

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-11-236

ORDER SUBMITTING RULES TO ATTORNEY GENERAL

October 12, 2011

Appearances

Commissioners Tony Clark, Brian P. Kalk, and Kevin Cramer

Preliminary Statement

On June 22, 2011, the North Dakota Public Service Commission (Commission) issued a formal Notice of Proposed Rulemaking and an Abbreviated Notice proposing to revise Section 69-05.2-12-04 of the Administrative Code. The proposed amendments pertain to the collateral bond provisions for surface coal mining and reclamation operations.

The proposed changes relate to letters of credit that are pledged as collateral and to the financial information and notices that banks issuing a letter of credit must provide to the Commission. The proposed amendment will not have an impact on the regulated community in excess of \$50,000.

Public Hearing and Comments

The Abbreviated Notice was published once in all 52 official county newspapers the week of July 2 through July 8, 2011. The Notice of Intent to Amend Administrative Rules and Notice of Public Hearing and proposed rules were also sent to those identified as interested or affected parties. The notices were forwarded on June 30, 2011, to the Legislative Council for publication.

A public hearing on the proposed rule changes was noticed for and held at 10:00 a.m. August 9, 2011. The hearing was held in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. Commission staff testified at the hearing to explain the proposed rule. A representative for BNI Coal, Ltd. testified in support of the proposed rule, but also requested that some modifications to the proposed rule related to the information and notices that banks must provide when issuing a letter of credit. A letter with proposed language changes was also submitted on August 2, 2011.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until August 19, 2011, 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. No other comments were received after the hearing.

Discussion

Staff prepared and filed a statement regarding the required regulatory analysis, takings assessment, and small entity regulatory analysis.

Staff testified at the hearing explaining the proposed changes and that the rules adopted by the Commission must be as effective as counterpart federal rules issued by the Office of Surface Mining. Although BNI testified in support of the proposed rule changes, some additional modifications were requested regarding the type of format of the financial information that banks issuing a letter of credit can provide to the Commission. The proposed rule was then modified in a manner very similar to that requested by BNI.

No other comments were received and no other changes are being made to the proposed rules.

Order

The Commission orders:

The proposed changes to Section 69-05.2-12-04 of 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 approved as to legality.

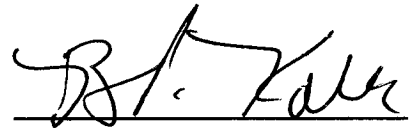
PUBLIC SERVICE COMMISSION



Kevin Cramer
Commissioner



Tony Clark
Chairman



Brian P. Kalk
Commissioner