

**PUBLIC SERVICE COMMISSION**  
**Reclamation Division**  
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**Memorandum**

**TO:** Commissioners Fedorchak, Christmann and Haugen-Hoffart  
Steve Kahl  
Jack Schuh

**FROM:** <sup>ZAB</sup> Zanna Brinkman, Reclamation Division

**DATE:** November 30, 2022

**SUBJECT:** Submittal of the rule changes in Case No. RC-21-329 resulting from SB 2317 to OSM as State Program Amendment No. XLII (42)

On April 20<sup>th</sup> we received a favorable legal opinion from the Attorney General on the rule changes proposed in Case No. RC-21-329. Before the Commission can adopt these changes, we also need to receive the Office of Surface Mining's approval of the rule changes by the State Program Amendment process. The necessary documents have been prepared for a program amendment that includes the reclamation law changes that were made by Senate Bill No. 2317 during the 67th Legislative Assembly and proposed rule changes to North Dakota Administrative Code (NDAC) Article 69-5.2 for surface coal mining and reclamation operations. I respectfully recommend the Commission submit the law and proposed rule changes to OSM as State Program Amendment No. XLII (42).

Senate Bill No. 2317 created and enacted Chapter 15-72 of the North Dakota Century Code that establishes a coal mine reclamation trust utilizing private assets pledged as collateral to fulfill the performance bond obligations under NDCC 38-14.1-16 and NDAC 69-05.2-12. This amendment adds a perfected lien or security interest in real property to the definition of collateral bond in NDAC 69-05.2-01-02 and adds the conditions that must be met for real property pledged as a collateral bond to NDAC 69-05.2-12-04.

Surface mining and reclamation rule changes were proposed by the Public Service Commission in Case No. RC-21-329. The Commission issued the notice of intent to amend administrative rules and the public hearing notice on November 17, 2021. The public hearing for the rule changes was held on January 4, 2022. No one opposed the proposed rule changes, and they were later sent to North Dakota's Attorney General for a legal review. The Commission received the Attorney General's opinion approving the rule changes proposed in Case No. RC-21-329 on April 20, 2022.

North Dakota State Program Amendment No. XLII (42) includes the rule changes proposed in Case No. RC-21-329, Senate Bill No. 2317, a side-by-side comparison of the state rules to the counterpart federal rules, and a copy of the Attorney General's opinion on the legality of the rule changes.

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Attached is a motion for the November 30<sup>th</sup> Commission meeting to submit the program amendment to OSM and the transmittal letter to OSM that should be signed by all three Commissioners.

Attachments

Program Amendments\Amend XLII (42)\Memo\_OSM\_Amend42\_11-30-22