

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-11-236

PUBLIC SERVICE COMMISSION STAFF TESTIMONY

August 9, 2011

I am Mike Berg, Environmental Engineer with the Reclamation Division of the Public Service Commission.

The Commission is proposing to amend the collateral bond provisions for surface coal mining and reclamation operations under North Dakota Administrative Code Section 69-05.2-12-04. The proposed changes relate to letters of credit that are pledged as the collateral for a collateral bond and involve the financial information and notices that banks issuing a letter of credit must provide to the Commission. An option will be added to allow a bank to provide a certified copy of financial reports that are already required by a federal agency instead of a balance sheet that is certified by a certified public accountant (CPA). Staff has been informed that some banks find it difficult to provide the CPA certified balance sheets, but they can more easily provide the same information by submitting copies of reports that are already required by federal banking regulators.

In addition, a change is being proposed to the provision that requires banks give the Commission notice of actions alleging insolvency or bankruptcy. This is being revised to require this notice only to the extent allowed by state or

federal banking regulations. State and Federal banking regulators have informed the Reclamation Division that the existing rule is in conflict with certain banking regulations that restrict banks from giving this information to others. These letter of credit rule changes were proposed at the request of BNI Coal, Ltd. based on their experience in trying to obtain letters of credit from banks as the collateral for a collateral bond.

The mining and reclamation rule changes adopted by the Commission must be as effective as the counterpart federal rules that have issued by the federal Office of Surface Mining (OSM) within the Department of the Interior. Reclamation Division staff does not believe OSM will have any concerns with these rule changes since the current PSC rules are more specific than the counterpart federal rules.

The Commission received written comments on behalf of BNI Coal, Ltd. in support of the proposed rule changes; however, these comments also suggest a couple modifications to the rule changes as they were proposed. No other comments in this rulemaking case have been received.

This concludes my testimony.