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October 27, 2005

Mr. James R. Deutsch
Director, Reclamation Division
North Dakota Public Service Commission
State Capitol - 13th Floor
600 E. Boulevard Avenue - Dept. 408
Bismarck, ND 58505-0480

FROM: ND PUBLIC SERVICE COMMISSION DIV.

Date: 10-28-05

Action: _____

Info. Reply: _____

Info. E-File: _____

SERVING:

MINNESOTA

Great River Energy
Minnesota Power
Minnkota Power Cooperative
Otter Tail Power Co.
Xcel Energy

NORTH DAKOTA

Basin Electric Power Cooperative
BNI Coal, Ltd.
Coteau Properties Company
Dakota Gasification Company
Dakota Westmoreland Corporation
Falkirk Mining Co.
Minnkota Power Cooperative
Montana-Dakota Utilities Co.
Otter Tail Power Co.
Xcel Energy

SOUTH DAKOTA

Basin Electric Power Cooperative
Montana-Dakota Utilities Co.
Otter Tail Power Co.
Xcel Energy

MONTANA

Basin Electric Power Cooperative
Dakota Westmoreland Corporation
Montana-Dakota Utilities Co.

CANADA

Luscar Ltd.
SaskPower

Dear Mr. Deutsch:

The Lignite Energy Council is providing comments to proposed draft regulations the Public Service Commission may be considering in the near future. This is a follow-up to the several meetings and discussions between your staff and LEC task force members over the past several months. Our comments address specific proposed rule changes.

Lignite Energy Council proposed changes (see Attachment 1):

1. NDAC 69-05.2-10-01. Permit applications – Public notices of filing.
The proposed rule changes would reduce unnecessary information in public notices. Based on our discussions, we understand our suggested rule changes would be acceptable to the PSC, and we submit them as is.
2. NDAC 69-05.2-12-12. Release of performance bond – Bond release information.
The current rule requires proof of publication within 30 days from filing a bond release application. Such proof of publication (affidavit of publication) is not created until all publications have been conducted, which is beyond the 30-day time limit in the rule. This makes compliance with the current rule virtually impossible. The proposed change is consistent with Federal rules, and fulfills the intent of the regulations. We understand the PSC will accept this change. Based on our discussions, we are not proposing a change to NDAC 69-05.2-12-12 (5), regarding topographic maps at this time.
3. NDAC 69-05.2-16-09. Performance standards – Hydrologic balance – Sedimentation ponds.
We are proposing a restructuring of these rules simply to clarify them. We understand the PSC will accept these, based on our previous discussions.
4. NDAC 69-05.2-16-14. Performance standards – Hydrologic balance – Groundwater monitoring.
Based on our discussions with you and your staff, we understand you will accept a reduced frequency of groundwater summary report submittals, from annual to biennial. We prefer the simple change that we've proposed. Your office has also recommended a change in reporting frequency. Our review of your proposed change to the same rule indicates there is no substantive difference between our two proposals. While we are not opposed to your proposed language, if the meaning and intent is the same as ours, we suggest the simplest, briefest change possible, as described by our submittal.

Mr. James R. Deutsch
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Public Service Commission proposed changes from July 7, 2005 (see Attachment 2):

1. NDAC 69-05.2-06-03 Permit applications – Right of entry and operation information.
Based on discussions between individual LEC task force members and you, we will agree with the change your office has proposed. This will eliminate the inclusion of expired or terminated leases from permits.
2. NDAC 69-05.2-12-12. Release of performance bond – Bond release application.
The PSC's proposal to add a clarifying paragraph to NDAC 69-05.2-16-05 (8) is acceptable to the LEC. This does not change current requirements.
3. NDAC 69-05.2-16-05. Performance standards – Hydrologic balance – Surface water monitoring
In a July 7 draft, your office proposed a rule to require a biennial summary report reviewing surface water conditions, in a manner similar to the current annual groundwater summary report. We do not support a regulation requiring submittal of a new report. While this may be useful information during bond release, and some companies may choose to conduct such a review and prepare a report, the LEC does not believe this should be mandated as a new requirement for all companies.
4. NDAC 69-05.2-24-01. Performance standards – Roads – General requirements
Your proposed change is for editing purposes and we support this change.

The Lignite Energy Council thanks you for your consideration of changes that would streamline the regulatory process while maintaining the nation's highest standards of environmental protection and land reclamation during surface mining operations. We look forward to your formal rulemaking.

Sincerely,

LIGNITE ENERGY COUNCIL



John W. Dwyer
President

Enclosures: Attachment 1 – LEC proposed changes
Attachment 2 – PSC proposed changes from July 7, 2005

cc: Joe Friedlander
Jim Melchior
Troy Leingang
Mike Altavilla
Dave Schouweiler

1.

NDAC 69-05.2-10-01. Permit applications - Public notices of filing.

1. The advertisement required by North Dakota Century Code section 38-14.1-18 must also include:

a. The applicant's name and business address.

b. A map or description which must:

(1) Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the permit area.

(2) Clearly show or describe the exact location and boundaries of the permit area.

(3) Show the north point (if a map).

(4) State the name of each owner of record of surface rights and, if the applicant proposes to mine coal or conduct activities that may impact future coal recovery, the names of each owner of record of coal rights within the permit boundaries.

Deleted: (3) Name the United States geological survey 7.5-minute quadrangle map which contains the area shown or described.

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2.

NDAC 69-05.2-12-12. Release of performance bond - Bond release application.

1. The permittee may request the commission release all or part of a bond for lands disturbed after July 1, 1975, as follows:

a. For lands disturbed between July 1, 1975, and June 30, 1979, the application must comply with subsection 1 of North Dakota Century Code section 38-14.1-17 and subsections 3 and 4. The criteria for release of all or part of the bond will be according to the reclamation requirements in effect at the time of the disturbance.

b. For lands disturbed after June 30, 1979, the application must comply with the requirements of this section and section 69-05.2-12-11.

2. The permittee may file bond release applications only at times and seasons that allow the commission to properly evaluate the completed reclamation operations. Each application for bond release shall include a notarized statement by the permittee which certifies that all applicable reclamation activities have been accomplished in accordance with this article, North Dakota Century Code chapter 38-14.1, and the approved reclamation plan.

3. Within thirty days after filing a request for bond release, the permittee shall submit a copy of the advertisement that was published as required by North Dakota Century Code section 38-14.1-17. The advertisement published must include the permittee's name.

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3.

NDAC 69-05.2-16-09. Performance standards - Hydrologic balance - Sedimentation ponds.

19. Impoundment inspections.

a. A registered professional engineer, or other specialist under the direction of a registered professional engineer, shall inspect each impoundment as required under subdivision b, c and d. The registered professional engineer and specialist must be experienced in the construction of impoundments.

b. Inspections must be made regularly during construction. Inspection records during construction shall be maintained at or near the minesite.

Deleted: , upon completion of construction, and at least yearly until removal of the structure or release of the performance bond

c. After impoundment construction is complete, the registered professional engineer shall promptly provide the commission a certified report that the impoundment has been inspected during construction on a regular basis and has been constructed as designed and according to the approved plan and this chapter. The report must include a summary of construction inspections, a statement of final storage capacity, and, if applicable, a discussion of any deviations from the approved plan.

Deleted: each inspection

Deleted: or maintained

Deleted: discussion of any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing

d. After impoundments are operational, they shall be inspected at least yearly until removal of the structure or release of the performance bond. A registered professional engineer shall provide the commission with an annual impoundment inspection report addressing any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability. A single report can address more than one impoundment; however, the condition of each impoundment shall be noted separately.

Deleted: , any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability

e. A copy of the inspection reports must be maintained at or near the minesite.

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4.

*(LEC Proposal)***NDAC 69-05.2-16-14. Performance standards - Hydrologic balance – Ground water monitoring.**

3. Ground water monitoring data must be submitted to the commission every three months or more frequently as prescribed by the commission. Monitoring reports must include analytical results from each sample taken during the reporting period. The operator shall review the data biennially or more frequently if required by the commission. Changes observed in the monitored aquifers in the permit or adjacent areas must be described and interpreted in the monitoring report as to their significance and possible effect on any water supplies. When the analysis of any ground water sample indicates noncompliance with the permit conditions, the operator shall promptly notify the commission and immediately take the actions provided for in subdivision a of subsection 3 of section 69-05.2-10-05 and subsection 2 of section 69-05.2-09-12.

Deleted: annually

*(PSC Proposal)***NDAC 69-05.2-16-14. Performance standards - Hydrologic balance - Ground water monitoring.**

3. Ground water monitoring data must be submitted to the commission every three months or more frequently as prescribed by the commission. Monitoring reports must include analytical results from each sample taken during the reporting period. The operator shall review the data regularly ~~annually or more frequently if required by the commission~~. When ~~the analysis of any ground water elevation or quality~~ sample indicates noncompliance with the permit conditions, the operator shall promptly notify the commission and immediately take the actions provided for in subdivision a of subsection 3 of section 69-05.2-10-05 and subsection 2 of section 69-05.2-09-12. The operator shall also submit a report biennially ~~shall review the data annually or more frequently if required by the commission~~ that reviews the condition of water resources in the permitted and adjacent areas. Changes observed in the potentiometric surfaces and quality of the monitored aquifers in the permitted or adjacent areas must be described and interpreted in the ~~monitoring~~ report as to their significance and possible effect on any water supplies.

DRAFT – JULY 7, 2005

1. (Revised 10/05)

NDAC 69-05.2-06-03. Permit applications – Right of entry and operation information.

2. Following completion of coal removal operations on the lands covered by a lease, the copy of the coal lease may be deleted from an approved permit if:

- a. The lease is no longer needed to show the surface right of entry for carrying out reclamation operations; or
- b. The lease has expired or has been terminated.

If a coal lease is no longer provided for surface right of entry, other documents granting the permittee surface right of entry must be added to the permit.

2. NDAC 69-05.2-12-12. Release of performance bond - Bond release application.

- 8. When the permittee requests final bond release under subdivision d of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must include:
 - a. The data collected, analyses conducted, and a narrative detailing compliance with subsection 4 of section 69-05.2-22-07.
 - b. The history of initial and subsequent seedings and fertilization, including mixtures and rates, appropriate soil tests, supplemental irrigation, or other management practices employed.
 - c. Documentation showing the reestablishment of essential hydrologic functions of alluvial valley floors.
 - d. If a premine water delivery system will not be replaced, the bond release application must address the requirements of subdivision b of subsection 90 of section 69-05.2-01-02.

3.

NDAC 69-05.2-16-05. Performance standards - Hydrologic balance - Surface water monitoring.

1. Surface water monitoring must be conducted in accordance with the monitoring program and based on the probable hydrologic consequences determination submitted under section 69-05.2-08-04. The commission will approve the nature of data that relate to the hydrologic reclamation plan in section 69-05.2-09-12, frequency of collection, and determine reporting requirements. The operator shall also submit a report biennially or more frequently if required by the commission that reviews the condition of water resources in the permitted and adjacent areas. Changes observed in the flow, water levels and quality of the monitored streams, lakes and impoundments in the permitted or adjacent areas must be described and interpreted in the report as to their significance and possible effect on any water supplies.
 - a. For locations in surface water bodies, such as streams, lakes, and impoundments, monitoring must:
 - (1) Be adequate to measure accurately and record quantity and quality of discharges from the permit area and identify the extent to which mining affects water quality and quantity in the adjacent area. Water samples taken from all monitoring sites must be analyzed for the parameters specified in subdivision b of subsection 3 of section 69-05.2-08-07. Results must be submitted quarterly to the commission.
 - (2) Be conducted to assure reliable test data according to existing standard procedures and analytical methods.

4.

NDAC 69-05.2-24-01. Performance standards - Roads - General requirements.

1. Each road, as defined in subsection ~~92~~ 93 of section 69-05.2-01-02, must be classified as either a primary or ancillary road.