



Public Service Commission

State of North Dakota

COMMISSIONERS

Tony Clark
Brian P. Kalk
Kevin Cramer

Executive Secretary
Darrell Nitschke

STATE OF NORTH DAKOTA
RECEIVED

NOV 14 2011

DEPARTMENT OF REVENUE

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

3 November 2011

The Honorable Wayne Stenehjem
North Dakota Attorney General
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0040

RE: Reclamation Rulemaking
Case No. RC-11-236

Dear Attorney General Stenehjem:

Enclosed please find proposed amendments to the North Dakota Administrative Code by the North Dakota Public Service Commission. In accordance with N.D.C.C. § 28-32-14, the North Dakota Public Service Commission requests your examination of these rules as to their legality so they may be considered for formal adoption and publication in the North Dakota Administrative Code.

Attached for purposes of review is a copy of each of the following:

- The proposed rule changes as ordered by the Commission which incorporate changes to those originally proposed;
- The original proposed rule changes;
- Full Notice of Intent to Amend Administrative Rules;
- Abbreviated Notice of Intent to Amend Administrative Rules;
- Affidavit of Publication from the North Dakota Newspaper Association;
- North Dakota Newspaper Association invoice showing the names of the newspapers where the abbreviated Notice was published;
- A copy of one of the actual notices, as published (others are available if you want them);
- A copy of the cover letter filing the Notice and Administrative Rules with the Legislative Council with the filing acknowledgment;
- Notice to sponsors - N/A. The proposed rules do not implement legislation enacted during the most recent legislative session;
- A statement regarding the required regulatory analyses, takings assessments and small entity regulatory analyses and economic impact statement;
- Comments received on 2 August 2011;
- Staff Testimony;

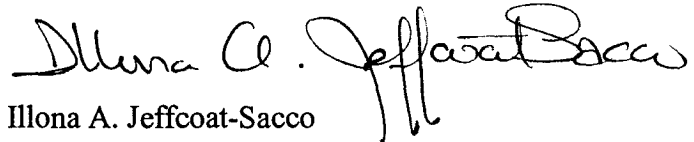
20 RC-11-236 Filed: 11/3/2011 Pages: 31
Letter to Attorney General requesting examination of
rules for legality

The Honorable Wayne Stenejem
3 November 2011
Page 2

- The 26 October 2011, Public Service Commission Order Submitting Rules to the Attorney General which summarizes comments received and the changes made to the proposed rules based on the comments.

Thank you for your consideration of the rules. If you have any questions please do not hesitate to call or email.

Best regards,

A handwritten signature in black ink, appearing to read "Ilona A. Jeffcoat-Sacco". The signature is written in a cursive style with a large, stylized initial "I".

Ilona A. Jeffcoat-Sacco
General Counsel

enclosures

PROPOSED RULE

69-05.2-12-04. Performance bond - Collateral bond. The guarantor of a collateral bond may be the permit applicant or a qualified third party.

1. Collateral bonds are subject to the following conditions:
 - a. All collateral must be kept in the commission's custody until authorized for release or replacement.
 - b. Collateral must be valued at market value.
 - c. Certificates of deposit must be assigned to the state, in writing, and upon the books of the issuer.
 - d. Except for certificates issued by the Bank of North Dakota, the commission will not accept an individual certificate in excess of one hundred thousand dollars, or the maximum amount insured by the federal deposit insurance corporation and the federal savings and loan insurance corporation, whichever is greater.
 - e. An issuer shall waive all rights of setoff or lien against the certificate.
 - f. The commission will accept only automatically renewable certificates of deposit.
 - g. The permit applicant shall deposit sufficient collateral to assure the commission will be able to liquidate the certificates prior to maturity, upon forfeiture, for the amount of the bond.
2. A collateral bond pledging a letter of credit may be approved by the commission subject to the following conditions:
 - a. The permit applicant has obtained prior commission approval for the bank issuing the letter of credit.
 - b. The commission may accept a letter of credit which is irrevocable for a term of at least one year if:

- (1) The letter of credit is automatically renewable for additional terms unless the bank gives at least ninety days prior written notice to the commission and the permittee of its intent to terminate the letter of credit at the end of the current term.
 - (2) The commission has the right to draw upon the letter of credit before the end of its term and convert it into a cash collateral bond if the permittee fails to replace the letter of credit with other acceptable bond within thirty days of the bank's notice to terminate the credit.
- c. The letter of credit must be payable to the commission in part or in full upon demand and receipt from the commission of a notice of forfeiture issued in accordance with sections 69-05.2-12-16 and 69-05.2-12-18 or demand for payment under paragraph 2 of subdivision b.
- d. The commission will not accept letters of credit from a bank for a permittee, on permits held by that permittee, in excess of ten percent of the bank's total equity (stock, surplus capital, and retained earnings) as shown on a balance sheet certified by a certified public accountant. Alternatively, the bank may provide an excerpt from its most recent report of condition and income as prescribed by the federal financial institutions examination council that is filed with its primary federal regulator. At a minimum, the excerpt must include copies of the attestation page and the balance sheet schedule from the report and a written certification by a bank officer that the copies are true and correct and identify the federal bank regulatory agency and date that the report was filed. A copy of the bank's most recent balance sheet or the excerpt from the report of condition and income must be provided with the letter of credit and. In addition, updated balance sheets that are certified by a bank officer as being true and correct must be submitted annually to the commission within ninety days after the close of the bank's fiscal year.
- e. A letter of credit is governed by:
- (1) The laws of the state of North Dakota.

- (2) The current version of the uniform customs and practices for documentary credits, published by the international chamber of commerce.
- f. Letters of credit shall provide that the bank, to the extent allowed by state and federal banking laws and regulations, will give prompt notice to the permittee and the commission of notices received or actions filed alleging the insolvency or bankruptcy of the bank or alleging violations of regulatory requirements that could result in suspension or revocation of the bank's charter or license to do business. In the event of actions which could result in suspension or revocation of the bank's charter or license, the commission has the right to draw upon the letter of credit before the end of its term and convert it into a cash collateral bond if the permittee fails to replace the letter of credit with a substitute bond within thirty days after receipt of such a notice from the commission. If a substitute bond is not filed and the commission is unable to draw on the letter of credit, the commission will suspend the permit and the operator shall cease surface coal mining activities and comply with section 69-05.2-13-11.
3. For a collateral bond the guarantor shall execute an indemnity agreement according to subsections 9 and 10 of section 69-05.2-12-01.
4. Persons with an interest in collateral posted as a bond, who desire notice of actions relating to the bond, shall request the notice in writing to the commission when collateral is offered.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1990; March 1, 2004; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

PROPOSED RULE

69-05.2-12-04. Performance bond - Collateral bond. The guarantor of a collateral bond may be the permit applicant or a qualified third party.

1. Collateral bonds are subject to the following conditions:
 - a. All collateral must be kept in the commission's custody until authorized for release or replacement.
 - b. Collateral must be valued at market value.
 - c. Certificates of deposit must be assigned to the state, in writing, and upon the books of the issuer.
 - d. Except for certificates issued by the Bank of North Dakota, the commission will not accept an individual certificate in excess of one hundred thousand dollars, or the maximum amount insured by the federal deposit insurance corporation and the federal savings and loan insurance corporation, whichever is greater.
 - e. An issuer shall waive all rights of setoff or lien against the certificate.
 - f. The commission will accept only automatically renewable certificates of deposit.
 - g. The permit applicant shall deposit sufficient collateral to assure the commission will be able to liquidate the certificates prior to maturity, upon forfeiture, for the amount of the bond.
2. A collateral bond pledging a letter of credit may be approved by the commission subject to the following conditions:
 - a. The permit applicant has obtained prior commission approval for the bank issuing the letter of credit.
 - b. The commission may accept a letter of credit which is irrevocable for a term of at least one year if:

- (1) The letter of credit is automatically renewable for additional terms unless the bank gives at least ninety days prior written notice to the commission and the permittee of its intent to terminate the letter of credit at the end of the current term.
 - (2) The commission has the right to draw upon the letter of credit before the end of its term and convert it into a cash collateral bond if the permittee fails to replace the letter of credit with other acceptable bond within thirty days of the bank's notice to terminate the credit.
- c. The letter of credit must be payable to the commission in part or in full upon demand and receipt from the commission of a notice of forfeiture issued in accordance with sections 69-05.2-12-16 and 69-05.2-12-18 or demand for payment under paragraph 2 of subdivision b.
- d. The commission will not accept letters of credit from a bank for a permittee, on permits held by that permittee, in excess of ten percent of the bank's total equity (stock, surplus capital, and retained earnings) as shown on a balance sheet certified by a certified public accountant or a certified copy of the bank's most recent reports of condition and income that are required by the federal financial institutions examination council. A copy of the bank's most recent balance sheet or reports of condition and income must be provided with the letter of credit and updated balance sheets or reports of condition and income must be submitted annually to the commission within ninety days after the close of the bank's fiscal year.
- e. A letter of credit is governed by:
 - (1) The laws of the state of North Dakota.
 - (2) The current version of the uniform customs and practices for documentary credits, published by the international chamber of commerce.
- f. Letters of credit shall provide that the bank, to the extent allowed by state and federal banking regulations, will give prompt notice to the permittee and the commission of notices received or actions filed alleging the insolvency or bankruptcy of the bank or alleging violations of regulatory

requirements that could result in suspension or revocation of the bank's charter or license to do business. In the event of actions which could result in suspension or revocation of the bank's charter or license, the commission has the right to draw upon the letter of credit before the end of its term and convert it into a cash collateral bond if the permittee fails to replace the letter of credit with a substitute bond within thirty days after receipt of such a notice from the commission. If a substitute bond is not filed and the commission is unable to draw on the letter of credit, the commission will suspend the permit and the operator shall cease surface coal mining activities and comply with section 69-05.2-13-11.

3. For a collateral bond the guarantor shall execute an indemnity agreement according to subsections 9 and 10 of section 69-05.2-12-01.
4. Persons with an interest in collateral posted as a bond, who desire notice of actions relating to the bond, shall request the notice in writing to the commission when collateral is offered.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1990; March 1, 2004; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
2011 Gas Pipeline Safety Rules
Rulemaking**

Case No. GS-11-79

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-11-236

**NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES
AND NOTICE OF PUBLIC HEARING**

June 22, 2011

PLEASE TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to section 69-09-03-02 and 69-05.2-12-04 of the North Dakota Administrative Code. The hearing will be held at **10:00 a.m., on August 9, 2011, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.** The proposed revisions to the North Dakota Administrative Code are as follows:

Gas Safety - Gas Pipeline Safety: Case No. GS-11-79

In order to continue the Commission's role as an agent for the federal pipeline safety program, the proposed change to North Dakota Administrative Code Section 69-09-03-02 adopts by reference changes made to federal pipeline safety regulations in effect as of June 22, 2011. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

Reclamation - Case No. RC-11-236

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 amendment relates 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 is not expected to have an impact on the regulated community in excess of \$50,000.

All of the proposed rule changes and the statements concerning Regulatory Analyses, Small Entity Analyses and Takings Assessments may be reviewed at the Public Service Commission's offices on the 12th floor of the State Capitol, Bismarck,

North Dakota. To obtain a copy of the proposed rule changes or the statements contact the Public Service Commission at 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, 701-328-2400, toll free 1-877-245-6685, Relay North Dakota TTY 1-800-366-6888, or NDPSC@ND.gov. This information is also available to view on the Commission's web site at www.psc.state.nd.us under "Formal Actions/Case Search".

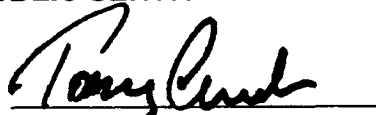
Interested persons may submit written comments on the proposed rules. Written comments should be filed with Darrell Nitschke, Executive Secretary, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, or NDPSC@ND.gov. The comment period closes 10 days after the hearing. Comments must be received by the close of business on August 19, 2011.

If you require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify the Commission at least 24 hours in advance.

PUBLIC SERVICE COMMISSION



Kevin Cramer
Commissioner



Tony Clark
Chairman



Brian P. Kalk
Commissioner

**NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES
NOTICE OF PUBLIC HEARING
RECLAMATION AND GAS PIPELINE SAFETY**

June 22, 2011

TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to the N.D. Admin. Code, relating to the adoption by reference of federal gas safety requirements and to the requirements for collateral bonds for surface coal mining and reclamation operations.

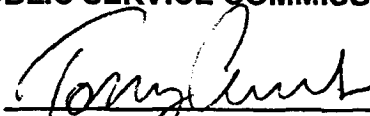
The public hearing will be held at 10:00 a.m., August 9, 2011, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. Written comments may be submitted to the Public Service Commission until the close of business on August 19, 2011.

A copy of the proposed rules may be obtained from the Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, 701-328-2400, toll free 1-877-245-6685, Relay North Dakota TTY: 1-800-366-6888, or NDPSC@ND.gov. This information is also available to view on the Public Service Commission's web site at www.psc.state.nd.us under "Formal Actions/Case Search".

If you require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify the Commission at least 24 hours in advance.

PUBLIC SERVICE COMMISSION


Kevin Cramer
Commissioner


Tony Clark
Chairman


Brian P. Kalk
Commissioner



Affidavit of Publication

RECEIVED

JUL 18 2011

PUBLIC SERVICE COMMISSION

Colleen Park, being duly sworn, states as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.
2. The newspapers listed on the exhibits published the advertisement of: **Public Service Commission – Administrative Rules relating to Reclamation and Gas Pipeline Safety**; 1 time(s) as required by law or ordinance.
3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

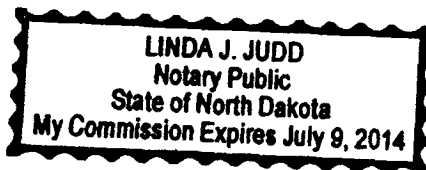
Signed: Colleen Park

State of NORTH DAKOTA

County of BURLEIGH

Subscribed and sworn to before me this 15th day of July, 20 11.

Linda J. Judd





North Dakota Newspaper Association

1435 Interstate Loop
Bismarck, ND 58503-0567
Ph (701) 223-6397 • Fax (701) 223-8185

RECEIVED

JUL 18 2011

INVOICE

PUBLIC SERVICE COMMISSION

Order **29405-11072PP0**

Invoice # **147614**

July 15, 2011

Advertiser: **Public Service Commission**

P.O.#:

Amount Due

\$1,978.68

Amount Paid

Attn: **TIM OSWALD**
PUBLIC SERVICE COMMISSION
600 E. BOULEVARD AVE.
STATE CAPITOL
BISMARCK, ND 58505

Voice: 701-328-4076

Please detach and return this portion with your payment

When placing an administrative rule notice, please fax or email your request. Regular mail is not always reliable when a deadline must be met. Thank you.

Public Service Commission Invoice # 29405-11072PP0-147614

Ad Size	Rate Type	Rate	Total	Discount (%)	Caption	Page	Run Date
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COUNTY

Ashley Tribune (Ashley ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/06/11
Beach Golden Valley News (Beach ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/07/11
Bismarck Tribune (Bismarck ND)							
6.00	SPR1	11.45	68.70	0.00	Reclamation ... Safety		07/02/11
Bottineau Courant (Bottineau ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/05/11
Bowbells Burke County Tribune (Bowbells ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/06/11
Bowman County Pioneer (Bowman ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/08/11
Cando Towner Co Record Herald (Cando ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/02/11
Carrington Foster Co Independ (Carrington ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/04/11
Carson Press (Elgin ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/06/11
Cavaller Chronicle (Cavalier ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/06/11
Center Republican (Hazen ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/07/11
Cooperstown Griggs County Courier (Cooperstown ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/08/11
Crosby The Journal (Crosby ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/06/11
Devils Lake Daily Journal (Devils Lake ND)							
6.00	SPR1	7.78	46.68	0.00	Reclamation ... Safety		07/05/11

<i>Ad Size</i>	<i>Rate Type</i>	<i>Rate</i>	<i>Total</i>	<i>Discount (%)</i>	<i>Caption</i>	<i>Page</i>	<i>Run Date</i>
COUNTY							
Dickinson Press (Dickinson ND)							
6.00	SPR1	7.78	46.68	0.00	Reclamation ... Safety		07/03/11
Elgin Grant County News (Elgin ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/06/11
Ellendale Dickey Co Leader (Ellendale ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/07/11
Fargo, The Forum (Fargo ND)							
6.00	SPR1	11.45	68.70	0.00	Reclamation ... Safety		07/04/11
Finley Steele County Press (Finley ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/08/11
Garrison McLean Co Independ (Garrison ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/07/11
Grafton * Walsh County Record (Grafton ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/06/11
Grand Forks Herald (Grand Forks ND)							
6.00	SPR1	11.45	68.70	0.00	Reclamation ... Safety		07/05/11
Harvey The Herald-Press (Harvey ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/02/11
Hazen Star (Hazen ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/07/11
Hettinger Adams Co Record (Hettinger ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/08/11
Jamestown Sun (Jamestown ND)							
6.00	SPR1	7.78	46.68	0.00	Reclamation ... Safety		07/02/11
Killdeer Dunn County Herald (Killdeer ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/08/11
Lakota American (Lakota ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/06/11
LaMoure Chronicle (LaMoure ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/06/11
Langdon Cavalier Co Republican (Langdon ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/04/11
Linton Emmons County Record (Linton ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/07/11
Lisbon Ransom County Gazette (Lisbon ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/04/11
Mandan News (Bismarck ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/08/11
Mayville * Traill County Tribune (Mayville ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/02/11
McClusky Gazette (McClusky ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/07/11
Medora Billings Co Pioneer (Beach ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/07/11
Milnor Sargent County Teller (Milnor ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/08/11
Minnewaukan Benson Co Farmers Press (Minnewaukan ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/06/11
Minot Daily News (Minot ND)							
6.00	SPR1	11.45	68.70	0.00	Reclamation ... Safety		07/03/11

<i>Ad Size</i>	<i>Rate Type</i>	<i>Rate</i>	<i>Total</i>	<i>Discount (%)</i>	<i>Caption</i>	<i>Page</i>	<i>Run Date</i>
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COUNTY

Mohall Renville County Farmer (Mohall ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/06/11
Napoleon Homestead (Napoleon ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/06/11
New England The Herald (New England ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/08/11
New Rockford Transcript (New Rockford ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/04/11
Rolla Turtle Mountain Star (Rolla ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/04/11
Rugby Pierce County Tribune (Rugby ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/02/11
Stanley Mountrail Co Promoter (Stanley ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/06/11
Steele Ozone & Kidder Co. Press (Steele ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/06/11
Towner Mouse River Journal (Towner ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/06/11
Valley City Times-Record (Valley City ND)							
6.00	SPR1	7.78	46.68	0.00	Reclamation ... Safety		07/05/11
Wahpeton Daily News (Wahpeton ND)							
6.00	SPR1	7.78	46.68	0.00	Reclamation ... Safety		07/03/11
Watford City McKenzie Co Farmer (Watford City ND)							
6.00	SPR1	5.65	33.90	0.00	Reclamation ... Safety		07/06/11
Williston Herald (Williston ND)							
6.00	SPR1	7.78	46.68	0.00	Reclamation ... Safety		07/03/11

Gross Advertising	1,978.68	Total Misc	0.00	Amount Paid	0.00
Agency Discount		Tax	0.00	Adjustments	0.00
Other Discount	0.00	Total Billed	1,978.68	Payment Date	
Service Charge	0.00	Unbilled	0.00	Balance Due	1,978.68

Your payment is due upon receipt. Thank you in advance for your prompt payment!

**NOTICE OF INTENT TO
AMEND ADMINISTRATIVE
RULES**

relating to
Reclamation and
Gas Pipeline Safety.

**Public Service
Commission**

will hold a public hearing to address
proposed changes to the N.D. Admin.
Code.

**Commission Hearing Rm.
12th Floor
State Capitol
Bismarck, ND
Tues., Aug. 9, 2011
10:00 a.m.**

A copy of the proposed rules may be
obtained by writing the Public Service
Commission, 600 E. Boulevard Ave.,
Dept. 408, Bismarck, ND 58505-0480
or by calling (701) 328-2400, toll free 1-
877-245-6685 or Relay North Dakota
TTY: 1-800-366-6888 or
NDPSC@ND.gov. This information is
also available to view on our web site at
www.psc.state.nd.us under "Formal
Actions/Case Search". Also, written
comments may be submitted to the
Public Service Commission at the above
address, until September 26, 2009. If you
plan to attend the public hearing and will
need special facilities or assistance
relating to a disability, please contact the
Public Service Commission by
telephone or by writing to the address
above at least 24 hours prior to the public
hearing.

Kevin Cramer, Commissioner
Tony Clark, Chairman
Brian P. Kalk, Commissioner

Attorneys At Law

P.O. Box 1260
109 - 5th St. S.W.
Watford City, ND
58854-1260

Located in The
Northern Plains
Building

REQUEST FOR ENGINEERING SERVICES

The County of McKenzie is currently seeking engineer-
ing firms for the design and construction management of
a shop building in Cartwright. One firm will be selected to
manage the project from design through final acceptance.
The County will select the firm based on technical capabili-
ties, experience, and qualifications. The McKenzie County
Engineer will evaluate proposals and make recommenda-
tions to the Board of County Commissioners. Inquiries
should be addressed to Michael Greer, McKenzie County
Engineer, at 701-444-2600.

Interested firms shall submit a written proposal summa-
rizing their qualifications as well as hourly rate information
to:

McKenzie County Engineer
PO Box 1221
Watford City, ND 58854

Proposals due by 5:00 p.m. on July 15, 2011.

Applicants claiming Veteran's preference must state so in a letter of application and at-
tach appropriate documentation. McKenzie County does not discriminate on the basis of
race, color, national origin, sex, religion, age or disability in the admission to its programs
or activities, including the employment process.

REQUEST FOR ENGINEERING SERVICES

The County of McKenzie is currently seeking engineer-
ing firms for the design and construction management of
two culvert projects. One firm will be selected to manage
the two projects from design through final acceptance. The
County will select the firm based on technical capabilities,
experience, and qualifications. The McKenzie County En-
gineer will evaluate proposals and make recommendations
to the Board of County Commissioners. Inquiries should
be addressed to Michael Greer, McKenzie County En-
gineer, at 701-444-2600.

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or activities, including the employment process.

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EDS!

7/6 Watford City



Public Service Commission
State of North Dakota

COMMISSIONERS

Kevin Cramer
Tony Clark
Brian P. Kalk

Executive Secretary
Darrell Nitschke

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
Web: www.nd.gov/psc
E-mail: ndpsc@nd.gov
Phone 701-328-2400
Toll Free 1-877-245-6685
Fax 701-328-2410
TDD 800-366-6888 or 711

30 June 2011

Mr. John Walstad
Code Revisor
North Dakota Legislative Council
State Capitol
600 East Boulevard, 2nd Floor
Bismarck, ND 58505-0360

Received in the office of the
Legislative Council this 30 day of June, 2011
By: ds

Re: Notice of Intent to Amend Administrative Rules
Case No. GS-11-79 and Case No. RC-11-236

Dear Mr. Walstad:

Enclosed please find copies of:

- Commission Motion proposing amendments, scheduling a hearing, issuing a notice of intent to amend rules and notice of hearing, and issuing an abbreviated notice
- Proposed rule changes on the following:
 - Section 69-09-03-02, 2011 Gas Pipeline Safety, Case No. GS-11-79
 - Section 69-05.2-12-04, Reclamation, Case No. RC-11-236
- Notice of Intent to Amend Administrative Rules and Notice of Public Hearing
- Abbreviated Notice of Intent to Amend Administrative Rules and Notice of Public Hearing

If you have any questions please do not hesitate to call. Thank you.

Best Regards,

Illona A. Jeffcoat-Sacco
General Counsel

enclosures

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-11-236

**Statement on Regulatory Analysis, Small Entity Analysis and Takings
Assessment**

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 amendment relates to letters of credit that are pledged as collateral, as well as the financial information and notices that banks issuing a letter of credit must provide to the Commission. An option is being 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. In addition, a change is being proposed that banks give the Commission notice of actions alleging insolvency or bankruptcy only to the extent allowed by state or federal banking regulations. It should also be noted that any mining and reclamation rules adopted by the Commission must be as effective as the counterpart federal rules that have issued by the federal Office of Surface Mining within the Department of the Interior.

Regulatory Analysis

N.D.C.C. § 28-32-08 requires an agency to prepare a regulatory analysis if the rule is expected to have an impact on the regulated community in excess of fifty thousand dollars. The law provides, in part:

2. The regulatory analysis must contain:
 - a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
 - b. A description of the probable impact, including economic impact, of the proposed rule;
 - c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and

- d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.

These proposed changes provide additional flexibility to permit applicants and their banks, so not additional costs are expected. If anything, the additional flexibility should result in costs on regulated industry being reduced. A regulatory analysis is not required since the proposed rules are not expected to have an impact on the regulated community in excess of fifty thousand dollars.

Small Entity Regulatory Analysis

N.D.C.C. § 28-32-08.1 requires that before adoption of any proposed rule, the adopting agency prepare a regulatory analysis in which the agency considers options to minimize adverse impact on small entities. The law provides, in part:

2. . . . The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:
 - a. Establishment of less stringent compliance or reporting requirements for small entities;
 - b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
 - c. Consolidation or simplification of compliance or reporting requirements for small entities;
 - d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
 - e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

The proposed rule changes do not impose any additional compliance or reporting requirements or performance standards on small entities.

Takings Assessment

N.D.C.C. § 28-32-09 requires an entity to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The law provides, in part:

1. . . . The agency's assessment must:

- a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
- b. Clearly and specifically identify the purpose of the proposed rule.
- c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
- d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
- e. Identify the source of payment within the agency's budget for any compensation that may be ordered.
- f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

Given that the proposed rules do not limit the use of private real property, a written assessment of the constitutional takings is not required.

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-11-236

**Small Entity Economic Impact Statement
October 17, 2011**

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 amendment relates to letters of credit that are pledged as collateral, as well as the financial information and notices that banks issuing a letter of credit must provide to the Commission. An option is being added to allow a bank to provide a certified copy of financial reports, or portions thereof, that are already required by a federal agency instead of a balance sheet that is certified by a certified public accountant. In addition, a change is being proposed that banks give the Commission notice of actions alleging insolvency or bankruptcy only to the extent allowed by state or federal banking regulations. It should also be noted that any mining and reclamation rules adopted by the Commission must be as effective as the counterpart federal rules that have issued by the federal Office of Surface Mining within the Department of the Interior.

Small Entity Economic Impact Statement

N.D.C.C. § 28-32-08.1(3) requires that before adoption of any proposed rule that may have an adverse impact on small entities, the adopting agency shall prepare an economic impact statement that includes consideration of:

- a. The small entities subject to the proposed rule;
- b. The administrative and other costs required for compliance with the proposed rule;
- c. The probable cost and benefit to private persons and consumers who are affected by the proposed rule;
- d. The probable effect of the proposed rule on state revenues;
and
- e. Any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.

The proposed rule changes in Case No. RC-11-236 will not have an adverse impact on small entities since no additional requirements are being imposed on them as stated in the Statement on Regulatory Analysis, Small Entity Analysis and Takings Assessment for this case.

MARILYN FOSS

- Attorney at Law -
Post Office Box 2216
Bismarck, ND 58502-2216

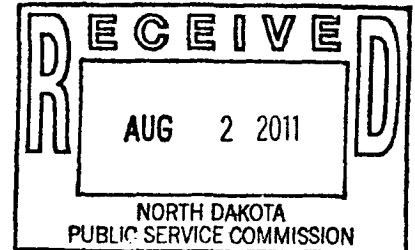
Phone: 701-355-4538
Fax: 701-355-4539

Email: foss@btinet.net
Cell: 701-471-3045

August 1, 2011

Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

RE: Case No RC-11-236



Gentlemen:

BNI Coal, Ltd. ("BNI") appreciates this opportunity to comment on the proposed rule changes to the collateral bond provisions of N.D.A.C. § 69-05.2-12-04. **BNI supports the proposed rule changes with clarification as described below and very much appreciates the attention that the PSC and its staff have given to improving the rule so that it more "user friendly" for BNI and other permittees.**

BNI has more than once attempted to take advantage of the current rule to obtain and post a bank issued letter of credit as a collateral bond to secure BNI's reclamation obligations, but has found no bank that would issue a letter of credit upon terms that would meet the requirements of the rule as it is currently written. Two insurmountable problems of "form over substance" emerged:

➤ §§ 69-05.2-12-04(d) currently requires an issuing bank to submit a CPA certified balance sheet to establish compliance with its ten percent credit limit. The problem with this is simply that state and federal banking laws do not require all banks to have "bank only", CPA "certified" or audited balance sheets. However, all banks do submit detailed, quarterly Reports of Condition and Income to their state and federal bank regulators. The reports are filed under penalty of perjury and include the bank's balance sheet showing the bank's stock, surplus capital and retained earnings in a schedule currently denominated as Schedule RC- Balance Sheet. **Allowing an issuing bank to establish its compliance with the PSC's credit limit by submitting Report of Condition and Income information is a positive change which BNI heartily endorses.** However, the full report with all of its schedules can be lengthy and not all schedules are public, although Schedule RC- Balance Sheet is. If balance sheet information is what the Commission needs, a bank should have the option of limiting its submission of Report of Condition and Income information to the balance sheet, recognizing that the full public schedules are available online. Furthermore, we believe minor clarifying language should be added to the rule to eliminate questions about the substance of the bank's certification. To meet both of these goals, we suggest the proposed language as it relates to the submission of the Reports of Condition and Income be revised to state, "or an excerpt from its most recent reports of condition and income as prescribed by the federal financial institutions examination council and filed by the bank with its primary federal regulator consisting at a minimum of a copy of the attestation page 1 and balance sheet schedule, together with a written certification by the bank that the copies are true and accurate and are from a report of condition and income that was filed with a stated federal bank regulatory agency on a stated date. A copy of the bank's most recent balance sheet or report of condition and income information must be provided with

11 RC-11-236 Filed: 8/2/2011 Pages: 2
Comments of proposed rule changes

BNI Coal, Ltd.

Marilyn Foss, Attorney

the letter of credit and updated balance sheets or report of condition and income information must be submitted annually to the commission within ninety days after the close of the bank's fiscal year.

➤ Banks have informed BNI Coal, Ltd. that the mandate in § 569--5.2-12-04(2)(f) for a bank to notify " the permittee and the commission of notices received or actions filed alleging the insolvency or bankruptcy of the bank or alleging violations of regulatory requirements that could result in suspension or revocation of the bank's charter or license to do business" conflicts with state and federal banking laws relating to the confidentiality of bank examinations. We understand federal and North Dakota state bank regulators have confirmed this to PSC staff. Because a bank may not comply with both the current rule and applicable bank laws and regulations, a bank that issues a letter of credit that conforms to the current rule places itself at risk for violating banking laws (something that itself can, technically speaking, jeopardize the bank's charter). In addition, occasionally, the regulatory examination process includes a discussion about whether a particular practice conforms to regulatory requirements. Many such discussions are concluded without a citation of violation or other regulatory consequence, even though the discussion may have been begun with an "allegation" of an apparent violation. **Substituting the word "citing" for "alleging" in the regulation and inserting the proviso that notice is required " to the extent allowed by state and federal banking laws and regulations" should resolve the issue for banks by removing a conflict between two sets of governing laws without interfering with the PSC's acknowledged need to be able to assess the status of the banks that are issuing the letters of credit.** As it happens, bank regulators do not close banks without first issuing some type of enforcement order, even as the vast majority of banks that are subject to an enforcement order successfully comply with it and see the enforcement order lifted. In any case, however, critical bank regulatory agency enforcement orders are generally public and, once issued, may be promptly disclosed by banks to the PSC. The proposed rule change (with the noted, slight revision) should allow the banks to issue a letter of credit that includes the disclosure obligation and also allow PSC to meaningfully evaluate the bank's status and whether to accept its letter of credit as a collateral bond.

BNI expects to attend the hearing on August 9 and to be available then or at the convenience of staff or the commission to address any questions there may be about these comments. Please direct any questions to me.

Again, BNI sincerely thanks the commission and staff for undertaking this rulemaking proceeding. We believe the adoption of the changes (revised as we suggest) will allow us to reduce our bond costs substantially to the ultimate benefit of North Dakota's consumers of electricity.

Sincerely Yours,



Marilyn Foss

Cc: Pat Clement via email transmission

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.

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-11-236

ORDER SUBMITTING RULES TO ATTORNEY GENERAL

October 26, 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, small entity regulatory analysis, and small entity economic impact statement.

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 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

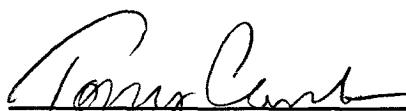
The Commission orders:

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.

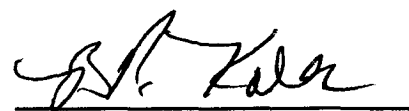
PUBLIC SERVICE COMMISSION



Kevin Cramer
Commissioner



Tony Clark
Chairman



Brian P. Kalk
Commissioner

PROPOSED RULE

69-05.2-12-04. Performance bond - Collateral bond. The guarantor of a collateral bond may be the permit applicant or a qualified third party.

1. Collateral bonds are subject to the following conditions:
 - a. All collateral must be kept in the commission's custody until authorized for release or replacement.
 - b. Collateral must be valued at market value.
 - c. Certificates of deposit must be assigned to the state, in writing, and upon the books of the issuer.
 - d. Except for certificates issued by the Bank of North Dakota, the commission will not accept an individual certificate in excess of one hundred thousand dollars, or the maximum amount insured by the federal deposit insurance corporation and the federal savings and loan insurance corporation, whichever is greater.
 - e. An issuer shall waive all rights of setoff or lien against the certificate.
 - f. The commission will accept only automatically renewable certificates of deposit.
 - g. The permit applicant shall deposit sufficient collateral to assure the commission will be able to liquidate the certificates prior to maturity, upon forfeiture, for the amount of the bond.
2. A collateral bond pledging a letter of credit may be approved by the commission subject to the following conditions:
 - a. The permit applicant has obtained prior commission approval for the bank issuing the letter of credit.
 - b. The commission may accept a letter of credit which is irrevocable for a term of at least one year if:

- (1) The letter of credit is automatically renewable for additional terms unless the bank gives at least ninety days prior written notice to the commission and the permittee of its intent to terminate the letter of credit at the end of the current term.
 - (2) The commission has the right to draw upon the letter of credit before the end of its term and convert it into a cash collateral bond if the permittee fails to replace the letter of credit with other acceptable bond within thirty days of the bank's notice to terminate the credit.
- c. The letter of credit must be payable to the commission in part or in full upon demand and receipt from the commission of a notice of forfeiture issued in accordance with sections 69-05.2-12-16 and 69-05.2-12-18 or demand for payment under paragraph 2 of subdivision b.
- d. The commission will not accept letters of credit from a bank for a permittee, on permits held by that permittee, in excess of ten percent of the bank's total equity (stock, surplus capital, and retained earnings) as shown on a balance sheet certified by a certified public accountant. Alternatively, the bank may provide an excerpt from its most recent report of condition and income as prescribed by the federal financial institutions examination council that is filed with its primary federal regulator. At a minimum, the excerpt must include copies of the attestation page and the balance sheet schedule from the report and a written certification by a bank officer that the copies are true and correct and identify the federal bank regulatory agency and date that the report was filed. A copy of the bank's most recent balance sheet or the excerpt from the report of condition and income must be provided with the letter of credit and, In addition, updated balance sheets that are certified by a bank officer as being true and correct must be submitted annually to the commission within ninety days after the close of the bank's fiscal year.
- e. A letter of credit is governed by:
- (1) The laws of the state of North Dakota.

- (2) The current version of the uniform customs and practices for documentary credits, published by the international chamber of commerce.
- f. Letters of credit shall provide that the bank, to the extent allowed by state and federal banking laws and regulations, will give prompt notice to the permittee and the commission of notices received or actions filed alleging the insolvency or bankruptcy of the bank or alleging violations of regulatory requirements that could result in suspension or revocation of the bank's charter or license to do business. In the event of actions which could result in suspension or revocation of the bank's charter or license, the commission has the right to draw upon the letter of credit before the end of its term and convert it into a cash collateral bond if the permittee fails to replace the letter of credit with a substitute bond within thirty days after receipt of such a notice from the commission. If a substitute bond is not filed and the commission is unable to draw on the letter of credit, the commission will suspend the permit and the operator shall cease surface coal mining activities and comply with section 69-05.2-13-11.
3. For a collateral bond the guarantor shall execute an indemnity agreement according to subsections 9 and 10 of section 69-05.2-12-01.
4. Persons with an interest in collateral posted as a bond, who desire notice of actions relating to the bond, shall request the notice in writing to the commission when collateral is offered.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1990; March 1, 2004;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16