

## Memorandum

To: Commissioners Kalk, Christmann, and Fedorchak  
Illona Jeffcoat-Sacco and Ryan Norrell  
Patrick Fahn

From: Austin Lafferty, Legal Intern

Date: July 23, 2013

Subject: Case No. PU-13-683 – Siting – Letter of Intent – Repeal Rulemaking  
July 30<sup>th</sup>, 2013 Commission Meeting Item C-BK4

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Under N.D.C.C. § 28-32-18.1, the PSC may repeal a rule in the N.D. Admin. Code without following the traditional process in N.D.C.C. Chapter 28-32, by utilizing the following procedure:

- 1) The PSC must initiate the request to the Administrative Rules Committee for consideration of the repeal;
- 2) The PSC must provide notice to the regulated community, in a manner reasonably calculated to provide notice to those persons interested in the rule, of the time and place the Administrative Rules Committee will consider the request for repeal of the rule.
- 3) The PSC and Administrative Rules Committee agree the rule repeal eliminates a provision that is obsolete or no longer in compliance with law and that no detriment would result to the substantive rights of the regulated community for the repeal.

The Commission's existing siting rules include N.D. Admin. Code Chapter 69-06-03 regarding letters of intent. The 2013 Legislature repealed the letter of intent law (N.D.C.C. 49-22-07.1) in House Bill 1147. Consequently, there is no longer any authority or need for N.D. Admin. Code Chapter 69-06-03.

The PSC has already begun the process outlined above to repeal the rule by initiating the request on July 18, 2013, through a letter from Illona Jeffcoat-Sacco to John Walstad, Code Revisor, North Dakota Legislative Council. Mr. Walstad responded noting that he will include the PSC's request on the agenda for the September 12, 2013 meeting of the Administrative Rules Committee.

The next step of the process is for the PSC to provide notice to the entities jurisdictional to the siting act and other entities likely to be interested in siting applications, the community impacted by the rule. N.D.C.C. § 28-31-18.1 requires that the PSC provide notice in a manner reasonably calculated to provide notice to those persons interested in the rule, which I believe would be best done by sending the notice to the contacts in the siting e-mail group, the sponsors of HB 1147, and any others that the Commission or staff feel should receive it. The notice need not be published.

This matter has been placed on the regular Consent Agenda for the Commission's July 30, 2013 meeting to issue the notice. A Notice of Meeting on Repeal of Obsolete Rule, as well as a Motion, are attached.