

## Senate Bill 2008

**Presented by:** Tony Clark, Chairman  
Public Service Commission

**Before:** House Appropriations - Government Operations Division  
Honorable Blair Thoreson, Chairman

**Date:** March 11, 2011

### TESTIMONY

Mister Chairman and committee members, I am Tony Clark Chairman of the Public Service Commission. I am here to testify in support of the Public Service Commission's budget. With me are my fellow Commissioners Kevin Cramer and Brian P. Kalk, as well as some of the division directors and support staff. I want to thank you for the opportunity to discuss our operations, statutory mandates, and resource needs.

The Governor's executive budget recommendation provides the commission with the resources to continue providing a high level of service to the people of North Dakota. We request your favorable support of the budget that is before you.

The Public Service Commission is proud to report that, despite the central role played by the commission in the state's booming energy industry, we are requesting no new full time employees. We have been able to achieve this by proactively addressing agency needs over the past several legislative sessions. Foremost has been the flexibility the legislature granted the commission with

regard to how we process cases. By using resources and expertise in the private sector on an as needed basis, we have been able to carry out our statutory duties, protect the public interest, and not grow the size of government.

The commission's main areas of responsibility, which are well known to you, include the following:

- Regulation of electric, natural gas, and telephone utilities
- Pipeline safety
- Licensing and inspecting grain elevators and grain buyers
- Licensing auctioneers and auction clerks
- Testing and certifying weighing and measuring devices
- Overseeing coal mining and reclamation
- Eliminating hazards at abandoned mine sites
- Siting oil and gas processing plants, power plants, power lines, and transmission pipelines
- Representing state rail interests in federal proceedings
- Railroad crossings

During the 2009 Legislative Session House Bill 1342 amended the North Dakota Century Code Section 49-11-22 giving the Public Service Commission jurisdiction to hear and decide petitions requesting that a horn be sounded at a private railroad crossing based on safety concerns of the public. To date during the 2009-2011 biennium the commission heard three such requests involving ten railroad crossings. A request regarding one crossing was withdrawn. For eight of

the crossings the commission ordered audible warnings to continue and for one crossing, the commission ordered the audible warnings to cease.

### **Public Utilities**

Public utility efforts are undertaken with a staff that is by far the smallest staff of any public utility commission in the nation. The public utility efforts engage 5.84 full-time employees.

The commission protects the public interest by implementing policy and regulating electric, natural gas, telecommunication, and pipeline companies in a fair, efficient, and cooperative manner. The commission helps promote the provision of safe, reliable, and high quality utility services through its work with utility companies, rulemaking, educating consumers and resolving consumer disputes.

The following illustrates some of the important work carried out by the Public Utilities Division:

- Track, comment on, and participate in the continued development of the regional wholesale electric market through the operator of the transmission system, the Midwest Independent System Operator. The regional wholesale market is important not only for efficiency and reliability but also for the future exportation of electricity from North Dakota.
- Investigate, analyze, advocate, provide testimony, and implement rate and rate design changes through the regulation of retail electric and gas service provided by investor owned utilities. The staff conducts annual reviews of earnings levels and processes rate increase applications. The commission

issued an order in Otter Tail Power Company's electric rate increase application in this biennium. Rate increase applications are currently pending for Montana-Dakota Utilities Co. and Northern States Power Company (Xcel Energy).

- Direct and enforce safety requirements for electric and natural gas service provided by all utilities.
- Investigate, analyze, implement, and provide assurances to the extent possible for using the state's abundant natural resources for the production of power through siting activities and overall regulatory authority. Through its siting authority, the commission oversees the location and construction of CO<sub>2</sub> pipelines, gas plants, generating stations and applicable water lines, wind farms, electric transmission lines, and oil and gas pipelines and related pumping stations and other facilities. There are currently 90 open siting cases compared to last legislative session when there were only 48 open siting cases.
- Advocate for better wireless services for customers in North Dakota through its Wireless Initiative to inform the public and service providers of coverage gaps, a.k.a. Zap the Gap.
- Investigate, analyze, advocate, and provide testimony concerning advance prudence applications by regulated utilities for electric resource additions. We expect more of these types of filings as continued generation and transmission build-out is expected for the next several years.

- Track, comment on, and implement federal telecommunication mandates including oversight and facilitation of the wholesale telecommunications market and the transition to competitive services. These types of cases include intercompany access disputes, inter-carrier compensation disputes, monitoring quality of service through regional efforts, overseeing the allocation of telephone numbers, rural exemption challenges and so on.
- Resolve territorial disputes between investor owned electric companies and rural cooperatives. Protect the public interest through action on agreements entered into between electric providers concerning service areas, which may include certificates of public convenience and necessity for utility plant and system extensions. Investigate, analyze, provide testimony, and implement merger and acquisition applications.
- Process the occasional formal dispute between customers and a utility company that cannot be resolved informally. In these cases, a formal complaint is filed by the customer or commission staff and the commission then may conduct a formal hearing and order a resolution.

The commission will continue efforts to educate consumers and competitors about the evolving utility marketplaces and the changing role of regulation, striving to identify and implement ways to lessen the regulatory burden on companies while strengthening and preserving necessary consumer protections. Regional impacts, widespread policy from Washington, DC, and environmental priorities and concerns will contribute to the challenges facing policymakers, regulators, and interested parties.

The siting caseload at the commission has grown dramatically the past few years. Since 2005, the commission has approved route permits for 779 million dollars in oil pipeline investments and 126 million dollars in electric transmission investments. We have also issued siting certificates for 2.7 billion dollars worth of wind generation. Looking forward, the challenges are even greater as we have letters of intent to build nearly 13.6 billion dollars worth of energy conversion facilities, all of them requiring commission oversight.

In addition to dramatic growth in North Dakota's energy export infrastructure, we are seeing more rate cases than we have in the past. New generation and transmission must be paid for so companies are coming in for rate increases, tariff adjustments, and prudence determinations on a regular basis.

### **Weights and Measures**

The Weights and Measures Program, comprised of four full-time employees, is designed to meet the needs of both the buyer and seller in the commercial marketplace. This is accomplished through the enforcement of the state's weights and measures laws by the inspection and testing of commercial weighing and measuring devices such as supermarket scales, grain elevator truck scales, livestock scales, and gas station pumps, etc. Some of the accomplishments and work of the program include:

- Testing and inspecting 11,327 commercial devices from January 1, 2009 to December 31, 2009.

- Collecting fees totaling 226,080 dollars for the general fund as a result of the above testing during that time period.
- Conducting quality control testing and monitoring the documentation of 8,488 weighing or measuring devices installed or serviced by registered service companies.

### **Gas Pipeline Safety**

The Gas Pipeline Safety Program employs one full time inspector to ensure the safety of jurisdictional gas utility distribution and transmission facilities. The commission enters into an agreement with the United States Department of Transportation annually which grants the state authority to conduct the federal gas pipeline safety program. As part of this agreement, approximately 40 percent of the cost of the North Dakota Gas Pipeline Safety Program is funded by the federal government. Increased construction activity and recent pipeline explosions highlight the importance of this program.

### **Reclamation**

The Reclamation Division is responsible for ensuring that active coal mining is carried out in an environmentally sound manner and that mined lands are successfully reclaimed. There are currently four large and two small coal mines operating in North Dakota and they produce around 30 million tons of lignite per year. There are nearly 105,000 acres of land presently under permit and, of this; approximately 68,000 acres have been disturbed by mining activities. Applications to permit another 27,000 acres are currently being

reviewed by the Reclamation Division. This includes applications for two new mines, one northwest of Center and the other near South Heart.

Between 1,500 and 2,000 acres of land are typically disturbed and reclaimed each year. The disturbed and reclaimed acres are monitored by the commission to ensure mining and reclamation activities are conducted in compliance with state reclamation laws.

The Reclamation Division has been monitoring the exploration for uranium, molybdenum, and germanium in lignite seams in southwest North Dakota. The coal seams of primary interest would most likely be surface mined and these mining activities would also be regulated by the commission. To the best of our knowledge, no data have been collected for the environmental resource studies needed for permitting.

Another significant workload for the Reclamation Division is related to final bond release on reclaimed lands. The commission's jurisdiction over reclaimed land ends upon the granting of the final bond release. However, mining companies cannot apply for final bond release until most mined lands have been reclaimed and seeded for at least ten years. When final bond release is requested, detailed information and data must be provided showing that reclaimed lands with an agricultural use produce as well as they did before mining. In the past eight years, final bond release has been granted on nearly 11,000 acres and final bond release is pending on another 1,000 acres.

The Reclamation Division continues to use and enhance a Geographic Information System (GIS) for storing, evaluating, and analyzing a vast amount of

data and maps that the commission receives from mining companies. Once data and maps are converted into the appropriate format and entered into the GIS, data are downloaded onto tablet PCs equipped with Global Positioning Satellite (GPS) receivers for use during routine mine inspections. The GPS receivers allow staff to know precisely where they are at during the mine inspection, to save a track-log of the areas traversed at the mine, and to accurately note any areas of concern observed during the inspections.

The federal Office of Surface Mining conducts ongoing reviews of the coal regulatory program and issues annual evaluation reports. North Dakota continues to receive excellent reports from the Office of Surface Mining and that office considers North Dakota's program one of the most efficient and well run programs in the country. The Reclamation Division is authorized 9.4 full time employees.

The federal government, through annual grants from the Office of Surface Mining, is currently paying 64 percent of the coal regulatory program costs and the state general fund covers the other 36 percent. Based on the available information at this time, it appears we should be receiving enough federal funds to meet our program needs for at least the first year of the 2011-2013 biennium. However, we have some concerns whether or not sufficient federal funds will be appropriated by Congress for the second year of the biennium.

### **Abandoned Mine Lands**

The mission of the Abandoned Mine Lands (AML) Division is to reclaim abandoned coal mine lands that pose a safety hazard. Sites eligible for

reclamation under Title IV of the federal Surface Mining Control and Reclamation Act include lands disturbed by coal mining prior to its enactment. These sites are prioritized on the basis of perceived hazards and are reclaimed based on priority ranking and available funds. The AML program is 100 percent federally funded. Major reclamation projects during the 2009-2011 biennium include filling underground mine voids east of Williston and in the Beulah/Zap area, and eliminating highwalls at abandoned surface mines north of Beulah and south of Sawyer.

The funding source for the AML program is a federal reclamation fee assessed on all active coal mines. North Dakota mining companies currently pay 9 cents per ton of lignite produced into the AML fund, which totals about 2.7 million dollars per year. The commission receives money from this fund to operate North Dakota's AML program. Federal legislation enacted in late 2006 extended collection of the federal reclamation fee until 2021. This legislation also requires the Office of Surface Mining to pay out the state share balances in the AML fund and this has increased our funding from 1.6 million dollars in 2007 to the 3.4 million dollars received this year. The commission expects to receive 7.4 million dollars from the Office of Surface Mining during the 2011-2013 biennium. Due to this increase in federal funding plus expected carry over funds for construction projects, the proposed budget increases the AML contractual services line item to 8 million dollars. This is a 1.5 million dollar increase over the appropriation for the current biennium. In addition to the 4.75 full time employees assigned to the AML program, the AML Division hires two seasonal

inspectors to monitor the on-site construction work during the summer and fall months.

The AML Division has developed a GIS database to store and display information about the AML sites in North Dakota. Much of this information will eventually be posted on the commission's website so it will be readily available to the public. We believe it is important to have information on abandoned underground mines available to the public since there are times when there are no surface features present to indicate a potential hazardous condition exists in an area.

### **Licensing**

The Licensing Division, comprised of 3.75 full time employees, oversees the licensing and bonding of all the grain elevators and grain buyers in North Dakota and processes all grain elevator and grain buyer insolvency cases. The division also oversees the licensing and bonding of all auctioneers and auction clerks. Some major accomplishments and important work completed during the biennium include:

- Completed 301 grain warehouse and grain buyer inspections between July 1, 2009 and December 31, 2010.
- Revenues generated for the general fund for license fees received during this same period of time total 322,610 dollars.
- Approved 208 requests to increase storage levels, which reached an all time high of 406 million bushels in November 2010.

- The commission was involved in five insolvencies during the biennium. Two of these insolvencies have been completed.

### **Agriculture Rail Rate Fund**

The Governor's executive budget recommendation includes a continuation of 900,000 dollars for an agriculture rail rate fund.

### **Administration**

The Administrative Division provides support services to the other divisions. Accordingly, a portion of the commission's funding comes from the federal government through an indirect cost reimbursement. Indirect costs are recovered from the federal grants to offset administrative costs associated with our federal programs.

### **Summary**

Of the commission's overall budget, about 58 percent comes from federal sources, 36 percent is general fund money, and six percent is special funds. The commission generates approximately one million dollars per biennium in income from statutory license and inspection fees. Indirectly, this income covers about 20 percent of the general fund money that is being requested in Senate Bill 2008.

The commission recorded 1183 complaints and inquiries during the current biennium. The vast majority of these concerned traditional public utility services, but many involve matters such as grain elevator operations, mining, and weights and measures.

During the current biennium, the commission opened 1037 cases. The commission attempts to process these cases as quickly and at as low a level of

formality as possible. As a result, approximately 96 percent of these cases were processed without the need for a formal hearing. Only 43 of these cases required formal hearings, several of which were mandated by state law.

The commission currently has 43 full time employees including the three commissioners, plus two temporary seasonal employees to work with the Abandoned Mine Lands Division during the construction season. The commission also has one temporary employee working in the Public Utility Division and funded through the American Recovery and Reinvestment Act (ARRA).

Mister Chairman, this concludes our testimony. I will be happy to answer any questions you may have.

**Attachments:**

1. Schedule for continuing appropriation funds: Performance Assurance Fund, Credit Sale Contract Indemnity Fund, and the Siting Process Expense Recovery Fund
2. PSC 2011-2013 organizational chart

## Continuing Appropriations

### Performance Assurance Fund

Fund No. 280

*Statutory Authority:* NDCC 49-21-31.

|                      | Biennium Ending   |            | B.T.D.<br>11/30/2010 | Projected           |            |
|----------------------|-------------------|------------|----------------------|---------------------|------------|
|                      | 2005-2007         | 2007-2009  |                      | 1/3/2011<br>6/30/11 | 2011-13    |
|                      | Beginning Balance | \$ 132,207 |                      | \$ 96,535           | \$ 98,742  |
| Revenues             | \$ 43,800         | \$ 17,400  | 47,000               | 1,500               | 30,000     |
| Total Available      | \$ 176,007        | \$ 113,935 | \$ 145,742           | \$ 104,800          | \$ 130,000 |
| Expenditures         | \$ 18,330         | \$ 15,193  | 1,134                | 1,000               | 10,000     |
| Tsfr to General Fund | \$ 61,142         | \$ -       | 41,309               | 3,800               | 20,000     |
| Ending Balance       | \$ 96,535         | \$ 98,742  | \$ 103,300           | \$ 100,000          | \$ 100,000 |

### Credit Sale Contract Indemnity Fund

Fund No. 395

*Statutory Authority:* NDCC 60-10.

|                 | Biennium Ending   |              | B.T.D.<br>11/30/2010 | Projected           |              |
|-----------------|-------------------|--------------|----------------------|---------------------|--------------|
|                 | 2005-2007         | 2007-2009    |                      | 1/3/2011<br>6/30/11 | 2011-13      |
|                 | Beginning Balance | \$ 1,956,352 |                      | \$ 4,206,289        | \$ 6,597,920 |
| Revenues        | 2,249,937         | 2,501,946    | 173,957              | 200,000             | 220,000      |
| Total Available | \$ 4,206,289      | \$ 6,708,235 | \$ 6,771,876         | \$ 6,797,920        | \$ 6,967,920 |
| Expenditures    | -                 | 110,315      |                      | 50,000              | 100,000      |
| Ending Balance  | \$ 4,206,289      | \$ 6,597,920 | \$ 6,771,876         | \$ 6,747,920        | \$ 6,867,920 |

### Siting Process Expense Recovery

Fund No. 301

*Statutory Authority:* NDCC 49-22-22.

|                 | Biennium Ending   |              | B.T.D.<br>11/30/2010 | Projected           |              |
|-----------------|-------------------|--------------|----------------------|---------------------|--------------|
|                 | 2005-2007         | 2007-2009    |                      | 1/3/2010<br>6/30/11 | 2011-13      |
|                 | Beginning Balance | \$ 132,944   |                      | \$ 524,391          | \$ 857,747   |
| Revenues        | 786,228           | 1,197,250    | 1,149,000            | 1,350,000           | 1,350,000    |
| Total Available | \$ 919,172        | \$ 1,721,641 | \$ 2,006,747         | \$ 2,207,747        | \$ 2,607,747 |
| Expenditures    | 31,713            | 145,480      | 81,216               | 100,000             | 200,000      |
| Refunds         | 363,068           | 718,414      | 735,615              | 850,000             | 1,000,000    |
| Ending Balance  | \$ 524,391        | \$ 857,747   | \$ 1,189,916         | \$ 1,257,747        | \$ 1,407,747 |