

Agency Overview

00408 Public Service Commission

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Agency Description

The Public Service Commission (PSC) is a constitutional agency with varying degrees of statutory authority over electric and gas utilities, telecommunication companies, energy conversion facilities, transmission line and pipeline siting, railroads, grain elevators, auctioneers and auction clerks, weighing and measuring devices, pipeline safety, coal mine reclamation, and eliminating public hazards from abandoned mine lands. The Commission is comprised of three Commissioners who are elected on a statewide basis to staggered six-year terms. The Commission had 45 authorized full-time employees throughout the 17-19 biennium and 2 to 3 temporary seasonal construction inspectors.

Agency Future Critical Issues

Robust activity to improve and increase energy capacity continues to spur siting applications and requests to determine the application of siting laws and rules. This is evident in the large number of siting applications during the biennium for pipelines, gas processing facilities, transmission lines, and wind farms. During the 2015-17 biennium the Commission received siting applications for 24 pipelines, one gas processing plants, six wind farms and three electric transmission lines. The Commission sited \$490 million worth of energy-related projects in 2017. For calendar year 2017 and the first seven months of 2018, the Commission held 44 public hearings throughout North Dakota to obtain public input on utility issues and new energy-related projects.

The Commission and the utilities we regulate are tasked with determining the prudence of resource additions prior to construction and currently all resource options are surrounded with large uncertainties. Coal faces strict 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, but extremely important and valuable to the utilities the Commission regulates.

The Commission continues to participate as a member of the organization of MISO States, Inc and Southwest Power Pool (SPP). MISO began operating a regional energy market in 2005 that continues to serve the loads of all MISO participants, including the three jurisdictional investor-owned electric utilities providing service in North Dakota. The SPP operates a similar regional energy market. Both provide a centralized generating unit dispatch procedure that co-optimizes the energy and ancillary services markets to ensure that the lowest cost generators are always being used throughout the regions regardless of utility control area boundaries. The markets establish Locational Marginal Prices (LMP's) for electric energy at local pricing nodes. All energy must be provided through the markets. Producers are paid the LMP for their energy at the time and node where it enters the market. The load pays the LMP at the time and node where the energy is delivered. Participation in these regional groups is becoming more important as decisions they make effect utilities the Commission regulates. Becoming involved and keeping up with this complex system takes increased staff time and specific staff expertise. In order to ensure that North Dakota's interests are represented in decisions that are made by the MISO and SPP, the challenge will be in finding resources to assign to the task.

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

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Dakota, the Commission has jurisdiction, in cooperation with the US Department of Transportation, for pipeline safety concerning intrastate gas transmission and distribution. The gas safety program is funded through a federal grant with a state cost share requirement.

The number of One Call violation complaints has increased since 2010 as North Dakota continues to experience the oil and gas energy development. During the 2015-17 biennium, 39 One-Call complaints were filed with the Commission. Continued One Call violation activity has increased the Commission's workload for its pipeline safety inspectors and its public utility analysts.

An ongoing concern is the amount of federal funding that the Commission will receive to cover the federal share of the coal regulatory program. The federal Office of Surface Mining (OSM) currently covers 64 percent of the program costs and the other 36 percent is state general funds. As part of OSM budget requests for the past several 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.

Leasing and permitting of federal coal have become much more time consuming and uncertain processes. Approximately 15 percent of the permitted acreage in North Dakota contains federal coal. The mining companies must first obtain the federal coal lease from the Bureau of Land Management and once they obtain the coal lease, federal mine plan approval must be obtained from OSM prior to actually mining the federal coal. Both the leasing and mine plan approval actions are subject to National Environmental Policy Act (NEPA) analysis and the processes are somewhat duplicative. Obtaining federal mine plan approval for some previously leased federal coal tracts at the Freedom Mine during the 2015-2017 biennium became a major challenge. Mine plan approval was finally obtained in December 2016, but only after North Dakota's congressional delegation became involved. Mining companies have indicated that if federal coal leases and mine plan approval cannot be obtained in a more timely manner, certain federal coal tracts will be bypassed (not mined) or mining of the federal coal will be delayed resulting in increased production costs.

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

Challenges facing the Abandoned Mine Lands (AML) Division include 1) the collection of the federal reclamation fee that funds the program is scheduled to end in late 2021. Unless re-authorization of the fee is enacted by Congress, it is expected that over \$20.0 million of reclamation work will not be completed; 2) as work on the larger AML sites is completed, the number of smaller projects will increase and project managers will need to design and manage more projects.

Agency Major Accomplishments

For the 2015-17 biennium:

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1. Processed 1,396 formal cases to include industry filings, complaint proceedings, and rule making. Ninety-six percent of all formal cases were processed without the need for a formal hearing.
2. Received and processed more than 1,200 complaints and inquiries. The majority involved customers needing help with gas/electric utilities, telecommunications, and those submitting public comments related to siting applications.
3. Continued to receive high marks on federal review of the coal regulatory and abandoned mine lands programs.
4. Approved funding for and implemented a state-run rail safety pilot program intended to supplement federal oversight of rail safety.
5. Increased third-party inspection program to improve oversight & reclamation of energy transmission and conversion facility construction projects.
6. For calendar year 2017 and the first seven months of 2018, the Commission held 44 public hearings throughout North Dakota to obtain public input on utility issues and new energy-related projects.
7. Instituted online licensing for grain, auctioneer and auction clerk licenses

Agency Mission Statement

The mission statement of the Public Service Commission is to fulfill its statutory mandates by protecting the public interest and regulating utilities, mining companies, weights and measures devices, railroad safety 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.
- Railroad safety is enhanced and maintained through inspection and compliance programs.

Agency Performance Measures

See Program Narrative

Agency Statutory Authority

ND Constitution Article V; North Dakota Century Code Chapters, 24-01, 24-09, 28-32, 38-14.1, 38-14.2, 38-18, 40-33, 40-34, 51-05.1, 54-06, 54-44.8, 57-61; 64-02, and 64-04, Titles 49 (except Chapter 49-16) and 60 (except Chapter 60-01).