annually.
- News releases are now sent out before each public hearing as another tool to educate people about public hearings and projects before the Commission. News releases have also been incorporated to inform about Commission votes and other important activities.
- The agency continues to maintain and update its website ([www.psc.nd.gov](http://www.psc.nd.gov)), including a series of “You Should Know” brochures. Case information, meeting notices and minutes, along with audio recordings and a link to live webcasting are all available on the site.
- The agency’s Twitter account is used to educate about public hearings and other newsworthy events. The number of followers continues to increase as the account is used. Currently @NDPSC has 760 followers.
- By working with the North Dakota Newspaper Association, the PSC was able to modify the way public notices appear in newspapers across the state, making them more graphically appealing and easier to understand.

## Financial Management

The Accounting Division is responsible for processing payments, financial reporting, procurement, asset management, and budgeting for the North Dakota Public Service Commission. The division also establishes financial policies and procedures in compliance with OMB policies along with generally accepted accounting principles and state and federal regulations.

## 2013-2015 Financials

Revenue	General	Federal	Special
Licensing	\$449,280		
Federal Government		\$9,013,873	
Fines	\$50,750		
Interest on Investments			\$33,784
Coal Mining Fees	\$85,436		
Filing Fees	\$11,050		
Scale Inspection Fees	\$122,380		
Utility Valuation Reimb.			\$11,881
Trsf to Perfor. Assurance	\$5,400		
Misc. Revenue	\$16,888		
<b>Total</b>	<b>\$741,184</b>	<b>\$9,013,873</b>	<b>\$45,666</b>

Note: Information is based on the June 2015 4911AA PeopleSoft Reports.

## Financial Data

### 2011-2013 Budget

<b>Expenses by Line Item</b>	<b>Appropriated</b>	<b>Expended</b>	<b>Unexpended</b>
Salaries and Wages	\$8,674,982	\$8,202,140	\$472,842
Operating Expenses	\$1,895,562	\$1,681,807	\$213,755
Capital Assets	\$88,665	\$87,614	\$1,051
Grants	\$20,000	\$20,000	\$0
AML Construction	\$8,000,000	\$5,540,177	\$2,459,823
Rail Fund	\$900,000	\$0	\$900,000
Litigation Fund	\$900,000	\$142,736	\$757,264
<b>Total</b>	<b>\$20,479,209</b>	<b>\$15,674,474</b>	<b>\$4,804,735</b>
<b>Funding Source</b>	<b>Appropriated</b>	<b>Expended</b>	<b>Unexpended</b>
General	\$7,091,740	\$6,793,910	\$297,830
Federal	\$12,362,469	\$8,874,019	\$3,488,450
Special	\$1,025,000	\$6,544	\$1,018,456
<b>Total</b>	<b>\$20,479,209</b>	<b>\$15,674,474</b>	<b>\$4,804,735</b>

\*Totals rounded to the nearest dollar

## General Counsel

The mission of the Legal Division is to provide high quality legal representation, advice and counsel to the Commission and various divisions and to fulfill staff functions for divisions as situations warrant and time allows. Duties include rate case advocacy; appellate representation of the Commission; representation of the Commission before other state and federal agencies; representation of the Commission in civil proceedings; support for the Commission's legislative activities; and enforcement of laws, rules, and Commission decisions. The Legal Division also functions as the Commission's hearing administrator and maintains the Commission's case docket system. Federal agencies in which the Legal Division represents the Commission include the Department of Energy, Environmental Protection Agency, Surface Transportation Board, Federal Communications Commission, Federal Energy Regulatory Commission, and the Department of Interior.

Section 49-01-09 of the North Dakota Century Code provides that the Attorney General be ex-officio attorney for the Commission and, personally or through commerce counsel, represents the Commission in any proceeding which the Commission deems proper and expedient. Section 54-12-08 of the North Dakota Century Code provides that the Public Service Commission may employ attorneys to represent the agency. The Attorney General appoints the attorneys employed by the Commission as Special and Assistant Attorneys General.

# Organizational Chart



# *Public Utilities*

## **Statutory and Constitutional Responsibilities**

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

The Commission is responsible for siting facilities such as electric generation, gas processing, oil refining, pipelines, and electric transmission lines.

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

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

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

## **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.

# *Major Activities and Accomplishments*

## **Economic Regulation**

### **Rate Cases:**

Following are the rate increase requests and increases granted:

<u>Date</u>	<u>Utility</u>	<u>Description</u>	(Millions)		
			<u>Request</u>	<u>Granted</u>	<u>Year</u>
14-Feb	NSP	Electric Rate Increase	\$ 16.90	\$ 7.38	2013
		(resulted in a multi-year		\$ 9.37	2014
		settlement with no rate		\$ 10.10	2015
		increase in 2016)		\$ -	2016
14-Apr	MDU	Gas Rate Increase	\$ 6.84	\$ 4.25	
15-Oct	MDU	Gas Rate Increase	\$ 4.30	\$ 2.56	

## Advance Determination of Prudence:

In accordance with N.D.C.C. §49-05-16, the investor-owned electric utilities operating in North Dakota may request an advance determination of prudence for certain major capital investments and the Commission may grant a determination of prudence which is binding for ratemaking purposes going forward. During the biennium, the Commission issued the following orders:

	Utility			(Millions)	
Date	Co.	Description	Purpose	Cost	Order
13-Oct	MDU	Polution Control Equipment Lewis & Clark Station Sidney, MT	Meet EPA Requirements Mercury and Air Toxics	\$ 27.7	Approved
14-Feb	NSP	Red River Valley Units 1 & 2 Natural Gas Generators Hankinson, ND	430 MW Generation	Trade Secret	Approved
14-Feb	NSP	Black Dog Unit 6 Natural Gas Generator Burnsville, MN	215 MW Generation	Trade Secret	Approved
14-Feb	NSP	Pleasant Valley Wind Project Southeastern MN	200 MW Generation	Trade Secret	Denied
14-Feb	NSP	Odell Wind Project Mountain Lake, MN	200 MW Purchase Power Agreement	Trade Secret	Denied
14-Feb	NSP	Courtenay Wind Project Stutsman County, ND	200 MW Purchase Power Agreement	Trade Secret	Approved
14-Feb	NSP	Border Winds Project Rolette County, ND	150 MW Generation	Trade Secret	Approved
15-Jun	MDU	Thunder Spirit Wind Project Adams County, ND	107.5 MW Generation	Trade Secret	Approved
15-Jun	NSP	Solar Energy Portfolio Various MN areas	187 MW Purchase Power Agreements	Trade Secret	Denied
15-Sep	NSP	Aurora Solar Various MN areas	100 MW Purchase Power Agreement	Trade Secret	Denied

## 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 2013-2015 biennium, the Commission received for approval 10 interconnection agreements and 12 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 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 report includes the following information – 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.

The Commission continues to provide a web-based electronic self-registration system for telecommunications companies other than incumbent local exchange telecommunications companies. The self-registration process is a streamlined process for non-incumbent telecommunications carriers to obtain the equivalent of a Certificate of Public Convenience and Necessity to provide telecommunications services in North Dakota. Approximately 431 telecommunications companies have self-registered.

## Natural Gas

Natural gas is distributed to end use customers in North Dakota by Great Plains Natural Gas Co., Northern States Power Company, and Montana-Dakota Utilities Co.

On September 18, 2013, the Commission received a \$6.8 million rate increase application for MDU's natural gas operations using a 2013 test year. In its December 30, 2013, decision, the Commission granted a \$4.25 million rate increase for MDU.

On February 6, 2015, the Commission received a \$4.3 million rate increase application for MDU's natural gas operations using a 2015 test year. In its November 4, 2015, decision, the Commission granted a \$2.6 million rate increase.

## Gas Pipeline Safety Program

The Commission amended North Dakota Administrative Code section 69-09-03-02 to adopt by reference changes made by the federal government to gas pipeline safety regulations, Title 49, Code of Federal Regulations Parts 190, 191, 192, 195, and 199, as of November 6, 2014, Case No. GS-14-761.

During the 2013-2015 biennium, the gas pipeline safety inspectors conducted inspections of four distribution system operators, five transmission system operators, and one gathering system operator. The total number of inspections is as illustrated in the following table:

PIPELINE INSPECTIONS BY TYPE	Number
STANDARD INSPECTION – RECORDS AUDITS	118
COMPLIANCE FOLLOW-UP	26
DESIGN/TESTING AND CONSTRUCTION	27
INVESTIGATING GAS EXPLOSION INCIDENTS	3
ONSITE OPERATOR TRAINING (seminars)	0
OPERATOR QUALIFICATIONS	23
INTEGRITY MANAGEMENT INSPECTIONS	2
DAMAGE PREVENTION ACTIVITIES	0
TOTAL INSPECTIONS	199

## Damage Prevention Program

During the 2013-2015 biennium, 98 third-party complaints were filed with the Commission alleging violations of North Dakota Century Code Chapter 49-23, the One-Call Excavation Notice System. In addition, Commission staff filed formal complaints with the Commission alleging violations of the One-Call Excavation Notice System by two excavators. In one of those proceedings, the Commission determined that the excavator did violate the One-Call law. The Commission believes these cases have brought a greater industry awareness of the One-Call law.

The Commission participated in the U.S. Department of Transportation's One Call Grant in 2013, 2014 and 2015. Through the grant, approximately 18 to 20 billboards have been placed in major markets throughout North Dakota each year to promote "Call Before You Dig" to reduce third-party damage to underground facilities in the state.

## Energy Conversion and Transmission Facility Siting

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.	Date of Order	Estimated Investment
PU-08-932	enXco Service Corporation	Wind-to-Electricity; 150 MW; McIntosh & Dickey Counties	10/6/10	Amended Order issued 5/27/15	400,000,000
PU-11-601	Thunder Spirit Wind, LLC	Wind-to-Electricity; 150 MW; Adams County	6/4/13	10/9/13	300,000,000
PU-11-680	MDU	10-inch Natural Gas Pipeline; Morton County	2/13/13	8/21/13	18,400,000
PU-11-692	Basin Electric Power Cooperative	Electric Transmission; 345 kV; Williams County	1/20/12	5/16/12	4,000,000
PU-11-696	Basin Electric Power Cooperative, Inc.	Electric Transmission; 345 kV; Mercer, Dunn, McKenzie, Williams, Mountrail Counties	3/15/13	Supplemental Order issued 9/2/15	300,000,000
PU-12-190	Hiland Operating, LLC	Natural Gas Pipeline- 6 inch Divide & Burke Counties	1/31/13	12/18/13	1,500,000

Case No.	Applicant	Description	Date of App.	Date of Order	Estimated Investment
PU-12-675	Basin Transload, LLC	Crude Oil Pipeline- Mercer County	5/10/13	9/25/13	2,500,000
PU-12-683	Hess Corporation	Crude Oil Pipeline- Williams County	11/26/12	11/13/13	1,000,000
PU-12-790	Basin Electric Power Cooperative	Combustion Turbines; 90 MW; McKenzie County	10/16/13	3/26/14	102,000,000
PU-13-22	Basin Electric Power Cooperative	Natural Gas Pipeline- Mercer County	2/28/13	7/10/13	6,500,000
PU-13-64	Courtenay Wind Farm, LLC	Wind-to-Electricity; 200.5 MW; Stutsman County	4/12/13	11/13/13	350,000,000
PU-13-103	Allele, Inc.	Electric Transmission; 250 kV Line reroute; Kidder & Stutsman Counties	6/17/13	10/9/13	700,000
PU-13-127	Allele, Inc.	Wind-to-Electricity; Bison 4; Mercer, Morton, Oliver Counties	5/6/13	9/25/13	345,000,000
PU-13-136	Hiland Crude, LLC	Crude Oil Pipeline- McKenzie, Williams, Mountrail Counties	3/27/14 and 12/17/14	2/25/15	55,300,000

Case No.	Applicant	Description	Date of App.	Date of Order	Estimated Investment
PU-13-799	Dakota Prairie Refining, LLC	Crude Oil Pipeline-Stark County	9/18/13	12/30/13	5,000,000
PU-13-540	Minnkota Power Cooperative, Inc.	230kV Transmission Line; Oliver, Morton Counties	7/1/13	N/A	N/A
PU-13-740	Tesoro High Plains Pipeline Company, LLC	Crude Oil Pipeline; McKenzie County	8/13/13	N/A	N/A
PU-13-825	Bakken Oil Express, LLC	Crude Oil Pipeline-Dunn & Stark Counties	10/4/13	2/26/14	14,000,000
PU-13-835	Whiting Oil and Gas Corporation	Gas Processing Plant Expansion-Mountrail County	10/11/13	5/28/14	3,000,000
PU-13-840	Montana-Dakota Utilities Co. & Otter Tail Power Company	Electric Transmission; 345kV- Dickey County	10/18/13	7/10/14	50,000,000
PU-13-848	Enbridge Pipelines (North Dakota) LLC	Crude Oil Pipeline; Williams, Mountrail, Ward, McHenry, Pierce, Towner, Ramsey, Nelson, Grand Forks Counties	10/30/13	6/25/14	1,300,000,000 (ND portion only)
PU-13-900	Great River Energy	DC Electric Transmission Line clearance variance from Commission order	12/13/13	3/26/14	N/A
PU-13-902	Allele, Inc.	240kV DC Electric Transmission Line; Stutsman County	12/9/13	N/A	N/A

Case No.	Applicant	Description	Date of App.	Date of Order	Estimated Investment
PU-14-16	Tesoro High Plains Pipeline Company, LLC	Crude Oil Pipeline; McKenzie County	1/3/14	N/A	N/A
PU-14-105	Sunflower Wind Project	Wind-to-electricity; 110 MW; Stark & Morton Counties	3/3/14	6/25/14	180,000,000
PU-14-121	Allele, Inc.	250 kV DC Line; Cass County	3/27/14	7/10/14	500,000
PU-14-135	Belle Fourche Pipeline Company	Crude Oil Pipeline-Billings, Dunn, Stark Counties	3/20/14	7/10/14	7,900,000
PU-14-218	ONEOK Rockies Midstream, L.L.C.	Gas Processing Plant; McKenzie County	4/21/14	7/10/14	280,000,000
PU-14-223	Meadowlark Midstream Company, LLC	Crude Oil Pipeline-Williams, Divide Counties	4/29/14	2/25/15	21,000,000
PU-14-226	Enbridge Energy, Limited Partnership	Crude Oil Pipeline; Pembina County	5/2/14	N/A	N/A
PU-14-254	ONEOK Bakken Pipeline, L.L.C.	Natural Gas Liquids Pipeline; McKenzie County	5/19/14	10/16/14	6,000,000
PU-14-256	Hawthorn Oil Transportation (North Dakota) Inc.	Crude Oil Pipeline; Mountrail County	5/28/14	N/A	N/A
PU-14-534	Tesoro High Plains Company LLC	Crude Oil Pipeline; Williams County	7/3/14	Withdrawn 8/13/14	N/A
PU-14-625	Targa Badlands LLC	Crude Oil Pipeline; Mountrail County	7/18/14	1/26/15	41,000,000
PU-14-646	Allele, Inc.	250kV DC Line; Cass County	7/25/14	N/A	N/A
PU-14-678	Antelope Hills Wind Project, LLC	345 kV Transmission Line; Mercer County	8/12/14	1/7/15	9,000,000

Case No.	Applicant	Description	Date of App.	Date of Order	Estimated Investment
PU-14-679	Antelope Hills Wind Project, LLC	Wind-to-electricity; Mercer County	8/12/14	5/13/15	240,000,000
PU-14-687	Great River Energy	230 kV Transmission Line	8/11/14	N/A	N/A
PU-14-689	Caliber Midstream Partners, L.P.	Natural Gas Liquids Pipeline; McKenzie County	8/15/14	4/29/15	1,800,000
PU-14-730	Tesoro High Plains Company LLC	Crude Oil Pipeline; Williams County	9/25/14	1/7/15	31,500,000
PU-14-731	CHS, Inc.	Crude Oil Pipeline; Ward County	9/24/14	N/A	N/A
PU-14-764	ONEOK Rockies Midstream, L.L.C.	Gas Processing Plant; McKenzie County	10/23/14	3/25/15	642,000,000
PU-14-769	Meadowlark Midstream Company, LLC / Epping Transmission Company, LLC	Crude Oil Pipeline; Williams County	11/3/14	5/13/15	18,000,000
PU-14-795	Tesoro High Plains Company LLC	Crude Oil Pipeline; Dunn County	11/4/14	N/A	N/A
PU-14-813	Basin Electric Power Cooperative	345 kV Transmission Line	11/12/14	Orders Issued 4/29/15 and 9/30/15	135,000,000
PU-14-823	Meadowlark Midstream Company, LLC	Crude Oil Pipeline; Divide, Burke Counties	11/17/14	5/13/15	33,000,000
PU-14-829	Basin Electric Power Cooperative	111 MW Natural Gas-to-Electricity; Williams County	12/1/14	4/29/15	161,200,000
PU-14-840	Hiland Crude, LLC	Crude Oil Pipeline; McKenzie County	12/17/14	4/8/15	10,500,000

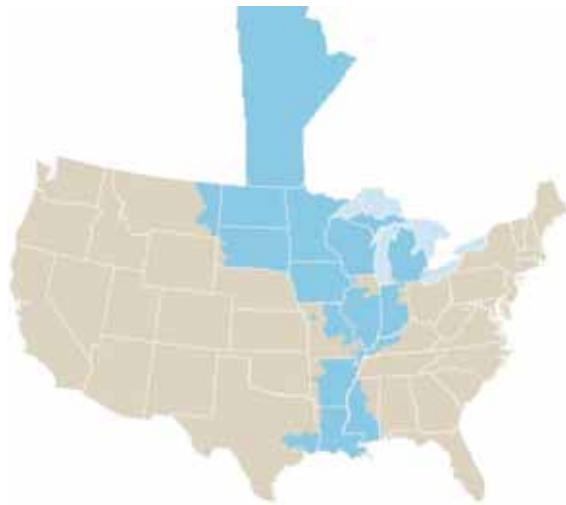
Case No.	Applicant	Description	Date of App.	Date of Order	Estimated Investment
PU-14-842	Dakota Access, LLC	Crude Oil Pipeline; Mountrail, Williams, McKenzie, Dunn, Mercer, Morton, Emmons Counties	12/22/14	Notice of Opportunity for Hearing (reroutes) 9/16/15	1,410,000,000 (ND portion only)
PU-14-852	Basin Electric Power Cooperative	225MW Natural Gas-to-Electricity; McKenzie County	12/31/14	4/29/15	149,000,000
PU-14-853	Targa Badlands LLC	Gas Processing Plant; McKenzie County	12/31/14	9/16/15	140,000,000
PU-15-31	Hess North Dakota Pipelines LLC	Crude Oil Pipeline; McKenzie, Williams Counties	1/15/15	6/22/15	104,700,000
PU-15-32	Hess North Dakota Pipelines LLC	Natural Gas Liquids Pipeline; McKenzie, Williams Counties	1/15/15	6/22/15	37,000,000
PU-15-35	Plains Pipeline, L.P.	Crude Oil Pipeline; Mountrail County	1/16/15	pending	9,000,000
PU-15-97	Bridger Pipeline LLC	Crude Oil Pipeline; Billings, Stark Counties	2/17/15	9/30/15	10,400,000
PU-15-111	Dickinson Wind, LLC	Wind-to-Electricity; 150 MW; Stark County	3/9/15	Withdrawn 6/17/15	225,700,000
PU-15-113	ONEOK Rockies Midstream , L.L.C.	Gas Processing Plant; Williams County	3/12/15	6/17/15	N/A
PU-15-114	Sacagawea Pipeline Company, LLC	Crude Oil Pipeline; McKenzie, Mountrail Counties	3/16/15	pending	100,000,000
PU-15-124	Rolette Power Development	Wind-to-Electricity; 100 MW; Rolette County	3/30/15	pending	175,000,000

Case No.	Applicant	Description	Date of App.	Date of Order	Estimated Investment
PU-15-133	Dickinson Wind, LLC	230 kV AC Line; Stark County	4/6/15	Withdrawn 6/17/15	25,000,000
PU-15-137	ONEOK Bakken Pipeline, L.L.C.	Natural Gas Liquids Pipeline; McKenzie County	4/7/15	8/12/15	6,000,000
PU-15-142	Vantage Pipeline US LP	Ethane Pipeline; Divide, Williams Counties	4/13/15	9/2/15	20,000,000
PU-15-232	NST Express, LLC	Crude Oil Pipeline; McKenzie County	5/29/15	10/14/15	80,000,000
PU-15-337	Basin Electric Power Cooperative	345kV Transmission Line; Kidder County	6/26/15	N/A	unknown
PU-15-403	Great River Energy	230kV Transmission Line	6/6/15	N/A	unknown
PU-15-416	Hiland Crude, LLC	Crude Oil Pipeline; McKenzie County	6/26/15	pending	15,000,000

## 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 regulatory agencies (one provincial, 16 state, and one city) having jurisdiction within the region served by the Midcontinent ISO. The Midcontinent 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 16 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.

In addition to the OMS, during this biennium the Commission began preparations for participating as a member of the Southwest Power Pool (SPP) Regional State Committee (RSC). Similar to the OMS, the RSC is a nonprofit membership corporation consisting of regulatory agencies having jurisdiction within the region served by the SPP. SPP is an independent, nonprofit organization, headquartered in Little Rock, Arkansas, and responsible for reliable operation of the regional electric grid owned by member utilities in nine states. With the addition



*Midcontinent ISO Footprint*

of the Basin Electric Power Cooperative/Western Area Power Administration/Heartland Consumer Power District Integrated System (IS), the SPP footprint is expanding into 14 states and the Commission is to become a participating member of the RSC effective October 1, 2015.

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 addition to its MISO and SPP activities, the Commission received applications for certificates of public convenience and necessity for electric resources from:

- Montana-Dakota Utilities Co. for its 107.5 MW Thunder Spirit Wind Project in Adams County. MDU's request for a certificate of public convenience and necessity was approved.
- Northern States Power Company for its 200 MW Courtenay Wind Farm in Stutsman County. NSP's request for a certificate of public convenience and necessity was approved.
- Otter Tail Power Company and Montana-Dakota Utilities, Co. for the North Dakota portion of a 345 kV electric transmission line from Ellendale to Big Stone, South Dakota. OTP's request for a certificate of public convenience and necessity was approved.
- Northern States Power Company for 230 kV additions to its Prairie Substation in Grand Forks. NSP's request for a certificate of public convenience and necessity was approved.
- Northern States Power Company for a 230 kV interconnection with the Border Winds Project in Rolette County. NSP's request for a certificate of public convenience and necessity was approved.

## **Major Challenges**

### **Federal Clean Power Plan**

In June 2014 the federal Environmental Protection Agency (EPA) proposed a Clean Power Plan rule intended to reduce CO<sub>2</sub> emissions from power plants by 30 percent from 2005 levels by the year 2030. During this biennium, the Commission worked with stakeholders in North Dakota and other states to develop and file comments regarding the proposed rule. Since then the EPA adopted a final rule in August 2015 that is much more stringent for North Dakota than was originally proposed. The Commission continues to work with stakeholders to formulate a response plan for North Dakota.

### **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 23 pipelines, four gas processing plants, four wind farms, six electric transmission lines and three electric power plants. The Commission received 14 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 a formal request for jurisdictional determination from NextEra Energy Resources, LLC and from Hess Corporation. For the first three months of the 2015-2017 biennium, the Commission has already received siting applications for five pipelines and a wind farm.

## Telecommunications

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

The Commission will voice North Dakota 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 will dwindle. As noted earlier, 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. In early 2010, it was projected that the 701 area code would exhaust in the first quarter of 2015. The projection as of April 2015 is that the 701 area code will exhaust in the first quarter of 2022. Based on that estimate, proceedings to determine a resolution are likely to begin the first quarter of 2019.

## Midcontinent ISO and Southwest Power Pool Energy Markets

The Midcontinent Independent System Operator (ISO) began operating a regional energy market in 2005 that continues to serve the loads of all Midcontinent ISO participants, including the three jurisdictional investor-owned electric utilities providing service in North Dakota. The Southwest Power Pool operates a similar regional energy market. Both provide a centralized generating unit dispatch procedure that co-optimizes the energy and ancillary services markets to ensure that the lowest cost generators are always being used throughout the regions regardless of utility control area boundaries. The markets establish Locational Marginal Prices (LMP's) for electric energy at local pricing nodes. All energy must be provided through the markets. 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*

The Public Service Commission is responsible for ensuring the equitable operation of commercial weighing and measuring devices in the state. This is accomplished through inspections, documentation review, licensing of service companies and inspectors, and quality assurance testing. In addition to devices, the Commission also maintains all working standards used to inspect the accurate operation of weighing and measuring devices.

As of June 30, 2015, there were approximately 22,564 commercial devices operated in North Dakota. These devices were tested for accuracy, at a minimum of every 15 months, by three state inspectors employed by the PSC and 184 registered service persons employed by 58 registered service companies. In addition to testing devices, the Commission also has a quality assurance (QA) program for the entire state of North Dakota that is currently being implemented with one of the three full-time state inspectors. The QA program reviews new installations for compliance, monitors the processes and test results of registered service persons, and performs on-site reviews prior to the approval of a permanent variance. The following table includes tests and inspections completed by both the PSC and private inspectors:

<i>Device Type</i>	<i>Total Devices</i>	<i>State Testing</i>	<i>State QA</i>	<i>Private Testing</i>
<i>GAS PUMP</i>	13,194	6,242	0	17,309
<i>COUNTER/PLATFORM SCALE</i>	4,197	4,759	0	3,172
<i>PIPELINE/TRANSPORT METER</i>	213	14	0	722
<i>MOTOR TRUCK SCALE</i>	1,004	0*	196	1,898
<i>HOPPER SCALE</i>	867	0*	82	1,450
<i>DECK/DORMANT SCALE</i>	745	0*	138	1,315
<i>AUXILIARY BEAM</i>	20	0*	6	41
<i>LIVESTOCK SCALE</i>	74	0*	10	132
<i>TRACK/HANGING SCALE</i>	82	128	0	29
<i>ONBOARD WEIGH SYSTEM</i>	2	0	0	2
<i>AG CHEMICAL</i>	153	0	0	258
<i>ANHYDROUS METER</i>	129	0	0	225
<i>COMPRESSED NG</i>	2	0	0	4
<i>LPG METERS</i>	444	0	0	799
<i>BULK DELIVERY</i>	1,401	0	0	2,342
<i>RR TRACK SCALE</i>	37	0	0	105
<b><i>TOTAL:</i></b>	<b>22,564</b>	<b>11,143</b>	<b>432</b>	<b>29,803</b>

\*Zero tests are a result of the change to the large scale program

Note: Some devices are tested at a higher frequency than required by law

For the 2013-2015 biennium, the Commission deposited a total of \$123,458 to the general fund generated from weights and measures inspection fees.

## ***Licensing Division***

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

- Oversee 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, adequately bonded, and have sufficient grain inventories on hand to cover their cash and grain storage obligations.
- Process all grain elevator, grain buyer, and hay buyer insolvencies. 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.
- Oversee the collection of credit-sale contract indemnity fund assessments and the disbursement of monies from the fund in grain warehouse and grain buyer insolvencies.
- Oversee 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:

- Provide education to producers on the importance of selling grain to licensed and bonded grain warehouses and grain buyers and signing credit-sale contracts. To help producers understand bond and credit-sale contract indemnity fund protections available in insolvency.
- Provide education to other agencies and commodity groups on the statutory compliance for grain licensees.
- Stay apprised of issues on the federal level that affect the state's grain industry and provide assistance in reaching resolution.
- Work with industry and legislators on issues facing the industry.
- Enhance the grain examination program by conducting examinations with bordering states and sharing results with others.

## C. Key 2015 Legislation

- HB 2008 provided for continued funding for grain licensing litigation.
- SB 2291 amended North Dakota Century Code to provide a producer an opportunity to waive his or her rights to trust benefits if undecided about when to take payment for a grain sale, thereby relieving a licensee of the statutory obligation to timely convert a scale ticket.
- SB 2301 amended North Dakota Century Code to provide a change from one-year licenses to two-year licenses for grain warehouse licensees licensed seven years or more.

## D. Major Accomplishments and Activities (and Trends)

- 445 grain examinations were completed
- 177 capacity increase requests and 119 capacity decrease requests were approved
- 30 requests to discontinue business were granted and 25 new licenses issued
- 393 state and federal grain warehouses with a combined capacity of 400.8 million bushels were licensed at the start of the biennium and 386 state and federal grain warehouses with a combined capacity of 452.9 million bushels were licensed at the end of the biennium, continuing a trend towards fewer and larger grain warehouses
- 82 roving grain buyers were licensed at the start and at the end of the biennium
- 370 auctioneers and 201 auction clerks were licensed at the start of the biennium and 351 auctioneers and 182 auction clerks were licensed at the end of the biennium

## E. Major Challenges

- Legal issues associated with the insolvencies resulting in delays in distributing trust fund and credit-sale contract indemnity fund proceeds.
- The Division continued its efforts to provide education and awareness on the importance of conducting business with only licensed and bonded grain buyers and the importance of signing credit-sale contracts.

**F. Trends (included in D above)****G. Major Cases - Five Insolvencies**

- The Commission was involved in five insolvencies during the biennium. The first insolvency was initiated during the 2011-2013 biennium and involved Mitchell Feeds, Inc., licensed as a North Dakota roving grain buyer. A legal case pending in Minnesota relating to a bank's claim to have a first priority security interest in grain transported from North Dakota to a facility in Minnesota caused delays in this proceeding. Once the case was resolved, the only trust asset available was a \$70,000 bond. Valid noncredit-sale receipt holder claims totaled just over \$1 million. Checks mailed in August 2014 resulting in each valid noncredit-sale receipt holder receiving 7 percent of the amount owed. The Commission was discharged as trustee and the case closed.
- The second insolvency was initiated during the 2011-2013 biennium and involved Anderson Seed Co., Inc. Anderson Seed Co., Inc. operated grain warehouses at Durbin and Selz, North Dakota, for its sunflower processing facility located in Mentor, Minnesota. In January 2012, Anderson Seed Co., Inc. sold a significant amount of sunflower seeds to one buyer. North Dakota statute provides grain contained in a warehouse is subject to a first priority lien in favor of outstanding receipt holders and the lien is discharged as to grain sold by the warehouseman to a buyer in the ordinary course of business. The Commission negotiated a \$685,000 settlement agreement related to the January 2012 grain sale. Valid noncredit-sale receipt holder claims totaled \$2,233,147 and valid credit-sale contract claims totaled \$809,018. The Commission liquidated grain assets with a value of \$2,150 and collected the \$685,000 settlement and \$280,000 bond proceeds. In July 2014, checks totaling \$967,177 were mailed to valid noncredit-sale receipt holders representing 43 percent of the amounts owed and checks totaling \$646,214 were mailed to valid credit-sale contract claimants representing 80 percent of the amounts owed. The Commission was reimbursed for one-half of its expenses related to the proceeding from the Credit-Sale Contract Indemnity Fund. The Commission was discharged as trustee and the case closed.
- The third insolvency was initiated during the 2011-2013 biennium and involved Falkirk Farmers Elevator Co. of Falkirk, North Dakota. Federal litigation was pending between Falkirk Farmers Elevator Co. and the only claimant who asserted a claim to the trust assets. The litigation involved substantial factual and legal issues that had to be resolved before the Commission could make a recommendation on the claim to the trust assets. Therefore, the Commission asked the Court to bifurcate the proceeding to allow disposition of claims against the credit-sale contract indemnity fund while the claim against the trust assets was pending. The Commission received seven valid credit-sale contract claims totaling \$278,818. In June 2014 checks totaling \$223,054 were mailed to valid credit-sale contract claimants, representing 80 percent of the amounts owed. The Commission liquidated all grain assets with a value of \$71,507, collected an outstanding account receivable from a grain sale in the amount of \$2,000 and collected the \$380,000 bond proceeds. The valid noncredit-sale receipt holder claim amount totaled \$495,795. In December 2014, all trust fund proceeds totaling \$461,043 were distributed to the valid noncredit-sale contract claimant, representing 93 percent of the amount owed. The Commission was reimbursed for one-half of its expenses related to the proceeding from the Credit-Sale Contract Indemnity Fund. The Commission was discharged as trustee and the case closed.
- The fourth insolvency was initiated during the 2011-2013 biennium and involved Earth Harvest Mills, Inc. doing business as Dakota Prairie Organic Flour Company. Earth Harvest Mills, Inc. operated as a flour mill and the only trust proceeds available were a \$50,000 surety bond. In August 2014, checks totaling \$50,003 were mailed to the seven valid noncredit-sale receipt holders

representing 62 percent of the amounts owed. Checks representing the lesser of 80 percent of the amount owed to each claimant or \$280,000 were mailed to 17 valid credit-sale contract claimants. A lien issue remains unresolved; therefore, payment is pending to a valid credit-sale contract claimant. This insolvency was pending at the end of the biennium.

- The fifth insolvency involved Grand Forks Bean Company, Inc. and is the only insolvency initiated during the current biennium. The Commission liquidated the dry edible bean inventory with a value of \$767,650. At the end of the biennium this insolvency was pending.

## H. Financial Data

- During this biennium, payments totaling \$1.5 million were paid from the credit-sale contract indemnity fund. At the end of the biennium, the credit-sale contract indemnity fund balance was approximately \$5 million.
- Revenues generated for the general fund for grain and auction license fees received during this same period of time total \$482,125.

# *Reclamation Division*

## Statutory and Constitutional Responsibilities



*Topsoil Being Spread on Reclaimed Land at the Freedom Mine*

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 64 percent of the funding needed to run this regulatory program during the 2013-15 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 interests and the rights of property owners;
- 3) Return mined lands to beneficial uses; and,

- 4) Restore the productivity of mined lands having agricultural uses to premine levels.

Related goals are to:

- 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;
- 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;
- 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; and,
- Maintain maximum staff effectiveness by providing training and other opportunities for professional growth.



*Reclaimed Hayland at the Center Mine*

## Key 2015 Legislation

One legislative bill was passed during the 2015 session that affected the coal regulatory program which modified the definition of “coal” and added a definition of “commercial leonardite” to the reclamation law. Related changes were made to other sections of that law as well.

## Major Accomplishments and Activities

Significant coal mine permitting activities during the 2013-15 biennium include:

- 1) Three permit applications were approved during the biennium and two of those were for the new Coyote Creek Mine in Mercer County. The other permit application that was approved was for a new mine area at the Center Mine in Oliver County. The acreage permitted by these three permits totaled 16,535 acres.
- 2) Nine significant permit revisions were approved and four of those added another 1,574 acres to existing permit areas. Significant revisions are subject to the same public notice and comment period as new permit applications.
- 3) 28 insignificant permit revisions were approved.
- 4) Five permit renewals were approved.
- 5) As of June 30, 2015, there were 134,355 acres under permit for surface coal mining and reclamation operations.
- 6) At the end of the biennium, permits were held by eight companies for eight mines. Of the eight mines, seven are active and the other one was 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; The Coyote Creek Mining Company, LLC, which owns and operates the Coyote Creek 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 remains under permit at the former Gascoyne Mine that was owned and operated 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 2013-15 biennium:

- 1) 1,339 inspections were conducted on the inspectable units that currently total 28.
- 2) 220 complete inspections were conducted (complete inspections cover all aspects of the mining and reclamation operations being conducted).
- 3) 1,119 partial inspections were conducted.

Three Notices of Violation (NOV) were issued to mining companies during the 2013-15 biennium and \$3,750 in civil penalties were assessed and collected for these violations.

Seven final bond release applications were approved during the 2013-15 biennium whereby the commission terminated its jurisdiction on 1,018 acres that had been under permit for surface coal mining.

Four new permit applications were pending at the beginning of the 2013-15 biennium and one other permit application was filed during that two-year period. Three applications were approved during the biennium and two others remained in a pending status. The following is the list of new permit applications that were approved during the 2013-15 biennium and pending as of June 30, 2015:

- 1) BNI Coal, Ltd. filed an application in late 2011 to permit 8,360 acres for a new mine area at its mine south of Center. Permit BNCR-1101 was issued by the Commission in May 2014.
- 2) The Coyote Creek Mining Company, a subsidiary of the North American Coal Corporation, filed an application in May 2013 to permit 84 acres for the proposed shop/office area and dragline erection site for a new mine southwest of Beulah. The Commission issued Permit NACC-1301 in March 2014.
- 3) The Coyote Creek Mining Company filed an application in December 2013 to permit 8,091 acres that includes the areas that will be mined at the new Coyote Creek Mine southwest of Beulah. Permit NACC-1302 was issued by the Commission in October 2014. This permit also includes 84 acres that are permitted under Permit NACC-1301.
- 4) An application from South Heart Coal, LLC, to permit 4,581 acres for a proposed mine southwest of South Heart was filed in March 2010. The Reclamation Division was waiting for the applicant to respond to its second technical review letter that was sent in July 2012 as the 2013-15 biennium ended. An informal conference was held on this application on June 28, 2011. This conference needs to be re-convened after the applicant satisfactorily addresses all technical items identified by the Reclamation Division.
- 5) 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 its second technical review letter to the applicant in April 2012 and was still awaiting a response to that letter when the 2013-15 biennium ended.

Additional information was added to the Reclamation Division's Geographic Information System (GIS) for storing and managing much of the data received from mining companies. The GIS has become an important tool for tracking mining and reclamation activities and for the technical analysis of permit applications. Information entered into the GIS includes recent high altitude air photos, permit boundaries, roads, stockpile locations, ponds and related features. Information from annual mine maps and bond releases are also entered. GIS data is then loaded onto tablet computers and iPads equipped with Global Positioning System (GPS) receivers that inspectors use when carrying out mine inspections. This allows for accurate tracking and recording of activities during mine inspections.

The Commission continued to receive excellent evaluation reports from OSM's Casper Field Office during the biennium on its implementation of North Dakota's coal regulatory program.

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

## **Major Challenges**

A major challenge for the next several years will be dealing with the proposed "Stream Protection Rule" that has been proposed by OSM. OSM plans to finalize this rule in mid 2016 and it will significantly change many of the permit application requirements and performance standards for mine operators. While this rule was proposed to primarily address some mining related concerns in the Appalachian region of the country, the nationwide rule will have major impacts on all coal mining in the United States. The proposed rule greatly increases the amount of baseline hydrologic information that must be provided in permit applications, adds requirements for more detailed hydrologic impacts assessments prepared by mining companies and regulatory agency staff, limits mining activities in any perennial or intermittent stream and other waterways, changes land use and vegetation requirements, and increases protections for fish and wildlife. The Commission will be required to revise its mining and reclamation rules and implement the new provisions once the federal rule becomes final.

An ongoing concern is the amount of federal funding that the Commission will receive to cover the federal share of the coal regulatory program costs. OSM currently covers 64 percent of the program costs and the other 36 percent is paid with state general funds. However, as part of OSM budget requests for the past several years, the administration has proposed reducing the amount of federal dollars nationwide for states to administer their coal regulatory programs. While the proposed reductions have not been enacted by Congress, the adequacy of future federal funding continues to be a major concern.

Staff spends considerable time reviewing and evaluating final bond release applications that are submitted by the mining companies. Staff must ensure all reclamation requirements have been met since the Commission's jurisdiction over the reclaimed lands ends once a final bond release becomes effective. A number of bond release applications are expected during the 2015-17 biennium for reclaimed lands at the large active mines and at the former Gascoyne Mine.

## **Trends**

The Reclamation Division plans to continue to add more data to the GIS for use in conducting its permit reviews 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 large active mines.

## **Major Cases**

The Dakota Resource Council (DRC) and Sierra Club filed two lawsuits in federal district court in late May 2012 that involved the coal regulatory program. The DRC had filed a lawsuit against the Commission for

failure to obtain OSM approval of Policy Memos to Mine Operators that have been issued by the Commission over the past 35 years. DRC claimed that these guidance documents need to be approved by OSM as a formal amendment to the federally approved program. In September 2013, the court ruled that policy memos do not need OSM approval. The other lawsuit was filed against the Department of the Interior by the DRC and Sierra Club over past campaign contributions that were received by elected commissioners. As part of this lawsuit, the plaintiffs wanted the Department of the Interior to withdraw its approval of North Dakota's coal regulatory program. The Commission intervened in this lawsuit. In November 2013, the court found that the campaign contributions received by elected commissioners were legal. Neither ruling was appealed by the DRC or Sierra Club.

A formal hearing was held to contest the Commission's decision to issue the 8,091-acre mining permit to the Coyote Creek Mining Company. The hearing was held over three days in late 2014 and early 2015 and the issues brought up at the hearing primarily related to pre-application alluvial valley floors determinations and some of the reclamation practices that will be used. In April 2015, the Commission issued an order affirming its earlier decision to grant the mining permit. However, that decision was then appealed to state district court. The determination that an alluvial valley floor does not exist along Coyote Creek is the subject of the pending court appeal. A court decision on the appeal is not expected until late 2015.

An informal conference was also held in June 2015 on the revision application that added the haul road corridor and coal unloading facility to a permit for the Coyote Creek Mine. The primary issue brought up pertained to dust control and air quality. The hearing officer in that case found those matters are under the jurisdiction of the State Health Department rather than the Commission.

## ***Abandoned Mine Lands (AML) Division***

### **Statutory and Constitutional Responsibilities**



*Sinkhole southeast of Dickinson*

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 funded entirely by the federal Office of Surface Mining Reclamation and Enforcement (OSM) within the Department of the Interior from federal fees that are collected on coal that has been mined since the late 1970's

### **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 ensure 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.



*Large sinkholes caused by collapse of abandoned mine workings near Bowman*

## Key 2015 Legislation

No legislation was passed during the 2015 session that affected the abandoned mine lands program.

## Major Accomplishments and Activities

The Commission received two annual grants from the federal Office of Surface Mining during the 2013-15 biennium for North Dakota's AML program. In March 2014, the Commission received a grant in the amount of \$3,382,106 and, in February 2015, the grant amount was \$2,781,000. The Commission should have received about 7 percent more each year, but state grant amounts were reduced due to the sequestering of federal funds. Congress passed legislation in late 2006 that amended the Surface Mining Control and Reclamation Act of 1977, which re-authorized the AML program and extended the federal reclamation fee used to fund the program until September 30, 2021. This will provide funding for North Dakota's AML program through 2022. The Commission is scheduled to receive minimum funding for state AML programs, or \$3 million dollars per year, for the remaining life of the program (less the amount of future sequestration).

During the 2013-15 biennium, four major drilling and grouting projects were conducted to inject cementitious grout into underground mine voids beneath public roads near Beulah in Mercer County and Scranton in Bowman County. The grout stabilizes the mine workings and prevents mine collapses that could endanger people and damage property. Major construction projects to backfill dangerous surface mine highwalls and eliminate spoil piles were completed at abandoned surface mines east of New England in Hettinger County, northeast of Glen Ullin in Morton County, and north of Beulah in Mercer County. An exploratory drilling project was also conducted at abandoned underground mines near Wilton in Burleigh County.

Maintenance projects were conducted to fill approximately 180 hazardous sinkholes caused by underground mine collapses at numerous sites in western North Dakota. Emergency projects were completed to fill extremely hazardous sinkholes caused by underground mine collapses near homes and public roads at sites

near Dickinson and Bowman and to extinguish coal waste fires east of Hettinger and northeast of Williston. Maintenance work for erosion control was carried out at previously reclaimed sites.

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 approximately \$2.75 million on June 30, 2015. (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 AML division's Geographic Information System (GIS) for all known abandoned mine sites in North Dakota. The AML Division posts abandoned mine information on the North Dakota GIS Hub and 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 2013-15 biennium.

Staff attended several OSM sponsored training classes and technical conferences during the biennium. One AML staff member also serves as a co-instructor for the AML drilling and grouting course that is included in the OSM suite of training classes.

## **Major Challenges**

The collection of the federal reclamation fee that funds the AML program is scheduled to end in late 2021. Unless re-authorization of the fee is enacted by Congress, it is expected that over \$20 million of reclamation work will not be completed at sites on the current inventory of abandoned coal mine in North Dakota.

As work at the larger AML sites is completed, the number of smaller projects will increase and project managers will need to design and manage more projects.

Work will continue to update and complete the GIS-based inventory of abandoned coal mine information and post detailed mine information on the Commission's website.

## **Trends**

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**

There were no significant cases involving the AML program during the 2013-15 biennium.

# **Railroad**

## **Responsibilities**

The Commission's regulatory authority over railroads diminished as a result of the enactment of two federal laws: the Staggers Rail Act in 1980 and the Interstate Commerce Commission (ICC) Termination Act in 1995. The 1995 enactment eliminated many ICC functions and transferred all remaining duties to the Surface Transportation Board (STB) within the U.S. Department of Transportation. These federal laws narrowed the state railroad jurisdiction.

State law still 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, has jurisdiction over certain railroad activities in intrastate commerce. The Commission's jurisdiction includes some specific safety and landowner rights matters.

The Public Service Commission does respond to railroad complaints. During the 2013-2015 biennium, the PSC responded to the following complaints.



<b>Rail Complaints</b>	<b>2013-2015</b>
Blocked Crossings	20
Diesel Fuel Spill	1
Rail Car Supply	4
Damage Claims	2
Rail	1
Land Purchase	1
Rail Crossings	13
Rail Fences	2
Replacement Under Pass	1
Rail Right of Way/Easement	2
Rail Drainage	1
Sales and leases	2
Services	2
Train Whistle	1
<b>Total</b>	<b>53</b>

The North Dakota 64th Legislative Assembly approved funding for a state-run rail safety pilot program intended to supplement federal oversight of rail safety. This is a state investment due to rising concerns because of the increase in rail traffic by the oil industry. The Railroad Safety Program authorized the hiring of two rail safety inspectors as part of the Public Service Commission's oversight responsibility on rail safety. The inspectors will focus on two major disciplines: (1) track, and (2) motor power and equipment (mechanical). These areas were identified as top priority based on statistical data showing the cause of the most severe rail accidents in the state.

## ***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. Milholland, 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
47. Clark, Tony.....	2001-2012
48. Cramer, Kevin.....	2003-2012
49. Fetch, Bonny (temporary appointment).....	2012