STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Reclamation
Rulemaking

Case No. RC-07-163

Public Service Commission
Public Utilities - Electric
Rulemaking

Case No. PU-06-490

ORDER

January 16, 2008

Appearances

Commissioners Susan Wefald, Kevin Cramer, and Tony Clark.

William Binek, Chief Counsel, asHearing Officer

Preliminary Statement

On October 3, 2007, the North Dakota Public Service Commission (Commission) issued its notice of proposed rulemaking proposing to revise several sections of the Administrative Code including the following two cases:

Reclamation: Case No. RC-07-163

The proposed rule changes in Case No. RC-07-163 affect coal mining and reclamation rules under North Dakota Administrative Code Article 69-05.2. The most significant change pertains to the self-bonding provisions and it will allow the Commission to accept, in addition to Moody's Investors Service and Standards and Poor's ratings, bond ratings from other national recognized rating organizations for companies that guarantee self-bonds. Another change updates the terminology used for native grassland descriptions that are required as part of the pre-mine land use information in permit applications. The other change corrects a cross reference error in the permit approval criteria. The proposed rule changes are not expected to have an impact on the regulated community in excess of $50,000.

Public Utilities - Electric – Case No. PU-06-490

The proposed rule change in Case No. PU-06-490 would amend section 69-09-02-35 of the North Dakota Administrative Code to adopt by reference the 2007 version

of the National Electric Safety Code for the installation and maintenance of electric supply and communication lines. The NESC is updated periodically, with a new edition issued every five years. The changes proposed would simply adopt the latest NESC 2007 Edition instead of the previously adopted 2002 Edition.

Public Hearing

A public hearing on the proposed rule changes was noticed for and held at 1:00 p.m. November 26, 2007. The hearing was held in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The notice of rulemaking was published once in all official county newspapers as evidenced by the affidavit of publication on file with the Commission. The notice was also forwarded to the Legislative Council for publication at least 30 days in advance of the November hearing.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until December 6, 2007, during which data, views, or oral arguments concerning the proposed rulemaking could be received by the Commission and made a part of the rulemaking record to be considered by the Commission.

The following discusses the comments that were received:

Reclamation: Case No. RC-07-163

Commission staff testified at the hearing to explain the changes proposed to North Dakota Administrative Code Article 69-05.2, rules for surface coal mining and reclamation operations. The most significant rule change was based on a suggestion from the Falkirk Mining Company, a subsidiary of The North American Coal Corporation, and it pertains to the self-bonding provisions in North Dakota Administrative Code Section 69-05.2-12-05.1. A representative from The North American Coal Corporation also testified at the hearing and provided a letter of support for the proposed self-bonding change.

The Commission's comment period ended December 6, 2007. No other comments were received.

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Commission staff testified at the hearing that the purpose of adopting the 2007 Edition of the National Electric Safety Code is to ensure that North Dakota safety requirements keep pace with industry standards. Staff testified that in practice the utilities are already applying the 2007 Edition.

The Commission's comment period ended December 6, 2007. No other comments were received.

Order

The Commission orders that the proposed changes to the North Dakota Administrative Code, as attached to and made a part of this order, be submitted to the Attorney General for an opinion that the rules are in compliance with North Dakota Century Code Section 28-32-14 and are approved as to their legality.

PUBLIC SERVICE COMMISSION

Tony Clark **Commissioner**	**Susan E. Wefald** **President**	**Kevin Cramer** **Commissioner**

69-05.2-08-08. Permit applications - Permit area - Vegetation and land use information.

1. The application must contain the following premining vegetation information:

   a. A map or aerial photograph at a scale of 1:4,800 that delineates the existing mapping units within each premining land use. The mapping units for different land use categories are:

      (1) For cropland, each soil mapping unit.

      (2) For tame pastureland, each soil mapping unit.

      (3) For native grasslands, each ~~range~~ ecological site. The soil mapping unit in each ~~range~~ ecological site must also be delineated.

      (4) For woodland, each woodland type, i.e., trees, tall shrubs, and low shrubs.

      (5) For fish and wildlife habitat, each vegetation type as further specified in subparagraphs a, b, and c.

         (a) For woodland, each woodland type, i.e., trees, tall shrubs, and low shrubs;

         (b) For wetlands, wetland classes based on ecological differentiation as set forth in Classification of Natural Ponds and Lakes in the Glaciated Prairie Region (United States department of the interior (1971) or other approved classification system.

         (c) For grasslands (native or introduced), each soil mapping unit.

      (6) For shelterbelts, the entire planting.

   b. For each land use, a comprehensive species list of higher plants and identification of any species of rare, endangered, poisonous, or noxious plants, developed by a thorough reconnaissance of all mapping units.

c. A description of each mapping unit delineated under subdivision a. This description must include:

(1) The acreage [hectarage] of each mapping unit for each surface owner within the permit area.

(2) An assessment of the productivity of cropland, tame pastureland, and native grassland based on published data, historic data, or quantitative data.

(3) Natural resource conservation service ~~range condition~~ similarity index in percent for native grassland.

(4) A detailed description of number and arrangement of trees and shrubs, probable age of trees, height of trees, and characteristics of understory vegetation for woodland and fish and wildlife habitat where woodland is the vegetation type.

(5) A detailed description of community structure, assemblages of plant species, water conditions, and size for fish and wildlife habitat where wetlands are the vegetation type.

(6) A description of number and arrangement of trees and shrubs, length and number of rows, and associated plant species for shelterbelts.

(7) When required for the proposed success standard, a quantitative assessment of applicable vegetation parameters using methods approved by the commission.

d. A detailed narrative describing the nature and variability of the vegetation in each mapping unit and land use category, based on a thorough reconnaissance and qualitative assessment.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14, 38-14.1-24

69-05.2-10-03. Permit applications - Criteria for permit approval or denial.

6. In addition to the requirements of subsection 3 of North Dakota Century Code section 38-14.1-21, no permit or significant revision will be

approved, unless the application affirmatively demonstrates and the commission finds, in writing, on the basis of information in the application or otherwise available, which is documented in the approval and made available to the applicant, that:

a. The permit area is not on any lands subject to the prohibitions or limitations of North Dakota Century Code section 38-14.1-07 or the area has met the application review procedures of section ~~69-05.2-04-01~~ 69-05.2-04-01.1.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992; June 1, 1994; July 1, 1995; June 1, 1997; May 1, 2001: □□□□□□□□□□□□.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-21, 38-14.1-33

69-05.2-12-05.1. Performance bond - Self-bond of permit applicant.

1. The commission may accept a self-bond if the following conditions are met:

   a. The applicant designates an agent for service of process in the state.

   b. The applicant has been in continuous operation as a business entity the five years preceding the application. The commission may allow a joint venture with less than five years of continuous operation if each member has been in continuous operation for the five years preceding the application.

   c. The applicant submits financial information in sufficient detail to show one of the following:

      (1) The applicant has a current ~~Moody's Investor Service or Standard and Poor's~~ rating for its most recent bond issuance of "A" or higher as issued by Moody□s Investors Service, Standards and Poor□s Corporation or an equivalent rating by any other nationally recognized statistical rating organization, as defined and approved by the United States securities and exchange commission, that is acceptable to the commission.

      (2) The applicant has a tangible net worth of at least ten million dollars, a ratio of total liabilities to net worth of 2.5 or less,

and a ratio of current assets to current liabilities of 1.2 or greater.

(3) The applicant's fixed assets in the United States total at least twenty million dollars and the applicant has a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liabilities of 1.2 or greater.

d. The applicant submits:

(1) Financial statements for the last complete fiscal year audited by an independent certified public accountant, and a report containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion; and

(2) Financial statements for completed quarters in the current fiscal year and additional information requested by the commission.

e. "Tangible net worth" means net worth less intangibles.

History: Effective May 1, 1988; amended effective January 1, 1993; □□□□□□□□□□□□.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-16

Public Service Commission **Case No. PU-06-490**
Public Utilities Electric
Rulemaking

Proposed Rule Change

69-09-02-35. Installation and maintenance - Conformance to National Electrical Safety Code. The installation and maintenance of electric supply and communication lines shall conform to rules and regulations established in the ~~2002~~ 2007 edition of the National Electrical Safety Code, issued August 1, ~~2001~~ 2006, which is adopted by reference. Copies of these regulations may be obtained from the public service commission, state capitol, Bismarck, North Dakota 58505-0480.

History: Amended effective September 1, 1984; January 1, 1988; December 1, 1990; August 1, 1993; July 1, 1997; March 1, 2003.
General Authority: NDCC 28-32-02, 49-02-04
Law Implemented: NDCC 49-02-04, 49-20-02