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OPINION

August 3, 2010

PUBLIC SERVICE COMMISSION

Mr. Patrick J. Fahn
Director of Compliance and Competitive Markets
Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

Dear Mr. Fahn:

The Office of Attorney General has examined the proposed amendments to N.D.A.C. art. 69-10 concerning weights and measures¹ and proposed amendments to N.D.A.C. § 69-09-09-06 concerning decommissioning of commercial wind energy conversion facilities,² along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was not issued or requested, 3) a takings assessment was not prepared, 4) a small entity regulatory analysis was prepared but an economic impact statement was not prepared because the rules propose no additional burden on small entities,³ and 5) the proposed rules are within the agency's statutory authority.

These administrative rules are in substantial compliance with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

Wayne Stenehjem
Attorney General

eee/pg

cc: John Walstad, Legislative Council

- 23 PU-10-159 Filed 08/03/2010 Pages: 1
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¹ Case No. WM-10-69.

² Case No. PU-10-159.

³ Your transmittal letter states that the small entity analysis was not performed, but the regulatory statement for each set of rules did contain a small entity regulatory analysis. In each case, the conclusion was that there was no adverse impact, meaning that an economic impact statement was not required. I am concerned that the small entity regulatory analysis for the decommissioning rule did not appear to address the questions presented, although the rule will not have an adverse economic impact on small entities since it only repeats a statutory requirement and does not add any requirements of its own.