

Agency Overview

00408 Public Service Commission

Date: 08/13/2012

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Agency Statutory Authority

ND Constitution Article V, Sections 2 and 5; Article XII, Section 13; North Dakota Century Code Chapters 19-01, 24-01, 24-09, 36-05, 38-14.1, 38-14.2, 38-18, 40-05, 40-33, 40-34, 51-05.1, 54-06, 54-44.8, 57-61; Title 49 (except Chapter 49-16), Title 60 (except Chapter 60-01) and Title 64.

Agency Description

The Public Service Commission is a constitutional agency with varying degrees of statutory authority over electric and gas utilities, telecommunication companies, energy generation plant and transmission line siting, railroads, grain elevators, auctioneers and auction clerks, weighing and measuring devices, pipeline safety and coal mine reclamation. The Commission is comprised of three Commissioners who are elected on a state-wide basis to staggered six year terms.

Agency Mission Statement

The Public Service Commission fulfills its statutory mandates by protecting the public interest and regulating utilities, mining companies, and licensees in a fair, efficient, responsive, and cooperative manner. Regulatory initiatives assure that:

- Utility customers receive reliable and safe service at reasonable and just rates.
- Mined coal lands are reclaimed to provide a safe and productive environment now and in the future.
- License and permit holders and operators of commercial weighing and measuring devices operate in a safe and fair manner.

Public Utilities Division

- Establish and maintain a fair, reasonable, safe, efficient and workable framework in which the transition from monopoly utility services to competitive utility services can evolve.
- Improve information flow to consumers and the public generally for the purpose of enhancing the public's understanding of the evolving industry, the Commission's role, and the consumers' rights and responsibilities.
- Continue to protect ND's environment by maintaining a high level of oversight of energy conversion and transmission facility siting and utility safety issues.

Testing & Safety Division

- Promote enhanced public safety of ND's gas and LPG intrastate distribution/transmission systems through compliance with federal/state gas pipeline safety laws and rules.
- Promote low compliance costs by maintaining industry education through interaction with consumers, commercial weighing and measuring device operators, and gas pipeline operators.
- Promote professionalism and accuracy in ND's Weights and Measures regulatory and service sectors and gas pipeline distribution and transmission sectors by providing a work environment favorable to ongoing professional education.
- Promote fairness in the marketplace by verifying the accuracy of commercial scales and meters used in ND.

Licensing Division

- Ensure that regulated entities comply with statutes and rules governing their operations.
- Ensure that the public receives fair and prompt service on matters involving jurisdictions handled by the Licensing Division.
- Regulate industry within a framework that minimizes negative economic impacts on regulated entities.

Reclamation Division

- Carry out the mine permitting, inspection and enforcement, and bond release activities in a manner that provides the required protection to the environment and property owners while being responsive to the needs of the mining industry.

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- Evaluate and adjust the regulatory program on an ongoing basis to achieve the optimum balance among environmental protection, least-cost industry operations, and landowner pursuit of agricultural activities.
- Explore the scientific, engineering and statistical underpinnings of the regulatory program and make every effort to see that improvements resulting from that exploration are made at both the state and federal level.
- Promote public awareness of the regulatory program through increased contact with relevant organizations and potentially affected landowners.
- Maintain maximum staff effectiveness by providing training and other opportunities for professional growth.

Abandoned Mine Lands Division

- Reclaim abandoned mine land sites found on the ND AML Inventory.
- Reclaim hazardous abandoned mine land sites not on the ND AML Inventory but discovered through exploratory drilling or public information.
- Reclaim emergency sites as the highest work priority. Develop emergency reaction plans that will reduce the time taken to eliminate the eminent hazard.

Legal Division

- Advise and counsel the Commission in all matters directly or indirectly affecting the Commission or Commission staff.
- Assist in the preparation and presentation of staff and Commission positions on matters of regulatory concern in Commission dockets and before state and federal agencies.
- Represent the Commission in all proceedings before state and federal courts.
- Oversee and coordinate the agency's legislative and rulemaking activities.
- Fulfill staff functions for various divisions as situations warrant and time allows.
- Regulate railroads as provided for by state law and represent ND's railroad shipping interests in federal proceedings and in direct negotiations with the rail carriers that serve the state.

Administrative Division/Executive Secretary

- Administer the agency's day-to-day activities including budgeting, accounting, human resources and agency administration, grant administration, and procurement.
- Provide accurate and usable financial information to commissioners and division directors.
- Provide necessary accounting and reporting to OMB, Legislative Council, ITD, federal government, utility industry, payroll department, etc.

Technology Division

- Provide an efficient and effective technology environment.
- Provide equipment necessary for the deployment of commission technology solutions.

Agency Performance Measures

Not Available.

Agency Major Accomplishments

1. The Commission processed 1,372 cases, 96% of all formal cases were process without the need for a formal hearing.
2. The Commission received and approved 41 interconnection agreements and 13 interconnection agreement amendments.
3. The Commission Gas Pipeline Safety Inspector conducted 172 inspections (120 standard inspections, 1 compliance follow-up, 24 design/testing and construction inspections). During the biennium, 19 violations were found resulting in the issuance of 9 compliance orders.
4. Weights and Measures Program monitored 21,185 devices, conducted 50 quality control inspections and investigated 29 complaints.
5. Licensing Division completed 393 grain warehouse inspections and 25 roving grain buyer inspections. They granted 44 requests to discontinue business and issued 52 new licenses. At the end of the biennium there were 290 grain warehouses and 111 facility based grain buyers. The Commission was involved in 6

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grain warehouse or grain buyer insolvencies during the biennium and is presently administrating 3 insolvencies. The Licensing Division issued 157 auctioneer licenses and 422 auction clerk licenses.

6. Reclamation Division conducted 1,310 routine mine inspections, 235 complete inspections covering all aspects of the mining and reclamation operations and 1075 partial inspections. There were 3 Notices of Violations and \$3,250 in civil penalties assessed. There were 14 bond releases applications approved and Commission terminated its jurisdiction on 3,877 acres. The Reclamation Division helped sponsor the "American Society for Mining and Reclamations 2011 Annual Meeting and Conference" in Bismarck, ND.
7. AML Division conducted major drilling and grouting projects in underground mine voids beneath residential areas and public roads near Williston, Beulah, Garrison, Wilton and Zap in order to stabilize and prevent mine collapse. There were 360 hazardous sinkholes filled in the western North Dakota caused by collapse underground mine sites.
8. During the 2009 Legislative Session House Bill 1342 amended the NDCC Section 49-11-22 giving the 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. During the 2009-2011 biennium the Commission heard three such requests involving ten railroad crossings. One request was withdrawn, 8 resulted in the Commission ordering audible warnings to continue, and 1 to cease the audible warning.
9. Since the 2007 enactment of N.D.C.C. section 49-03-06 authorizing service area agreements to encourage harmony and operational efficiency among electric providers, the Commission has or is processing 12 electric service area agreements, including one recent agreement between two cooperatives. As a result, there are now service area agreements filed for areas within and around the cities of Mandan, Kenmare, Bottineau, Williston, Garrison, Jamestown, Stanley, Wahpeton, Casselton, and Kindred.

Agency Future Critical Issues

Robust activity in the energy industry continues to spur increased siting applications and requests to determine the application of siting laws and rules. During the biennium, the Commission received siting applications for 17 pipelines, 3 gas processing plants, 7 wind farms, 4 electric transmission lines and 1 electric power plant. The Commission received 8 filings under the abbreviated siting process defined in North Dakota Century Code section 49-22-03 for construction of facilities wholly within the geographic area for which the utility had previously obtained a certificate or permit or on which a facility was constructed before April 9, 1975. The Commission also received formal requests for jurisdictional determination from Ashtabula Wind III, LLC and North Dakota Winds, LLC. For the first 4 months of the 2011-2013 biennium, the Commission has already received siting applications for 2 pipelines, 4 wind farms, 1 gas-fired electric power plant, and 1 electric transmission line.

Beginning in 2010 the U.S. Environmental Protection Agency (EPA) started issuing several rules that will impact the electric power industry. These regulations are designed to tighten controls on NO_x, ozone, SO₂, particulates, mercury, cooling water intake and discharge, and fly ash. These EPA rules will require some existing coal units to either be retrofit with environmental control equipment or retired. There has also been progress made by the EPA towards regulating greenhouse gases, for instance CO₂. The total magnitude of the effects on reliability and costs from these rules has yet to be completely analyzed.

Montana-Dakota Utilities Co. and Otter Tail Power Company filed an advance determination of prudence case, PU-11-163 and PU-11-165 respectively, with the Commission in May 2011 to install an air quality control system (AQCS) on their jointly owned Big Stone coal plant to comply with EPA's Regional Haze Program. The Regional Haze Program is in place to improve visibility in specific "Class I" areas, in particular to the Big Stone plant are the Badlands National Park, Theodore Roosevelt National Park, Isle Royale National Park, Voyageurs National Park, and Boundary Waters Canoe Area. The estimated capital cost for the AQCS is approximately \$489 million with both MDU and Otter Tail North Dakota customers seeing an approximately 16 percent increase in rates as a result.

Utility companies and the Commission are tasked with determining the prudence of resource additions prior to construction and currently all resource options are surrounded with large uncertainties. Coal faces the above rules and the potential for greenhouse gas regulation. Natural gas faces fracking concerns, historically volatile fuel prices, and the potential for greenhouse gas regulation. Nuclear faces unanswered waste storage, permitting concerns, and high cost. Renewable resources face their intermittent nature and high cost. With hundreds of millions of ratepayer dollars at stake, making an advance determination of prudence is a major challenge.

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Nationally, and within North Dakota, Gas Pipeline Safety has become an increasingly important issue. Several high-profile incidents have highlighted it as a concern, and the industry and state and federal regulators are all interested in finding ways to ensure we have the safest gas pipeline system possible. In North Dakota, the Commission has jurisdiction, in cooperation with the US Department of Transportation, for intrastate gas transmission and distribution. Since additional pipeline safety regulations have been and will continue to be promulgated at the federal level, the Commission will likely determine that more state resources are necessary. The gas safety program is funded through a federal grant with a state cost share requirement. Also, the number of One Call violation complaints have increased since 2010 as North Dakota continues to experience the oil and gas energy boom. Continued One Call violation activity has increased the Commission's workload. Grain warehouse and grain buyer insolvencies caused by volatile market conditions in the grain industry prompted discussions within the agriculture community on bond and credit-sale contract indemnity fund protections and whether the current protections offered should be changed. The Commission continues to provide education and awareness on the importance of conducting business with only licensed and bonded grain buyers and the protections available to cash claimants when a licensee becomes insolvent. In the most recent insolvencies, the bonds are significantly inadequate and the processes are extremely complicated and time consuming. Under the current scheme, it is unlikely the problem will get better and it cannot get solved without additional budgeting.

An ongoing concern is the amount of federal funding that the commission will receive to cover the federal share of the coal regulatory program. OSM currently covers 64% of the program and the other 36% is State general funds. As part of OSM budget requests for the past two years, the administration has proposed reducing the amount of federal dollars that states receive nationwide for their coal regulatory programs. While the proposed reductions have not been enacted by Congress, the adequacy of future federal funding continues to be a concern due to the large federal deficit.

The Reclamation Division has seen a significant increase in the permitting workload due to applications to permit additional areas for surface coal mining activities and this will continue into the 2011-13 biennium. Staff has conducted technical reviews of permit application for two new mines, the Otter Creek and South Heart Mines. The applications propose to permit 5,490 acres and 4,581 acres, respectively. In late July 2011, the commission issued a significant revision for a permit at the Falkirk Mine which added nearly 17,000 acres to that permit. BNI Coal, Ltd. also plans to submit an application to permit approximately 9,000 acres for a new mine area at the Center Mine. The review of these applications has greatly increased that amount of time that staff spends on permitting matters. Also, assuming permits will be issued for two new mines, the inspection workload will increase once mining operations begin at these mines.

Staff workload for the review of final bond release applications will increase as more applications are filed for reclaimed lands at the four large active mines and for reclaimed lands at the former Glenharold and Gascoyne Mines. These reviews must ensure all reclamation requirements have been met since commission jurisdiction over the reclaimed lands ends once final bond release is granted.

In addressing AML concerns, staff will need to design and manage larger and additional construction projects each year since federal funding will increase to approximately four million dollars per year in 2012 and 2013 due to the federal legislation that re-authorized and extends the AML program. As work at the larger AML sites is completed, the number of projects will certainly increase and project managers will need to design and manage more projects.

Work will continue on the development of a GIS containing abandoned mine information and to post detailed mine information on the commission's website.

The most significant case involved the Buechler/Velva project south of Sawyer where the contractor only completed about one-third of work before abandoning it. The AML Division made a claim on the contractor's performance bond and the bonding company arranged for a completion contractor to finish the project during the 2011 construction season. While the construction work was being completed, the original contractor filed a complaint against the Commission in September 2011 with his intent to sue for damages over the terms in the original contract.