

Testimony of the North Dakota Public Service Commission

Brian P. Kalk, Chairman

Presented Before the Interim Legislative Energy Development and
Transmission Committee

Sen. Rich Wardner, Chairman

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Chairman Wardner and members of the Interim Committee, I am Brian P. Kalk, Chairman of the North Dakota Public Service Commission (PSC). Thank you for your invitation to be with you today. It is my pleasure to be able to deliver an update of our recent activities and to give you a broad overview of what is happening in the energy sector in North Dakota from the perspective of a regulatory agency that oversees a large portion of its development.

Here is a brief update of some of the key items and projects completed or underway.

- On June 2, 2014 the Federal Environmental Protection Agency issued their proposed rules on existing source guidelines for limiting Carbon Dioxide. The final rules will not be issued until June 2015. There is **NO** Guarantee that the final rules will mirror the proposed rules.
- The PSC will file our comments to the EPA (October 16, 2014) and continue to support the efforts of Mr. Glatt and the Health Department as they develop the North Dakota State Implementation Plan.
- The proposed rules are complex and substantially different from existing EPA regulations limiting criteria air pollutants. Litigation is a certainty but *my concern is the impact to the reliability of the electric power grid.*
- The Commission has set up meetings with our regulated utilities to discuss the impacts to reliability and consumers.
- Montana-Dakota Utilities Co. has been issued a certificate of site compatibility and construction is being completed on its 88 megawatt gas turbine electric generators costing approximately \$56.6 million and located near Heskett Station in Mandan.
- Basin Electric Power Cooperative, Inc. has been issued a certificate of site compatibility and construction is complete on two 45 megawatt gas turbine electric generators costing approximately \$102 million, located at its Pioneer Generating Station northwest of Williston.

- Basin Electric Power Cooperative, Inc. has been issued a certificate of site compatibility and construction is underway on two 45 megawatt gas turbine electric generators costing approximately \$115 million, located at its Lonesome Creek Generating Station west of Watford City.
- Two cases related to 1 new gas processing plants and 1 expansion to an existing gas processing plant where approved. 1 additional natural gas case is scheduled to be voted on at our Commission meet later this week. These investments totaled \$283 million. The companies involved are ONEOK Energy and Whiting Oil.
- Since 2010, the Commission has approved an increase of 530 million cubic feet per day of natural gas processing facilities. The pending case for later this week has the nameplate capacity of 200 million cubic feet per day.
- Sixty-eight pipeline cases have been docketed by the Commission since 2005. These cases involve oil, gas, natural gas and CO2. The Commission has taken action on 49 of these cases, 14 of the cases required no Commission action under the siting exclusion law. The remaining 5 cases are pending. The project investment related to the 49 cases acted on by the Commission is \$4.2 billion. The project investment related to the 5 pending cases is \$90 million.
- Recently, the Commission issued a siting permit for the North Dakota Pipeline Company LLC (formerly Enbridge) Sandpiper Pipeline project. The new crude oil pipeline is approximately 300 miles long in North Dakota beginning near Tioga and extending east across the state exiting North Dakota just south of Grand Forks. Total cost of the North Dakota portion of the project is estimated to be \$1.3 billion.
- 17.2 miles of natural gas gathering pipeline are now subject to the Commission's natural gas pipeline safety jurisdiction. *This is a significant development.* These gathering lines are jurisdictional due to the "encroachment" of public facilities being within 660 feet of a line.
- From Spring 2012 to Spring 2013, jurisdictional natural gas pipelines have increased by the following; 134 miles of gas distribution piping and 3532 individual gas distribution services. To add perspective to these numbers that is an increase of 4.2% for distribution piping and 2.4% for individual natural gas services. I would anticipate the number of jurisdictional natural gas pipelines to continue to increase for many years to come.
- I would like to thank the legislature for their approval of our second natural gas inspector approved the last legislative session. Following your legislative approval we immediately advertised and hired the inspector. He is continuing

to complete the required 36 month training while conducting inspections as he becomes certified.

- Since 2005, thirty electric transmission line cases have been docketed by the Commission. The Commission has taken action on 28 of these cases. Two remaining cases are pending. The project investment related to the 28 cases acted on by the Commission is approximately \$990 million.
- Included in the transmission lines that have been sited are the Minnkota 345kV line from Center to Grand Forks and the NSP CapX 2020 line from Monticello to Fargo. Both of these transmission lines are currently under construction.
- Basin Electric Power Cooperative has recently been issued a corridor certificate and route permit for its proposed 345 kV Transmission line from Antelope Valley Station at Beulah to Tioga. The project is now waiting for federal approvals under the National Energy Policies Act with hopes of beginning construction yet this summer.
- The Commission issued certificates of public convenience and necessity to MDU and Otter Tail for the joint ownership and construction of the North Dakota portion of a 345 kV transmission line from Ellendale to Big Stone, South Dakota. Hearings on the siting application have been held in both North Dakota and South Dakota with decisions and site permits pending at this time. The North Dakota portion is scheduled to be voted on at our Commission meeting later this week.
- Twenty-nine wind farm cases have been docketed by the Commission. The Commission has taken action on 25 of these cases. The project investment related to the 25 cases acted on by the Commission is \$5.2 billion. The investments related to the 4 pending wind farm cases are \$5.0 billion. I would like to note that the Commission received “letters of intent” in the 4 pending cases in 2008 and we have not received applications from the companies.
- Recently, Certificates of Site Compatibility have been issued and construction is underway or expected to begin soon on 814.5 MWs of new wind generation:
 - 150 MW Border Winds project, Rollette and Towner Counties
 - 200.5 MW Courtenay Wind Farm in Stutsman County
 - 110 MW Sunflower Wind Project in Stark and Morton Counties
 - 150 MW Thunder Spirit Wind Project in Adams County
 - 204 MW Bison 4 Wind Project in Oliver, Morton & Mercer Counties
- With the addition of these new projects, the total development in service or under construction in the Oliver county area will be nearly 600 MW and the

total development in North Dakota will be 2486.7 MW of nameplate wind generating capacity.

- The Commission recently issued a new mining permit covering 8,360 acres at BNI Coal's Center Mine in Oliver County. Much of the mine's coal production is expected to come from this permit area over the next 25 years. Also at this time the Commission has pending applications that propose to permit over 18,000 acres for three new surface coal mines. One of these applications is for the Coyote Creek Mine in Mercer County that will begin coal deliveries to the Coyote Power Station south of Beulah in the spring of 2016. The other two applications are for the proposed Otter Creek Mine in Oliver County and the South Heart Mine in Stark County. However, actual mine development at these locations is very uncertain at this time.
- The Commission has four final bond release applications totaling 875 acres under review. Once final bond release is approved, the Commission's jurisdiction terminates over the lands that have been mined and reclaimed.
- The Commission is reviewing six final bond release applications that total 1,100 acres for terminating its jurisdiction over lands that have been mined and successfully reclaimed. This year the Commission has approved another final bond release application for 134 acres.

Since this recent energy boom began in 2005, the Commission has completed cases involving around \$12 billion in investments in North Dakota, and there are is another \$5.3 billion in proposed projects in various stages of permitting.

Historically the Commission has only been able to process this caseload without adding significant staff because of forward looking changes the legislature approved several sessions ago. Project developers' siting fees are available to process these cases, and to hire outside consultants and experts. Last session we identified two critical positions, I want to thank the legislature for the additional Gas Pipeline Inspector and Public Utility Analyst that were authorized last session. I am pleased to report both positions have been hired. However, we may be looking for yet another Gas Pipeline Inspector given the continued growth in jurisdictional gas pipelines.

In my remaining time, I would like to briefly address a few additional issues that maybe of interest to the Committee.

The Commission, with the help of stakeholders, continues to increase the awareness of "Call Before You Dig" and the potential penalties for not calling 811. Thanks to your help the maximum fine for a violation was increased from five thousand dollars to twenty five thousand dollars.

Since 2011 the North Dakota Public Service Commission has received 58 Damage Prevention Enforcement cases which have been initiated by third party complaints. The fines range from \$500 to \$5000. Protecting our underground infrastructure continues to be the number one goal of the program.

When there is a violation of One Call law the Commission will assess a penalty not to exceed twenty five thousand dollars, provided by ND Century Code section 49-07-01.1, and takes into consideration a number of factors including the nature, circumstances and severity of the complaint, the respondent's history of prior violations or complaints, the respondent's ability to pay, and any good faith effort by the respondent in attempting to achieve compliance.

It should be noted that an additional provision may be requested to revoke the business license of excavators that continue to violate "Call Before You Dig" when monetary fines do not suffice.

Transmission Development

The state of North Dakota, through the participation of the PSC and others, continues to be involved with regional transmission planning efforts. While our state has seen tremendous electricity generation development in recent years, continued and even greater investments will be dependent on additional transmission assets being constructed throughout the region, and indeed, the entire Eastern Interconnection. Within our local Midcontinent ISO region (the MISO independently operates the regional transmission grid). Perhaps most noteworthy are recently approved proposals that provide for a portfolio of new MISO transmission projects (multi-value project or "MVP's that could expand the available transmission assets that serve both reliability and generation needs within the Midwest. The Ellendale to Big Stone 345 kV transmission line is an MVP. In addition, there are ongoing efforts amongst the 40 states in the Eastern Interconnect to plan for transmission on a forward-looking basis (Andrea Stomberg, PSC staff member Jerry Lein, and myself are North Dakota's representatives on this "Eastern Interconnection States Planning Council"). Finally, the Federal Energy Regulatory Commission (FERC) has been actively promoting future grid planning – especially in regards to supporting ways of meeting individual states' renewable portfolio standards – through such things as its recent Orders 890 and 1000, which seek to compel greater regional and interregional transmission planning.

Also of interest, Basin Electric has begun the process of joining the Southwest Power Pool (SPP), which will create a RTO seem between MISO and SPP with implications for all regional electric suppliers.

Gas Pipeline Safety

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 U.S. Department of Transportation, for intrastate gas transmission and distribution. In the last legislative session, the Commission requested additional natural gas pipeline safety resources and was provided a second pipeline safety inspector position. The inspector position has been filled. The Commission is considering a legislative request to add a pipeline safety program and associated resources for intrastate hazardous liquids transmission lines. A liquids pipeline safety program would also be in cooperation with the U.S. Department of Transportation. In the future, additional federal regulations may be promulgated, and if so, we hope that the federal government will finally increase state cost reimbursement to a level of 80% as provided in federal law (states have traditionally been shortchanged this amount). If additional resources are needed, we will keep the Committee apprised, and of course, would welcome any input or suggestions you have in this regard.

Coal Mine Reclamation

The Commission continues to be concerned with proposed changes to the coal regulatory program by the federal Office of Surface Mining (OSM). Most of these changes appear to have the goal of making it more difficult and expensive to mine coal, as opposed to correcting any identified problems. For example, OSM continues to work on a new nationwide rule to protect streams that may be impacted by coal mining. While the primary purpose of the proposed rule relates to mountaintop mining and valley fill issues in Appalachia, it will unnecessarily add new requirements for coal mining in all areas of the country. Added baseline data requirements for streams and more comprehensive water monitoring throughout the mining and reclamation process will add to the cost of mining. Also, as part of OSM's annual budget requests for the past several years, the Department of the Interior has proposed cutting federal funding for the state regulatory programs and to require states to increase their own taxes on coal to fund the federal share of these programs. As an alternative to states increasing industry taxes or fees, OSM plans to issue a new rule to assess fees to the coal industry that would be returned to the states to cover all or part of the federal share of the regulatory program costs. However, the proposed cuts in federal funding for state programs have not been allowed by Congress to date. It appears that OSM is trying to do through regulation what has not been accomplished through legislation. The new regulations being considered would result in increases to the cost of coal. The Commission notes that these are concerns that are shared by a number of other states and we continue to express these concerns via a number of mechanisms, including our participation in the Interstate Mining Compact Commission

Utility Rate Increases

The Commission is seeing an increase in the frequency of rate increases through traditional rate increase applications as well as rider surcharges for environmental upgrades required by the federal government, new or upgraded transmission lines and new generation. For instance, both Montana-Dakota Utilities Co. and Otter Tail

Power Company have riders in place to recover costs associated with the nearly \$400 million environmental upgrades currently being installed at their Big Stone Station in South Dakota. Each of the three investor-owned utilities operating in North Dakota have transmission riders to pass through the cost of new transmission projects as well as transmission refurbishments and upgrades. Otter Tail has a rider to cover the wind investments it has made in North Dakota and Montana-Dakota has a rider for its new gas turbine in Mandan.

In the last year, the commission granted two rate increases through the more traditional approach of a general rate increase proceeding. The two cases were as different as night and day. On September 18, 2013, Montana-Dakota filed for a 6% rate increase or about \$7 million more in revenues per year. In a little over a month, the commission's staff reached a settlement agreement for a \$4.25 million rate increase. After reviewing the record, the commission agreed with the settlement agreement making it perhaps the most efficient rate increase process ever. The rate increase amount was agreed to rather quickly because of increased investment needs in the western part of the state. The case was very straight-forward and we handled the matter quickly and efficiently.

On the other hand, on December 18, 2012, Northern States Power Company filed for a rate increase of \$16.9 million or an increase of 9.25% following a nearly 10% increase ordered on February 29, 2012. After several days of technical hearings and multiple rounds of testimony; a couple of Public Input sessions; tons of late filed exhibits and many commission work sessions, the Commission ordered on February 26, 2014 in what has been one of the most difficult and protracted rate case proceedings I have been involved in. That said, the extra work has set the stage for better regulation in the future. NSP operates a multi-state utility company. As such, generation costs of the entire integrated system are allocated to the various states served. In this proceeding, the commission staff identified several generation facilities in Minnesota that appear to be more about economic development in Minnesota than least cost energy planning. A framework has been developed to take another look at all of these facilities and restack the generation portfolio serving North Dakota. We are fine with Minnesota constructing solar generation in the northern clime and building small Community Based Energy Development generation facilities throughout its state but to the extent such facilities do not reflect least cost planning, Minnesota should pay for their own costs. The commission has also been concerned about the lack of generation in Eastern North Dakota for sometime. The addition of the CAPX 345kV line into Fargo will alleviate some of that concern but it does not replace the need for local generation. In its order, the Commission accepted NSP's commitment to build up to 400 MW of thermal generation resources in North Dakota by 2036. Yes, 2036 is a ways off but not as much as you think in terms of planning for future generation. Our companies are already planning out to the 2020-2025 timeframe. This case took a long time to process but the extra work will pay dividends in the years to come.

Territorial Integrity Act

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 18 electric service area agreements, including recent agreements between cooperatives. As a result, there are now service area agreements filed for areas within and around the cities of Watford City, Valley City, Dickinson, Bismarck, Mandan, Kenmare, Bottineau, Williston, Garrison, Jamestown, Stanley, Wahpeton, Casselton, and Kindred as well as areas in Cass, Divide, McLean, Mountrail, and Richland Counties.

Mr. Chairman and committee members that ends my testimony. I would be happy to answer any questions you may have.