TESTIMONY

Presented by: **Illona A. Jeffcoat-Sacco**
General Counsel
Public Service Commission

Before: **Administrative Rules Committee**
The Honorable Bill Devlin, Chairman

RE:

N.D. Admin. Code Chapter 69-05.2-10
Surface Coal Mining & Reclamation Operations PSC Case No. RC-12-166

N. D. Admin. Code Sections 69-09-03-01 and 69-09-03-02
Pipeline Safety PSC Case No. GS-14-761

N.D. Admin. Code Article 69-02
Practice and Procedure PSC Case No. AD-14-762

N. D. Admin. Code Sections 69-07-02-02 and 69-07-02-02.1
Grain Warehouse and Grain Buyer Bonds PSC Case No. GE-14-763

Date: **March 6, 2015**

Mr. Chairman and committee members, my name is Illona Jeffcoat-Sacco. I am General Counsel for the North Dakota Public Service Commission. The Commission asked me to provide this testimony today concerning rules recently promulgated by the Public Service Commission.

Before I address your questions, I want to make two specific requests of the Committee, and I thank you in advance for your consideration of these requests.

The first is for a delayed effective date for the revised Grain Warehouse and Grain Buyer bonding rules in Chapter 69-07-02. If the effective date of the new rules is 1 July rather than 1 April, the effective date of the new bonding requirements will more closely match our annual licensing period. For this reason, the Commission respectfully asks for a delayed effective date.

The second is to request a correction to a column title in section 69-07-02-02(1)(a). As written, one cannot determine the correct bond amount for licensees licensed more than six years but less than seven years. This was a simple oversight on our part as we were writing the rules and no one thought of it

until a few days ago. If the column titled ≤6 years is changed to <7 years, the error will be corrected.

Thank you again for your consideration and I apologize for any inconvenience this may cause.

Our responses to your questions follow. In each case, the question is restated prior to our response.

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.

Ans: No

2. Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.

N.D. Admin. Code Chapter 69-05.2-10
Surface Coal Mining & Reclamation Operations PSC Case No. RC-12-166

Ans: Yes

Mining and reclamation rules adopted by the Commission must be as effective as counterpart regulations adopted by the Office of Surface Mining Reclamation and Enforcement (OSM) within the Department of the Interior. North Dakota's reclamation law is based on the federal Surface Mining Control and Reclamation Act of 1977. The mining and reclamation rule changes in this rulemaking proceeding were required by OSM.

N. D. Admin. Code Sections 69-09-03-01 and 69-09-03-02
Pipeline Safety PSC Case No. GS-14-761

Ans: Yes

The purpose of this rulemaking is to adopt, by reference in state administrative rule, the most recent amendments to pipeline safety regulations adopted by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA). For gas pipeline safety, this rule change adopts amendments to safety regulations that have been adopted by PHMSA since June 22, 2011, current to November 6, 2014. For hazardous liquids pipeline safety, the Public Service Commission currently has statutory authority

concerning pipeline safety but hasn't initiated a safety program agreement with PHMSA.

N.D. Admin. Code Article 69-02
Practice and Procedure PSC Case No. AD-14-762

N. D. Admin. Code Sections 69-07-02-02 and 69-07-02-02.1
Grain Warehouse and Grain Buyer Bonds PSC Case No. GE-14-763

Ans: No

3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.

N.D. Admin. Code Chapter 69-05.2-10
Surface Coal Mining & Reclamation Operations PSC Case No. RC-12-166

Ans:

The Abbreviated Notice was published once in all county newspapers the week of June 12 through June 18, 2012. The notices were also forwarded to the Legislative Council for publication at least 30 days in advance of the hearing. A public hearing was noticed for and held at 10:00 a.m., July 12, 2012. The hearing was held in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until July 23, 2012, during which data, views, or oral arguments concerning the proposed rulemaking could be received by the Commission and made a part of the rulemaking record to be considered by the Commission.

Commission staff testified at the hearing. On October 10, 2012, the Commission adopted an Order Submitting Rules to Attorney General for an opinion on legality. The Attorney General approved the rules by letter dated October 26, 2012. On November 9, 2012, the Commission submitted the changes to OSM for approval as a State Program Amendment.

OSM noted that part of subsection 3 of Section 69-05.2-10-09 was different from the current counterpart federal regulation and it needed to be changed. We discovered that an outdated version of a federal rule was inadvertently used when drafting the state provision so a correction was submitted to OSM following review by the Attorney General's office in April 2013. However, OSM did not

approve the state program amendment until publishing a notice in the Federal Register on December 16, 2014. The Commission then adopted the rules changes on January 21, 2015.

N. D. Admin. Code Sections 69-09-03-01 and 69-09-03-02
Pipeline Safety PSC Case No. GS-14-761

N.D. Admin. Code Article 69-02
Practice and Procedure PSC Case No. AD-14-762

N. D. Admin. Code Sections 69-07-02-02 and 69-07-02-02.1
Grain Warehouse and Grain Buyer Bonds PSC Case No. GE-14-763

Ans:

On November 6, 2014 the Commission issued a formal Notice of Proposed Rulemaking and an Abbreviated Notice in all three cases. The Abbreviated Notice was published once in all official county newspapers the week of November 12 through November 17, 2014. The notices were also forwarded to the Legislative Council for publication at least 30 days in advance of the hearing. A public hearing was noticed for and held at 1:00 p.m. CST, on December 15, 2014. The hearing was held in the Commission Hearing Room, 12th Floor, State Capitol, Bismarck, North Dakota. The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until December 26, 2014, during which data, views, or oral arguments concerning the proposed rulemaking could be received by the Commission and made a part of the rulemaking record to be considered by the Commission.

4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.

N.D. Admin. Code Chapter 69-05.2-10
Surface Coal Mining & Reclamation Operations PSC Case No. RC-12-166

Ans:

Staff testified at the July 12, 2012 hearing to explain the proposed rules and no other comments were received during the comment period. However, on March 13, 2013, Jim Deutsch, Director of the Public Service Commission's Reclamation Division, received a call and an electronic message from OSM requesting that the Commission revise the proposed rules slightly in order to be consistent with the federal Ownership and Control provisions. When drafting the original proposed subsection 3 of Section 69-05.2-10-09, staff inadvertently used language similar to an outdated version of a federal rule. Consequently, OSM required a change to that language before OSM could approve the proposed rules. The relevant section of the proposed rules was revised as requested by OSM. No other changes have been made to the rules as submitted to the Attorney General on October 10, 2012.

N. D. Admin. Code Sections 69-09-03-01 and 69-09-03-02
Pipeline Safety PSC Case No. GS-14-761

Ans:

No comments other than staff testimony were received and we agreed with the rules as originally proposed.

N.D. Admin. Code Article 69-02
Practice and Procedure PSC Case No. AD-14-762

Ans:

On December 12, 2014, Otter Tail Power Company submitted written comments proposing changes to Section 69-02-09-12 and Section 69-02-09-13 to correct minor errors. One proposed change was to add a new line item (69-02-09-13) to the list of sections at the beginning of the Chapter, and the other to change a mistyped number in the new language added to section 69-02-09-12. The language should have referenced section 13, not section 14. We agree that the corrections noted by Otter Tail Power Company should be made, and these are incorporated into the rules.

Staff recommended a change to the originally proposed rule regarding Service of Formal Complaints (N.D. Admin Code Sections 69-02-02-02 and 69-02-02-03). The rule as originally proposed calls for both the complaint and notice of hearing to be served at least 45 days prior to the hearing date. However, upon further review of the standards set forth in North Dakota Century Code Section 28-32-10, the rule should require that only the complaint must be served at least 45 days before the hearing date. This revision would allow the notice to be served

with the complaint at least 45 days before the hearing, or later, so long as it is served as required by law, usually at least 20 days before the hearing. We agreed with the recommendation of Staff and have incorporated the change into the rules.

N. D. Admin. Code Sections 69-07-02-02 and 69-07-02-02.1
Grain Warehouse and Grain Buyer Bonds PSC Case No. GE-14-763

Ans:

Commission staff, North Dakota Corn Growers Association, North Dakota Grain Dealers Association, U.S. Durum Growers Association, and North Dakota Ethanol Council testified at the hearing and provided written versions of their testimony. Steve Strege, a private citizen with over 37 years' experience working for the North Dakota Grain Dealers Association, also filed written comments.

The North Dakota Corn Growers Association and U.S. Durum Growers Association were in support of the proposed amendments to the bond rules. The North Dakota Ethanol Council expressed its neutral position on the proposed amendments. The North Dakota Grain Dealers Association stated its support of changes that will promote a strong and healthy industry, but believes the system currently in place works. The North Dakota Grain Dealers Association suggested keeping the current bands or brackets in place and raised a concern regarding the increased bonding for joint ventures between two established companies.

The Commission considered the input regarding bands or brackets, and revised the proposed rules to include bands or brackets because of the inefficiency and possible expense associated with changing the bond amount every time there is a change in capacity. The Commission also considered the concern regarding increased bonding for a new licensee resulting from a joint venture between two established companies, but declined to change the rule. The Commission determined there is a risk associated with any new entity and consequently there is justification for increased bonding in that event.

5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.

N.D. Admin. Code Chapter 69-05.2-10
Surface Coal Mining & Reclamation Operations PSC Case No. RC-12-166

Ans:

The rulemaking was combined with two Public Utilities cases and the Notice of May 30, 2012 covered all proposals. The total cost for publishing the notices was $4,946.70. The cost for legal notice associated with just the Reclamation rules was 1/3 or $1,648.90. Other than staff time, no other significant costs were incurred.

N. D. Admin. Code Sections 69-09-03-01 and 69-09-03-02
Pipeline Safety PSC Case No. GS-14-761

N.D. Admin. Code Article 69-02
Practice and Procedure PSC Case No. AD-14-762

N. D. Admin. Code Sections 69-07-02-02 and 69-07-02-02.1
Grain Warehouse and Grain Buyer Bonds PSC Case No. GE-14-763

Ans:

The total cost to publish the November 6, 2014 Notice for the three rulemaking cases was $3,899.06. Other than staff time, no other significant costs were incurred.

6. An explanation of the subject matter of the rules and the reasons for adopting those rules.

N.D. Admin. Code Chapter 69-05.2-10
Surface Coal Mining & Reclamation Operations PSC Case No. RC-12-166

Ans:

Most of the rule changes in Case No. RC-12-166 pertained to the Commission's use of the federal Applicant Violator System prior to the approval of mining permits, renewals and certain revisions. The Applicant Violator System is a national database that contains information about mining companies having unabated violations or unpaid civil penalties. A mining company that is linked to an entity in this database may be ineligible to receive a new mining permit, renewal, or revision that proposes to permit or mine additional lands. These changes were required by the federal Office of Surface Mining (OSM). During OSM's review of the rules changes they noted that part of subsection 3 of Section 69-05.2-10-03 was different from the current counterpart federal regulation and it needed to be changed. As discussed above, an outdated version of a federal rule was inadvertently used when drafting the state provision

so the correction was submitted to OSM in May of 2013. The rule change before the committee today is limited to the correction that was made to subsection 3 of Section 69-05.2-10-03.

N. D. Admin. Code Sections 69-09-03-01 and 69-09-03-02
Pipeline Safety PSC Case No. GS-14-761

Ans:

The purpose of this rulemaking is to adopt, by reference in state administrative rule, the most recent amendments to pipeline safety regulations adopted by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA). For gas pipeline safety, this rule change adopts amendments to safety regulations that have been adopted by PHMSA since June 22, 2011, current to November 6, 2014. For hazardous liquids pipeline safety, the Public Service Commission currently has statutory authority concerning pipeline safety but hasn't initiated a safety program agreement with PHMSA.

N.D. Admin. Code Article 69-02
Practice and Procedure PSC Case No. AD-14-762

Ans:

The proposed rules consist of changes to the procedural rules in four areas: service of formal complaints; individual customer notice in utility rate related cases (bill stuffers); appearances at formal hearings, and protection of information. The existing procedure when serving formal administrative complaints and notices related to those complaints is being clarified in the proposed rules. One additional type of utility filing will be included with the existing types of filings for which individual utility customer notice is required. The requirement that staff who work on formal cases be noted as making a formal appearance is being deleted. The changes to the rules regarding when and how the Commission will protect information from general disclosure are the most comprehensive, but do not materially change the existing process, except to make protection of certain regularly filed information easier and less costly for everyone involved.

N. D. Admin. Code Sections 69-07-02-02 and 69-07-02-02.1
Grain Warehouse and Grain Buyer Bonds PSC Case No. GE-14-763

Ans:

The proposed rules change the way a warehouse bond is determined, including requiring additional bond coverage for newer licensees, and those with substantial annual purchase volume. A reduction is available for a licensee with a shorter scale ticket conversion policy. The proposed rules also change the way the bond is determined for a roving grain buyer. The proposed rules also increase the maximum bond for all licensees.

The North Dakota Office of the State Auditor performed an audit of the Public Service Commission for the biennium ended June 30, 2013. The report issued by the State Auditor included a recommendation that the Commission take steps to increase grain buyer bonds. Over the years, the Public Service Commission has considered the issue of grain bond levels and the impact of the bonding requirements on recovery in the event of insolvency. In 2008 and 2009 the Public Service Commission met with various members of the agriculture community and interested legislators to identify and discuss alternative bond options. In January 2010, the Commission testified before the Interim Legislative Agriculture Committee about whether the current bonds were inadequate, whether bonds should be increased, whether a new "processor" class should be created, or whether current bonds should remain as is. Bond discussions have been ongoing and the Commission is proposing these rules to address bonding concerns.

7. Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.

N.D. Admin. Code Chapter 69-05.2-10
Surface Coal Mining & Reclamation Operations PSC Case No. RC-12-166

N. D. Admin. Code Sections 69-09-03-01 and 69-09-03-02
Pipeline Safety PSC Case No. GS-14-761

N.D. Admin. Code Article 69-02
Practice and Procedure PSC Case No. AD-14-762

Ans:

The proposed rules are not expected to have an impact on the regulated community in excess of fifty thousand dollars and there have been no requests for any regulatory analyses. Consequently, no regulatory analysis was required. Statements to this effect were prepared and copies are attached.

N. D. Admin. Code Sections 69-07-02-02 and 69-07-02-02.1
Grain Warehouse and Grain Buyer Bonds PSC Case No. GE-14-763

Ans:

While it is not possible to determine an exact impact, it is likely the proposed rules will impact the regulated community in excess of fifty thousand dollars. Consequently, a Regulatory Analysis was prepared and a copy is attached.

8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide copies.

N.D. Admin. Code Chapter 69-05.2-10
Surface Coal Mining & Reclamation Operations PSC Case No. RC-12-166

N. D. Admin. Code Sections 69-09-03-01 and 69-09-03-02
Pipeline Safety PSC Case No. GS-14-761

N.D. Admin. Code Article 69-02
Practice and Procedure PSC Case No. AD-14-762

The proposed rule changes are not expected to have an adverse effect on small entities. Statements to this effect were prepared and copies are attached.

N. D. Admin. Code Sections 69-07-02-02 and 69-07-02-02.1
Grain Warehouse and Grain Buyer Bonds PSC Case No. GE-14-763

Ans:

The proposed rule change could impact a small entity. A statement to this effect was prepared and a copy is attached.

9. Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency. If so, please provide copies of a fiscal note.

N.D. Admin. Code Chapter 69-05.2-10
Surface Coal Mining & Reclamation Operations PSC Case No. RC-12-166

Ans: No

N. D. Admin. Code Sections 69-09-03-01 and 69-09-03-02
Pipeline Safety PSC Case No. GS-14-761

N.D. Admin. Code Article 69-02
Practice and Procedure PSC Case No. AD-14-762

N. D. Admin. Code Sections 69-07-02-02 and 69-07-02-02.1
Grain Warehouse and Grain Buyer Bonds PSC Case No. GE-14-763

Ans: Yes. Fiscal notes were prepared and copies are attached.

10. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. Please provide a copy if one was prepared.

N.D. Admin. Code Chapter 69-05.2-10
Surface Coal Mining & Reclamation Operations PSC Case No. RC-12-166

N. D. Admin. Code Sections 69-09-03-01 and 69-09-03-02
Pipeline Safety PSC Case No. GS-14-761

N.D. Admin. Code Article 69-02
Practice and Procedure PSC Case No. AD-14-762

N. D. Admin. Code Sections 69-07-02-02 and 69-07-02-02.1
Grain Warehouse and Grain Buyer Bonds PSC Case No. GE-14-763

Ans:

The proposed rules would not limit the use of private real property and would not result in a taking or regulatory taking. Statements to this effect were prepared and copies are attached.

11. If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules. If these rules were adopted as emergency (interim final) rules, what steps were taken to

make the rules known to persons who can reasonably be expected to have a substantial interest in the rules?

N.D. Admin. Code Chapter 69-05.2-10
Surface Coal Mining & Reclamation Operations PSC Case No. RC-12-166

N. D. Admin. Code Sections 69-09-03-01 and 69-09-03-02
Pipeline Safety PSC Case No. GS-14-761

N.D. Admin. Code Article 69-02
Practice and Procedure PSC Case No. AD-14-762

N. D. Admin. Code Sections 69-07-02-02 and 69-07-02-02.1
Grain Warehouse and Grain Buyer Bonds PSC Case No. GE-14-763

Ans: N/A

Mr. Chairman, this completes my testimony. I would be happy to respond to any questions the committee might have.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Reclamation
Rulemaking

Case No. RC-12-166

Statements on Regulatory Analysis, Small Entity Regulatory Analysis and Economic Impact, and Takings Assessment

May 30, 2012

The Commission is proposing to amend the several existing rules and add three new sections to North Dakota Administrative Code Article 69-05.2 pertaining to surface coal mining and reclamation operations. The federal Office of Surface Mining is requiring that provisions be added for the Commission's use of the Applicant Violator System prior to the approval of mining permits, renewals and certain revisions. While the Commission has been using the Applicant Violator System for many years pursuant to a written agreement, the Office of Surface Mining is now requiring that the procedures be incorporated into rules.

The Applicant Violator System is a national database of mining companies that have unabated violations or unpaid civil penalties. A mining company that is linked to an entity in this database may be ineligible to receive a new mining permit, renewal, or revision that proposes to permit or mine additional lands. The new provisions also contain procedures for companies to use if they want to challenge information or links in the Applicant Violator System. Two other rule changes are also being proposed. One adds a new subsection to an existing rule on the format of electronic permit applications and the other modifies an existing provision to make it consistent with another rule that was previously amended. It should also be noted that mining and reclamation rules adopted by the Commission must be as effective as counterpart federal rules issued by the federal Office of Surface Mining within the Department of the Interior.

Statement on Regulatory Analysis

North Dakota Century Code Section 28-32-08 requires that an agency issue a regulatory analysis if the proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars or if a written request for the analysis is filed by the governor or a member of the legislative assembly. The law provides, in part:

2. The regulatory analysis must contain:

    a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear

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Statements on reg. analysis, small entity, econ. impact and takings

Public Service Commission

the costs of the proposed rule and classes that will benefit from the proposed rule;

b. A description of the probable impact, including economic impact, of the proposed rule;

c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and

d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.

These proposed changes primarily pertain to the Commission's use of the federal Application Violator System before approving mining permits, renewals and certain permit revisions. In addition, a new subsection will be added to recognize that most permit application are now being submitted is an electronic format and the new subsection contains general formatting requirements for these submittals.

These revisions and additions are not expected to have an impact on the regulated community in excess of fifty thousand dollars and to date, there has not been a request for a regulatory analysis. Consequently, a regulatory analysis is not required at this time.

Statement on Small Entity Regulatory Analysis and Economic Impact

North Dakota Century Code section 28-32-08.1 requires that before adoption of any proposed rule, the adopting agency prepare a regulatory analysis in which the agency considers options to minimize adverse impact on small entities. The law provides, in part:

2. . . . The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:

a. Establishment of less stringent compliance or reporting requirements for small entities;

b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;

c. Consolidation or simplification of compliance or reporting requirements for small entities;

d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and

e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

See the discussion above. For the same reasons, the proposed rule changes are not expected to have an adverse effect on small entities.

Statement on Takings Assessment

North Dakota Century Code Section 28-32-09(1) requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private property. The law provides, in part:

1. . . . The agency's assessment must:

   a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.

   b. Clearly and specifically identify the purpose of the proposed rule.

   c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.

   d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.

   e. Identify the source of payment within the agency's budget for any compensation that may be ordered.

   f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

Given that the proposed rules do not limit the use of private real property, a written assessment of the constitutional takings is not required.

Public Service Commission
Gas Pipeline Safety
Rulemaking

Case No. GS-14-761

FISCAL NOTE

20 January 2015

Natural Gas Pipeline Safety

The North Dakota Gas Safety Program is administered by the Public Service Commission pursuant to a grant from the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA).

In its Natural Gas Pipeline Safety grant application with PHMSA, the Public Service Commission certifies that it has adopted each federal safety standard within 120 days before the date of the certification, or is taking stops to adopt such standards. For a standard that has not yet been adopted, the Commission must adopt the standard within 24 months of the effective date, or two general sessions of the State Legislature, whichever is longer.

Failure to adopt the required standards can impact the amount of federal grant funds received to operate the program. The estimated budget for North Dakota's 2015 gas pipeline safety program is approximately $335,000. If the grant funds 80% of the estimated budget (as is currently the case), and qualification of the North Dakota program is based on a point system, failure to adopt standards in a timely manner could result in a reduction of points and therefore a reduction of grant funds to North Dakota of approximately $5300. This shortfall in operating funds would need to be made up by general funds.

Hazardous Liquids Pipeline Safety

The Commission proposes to establish a hazardous liquids pipeline safety program in 2015. The Commission has requested, and the Governor has included in the executive budget, 3.5 FTEs for the program. The estimated 2015-2017 budget for the program is $1,191,480. Similar to the gas pipeline safety program, the federal share of the actual program cost is estimated to be between 60% and 80% of the program costs, and is dependent on federal appropriation and number of participating states. The state share of the actual program cost would therefore be between 20% and 40%. As with the natural gas program, failure to adopt standards in a timely manner could result in a reduction of grant funds to North Dakota.

State of North Dakota
Public Service Commission

Public Service Commission
Gas Pipeline Safety
Rulemaking

Case No. GS-14-761

Statement
Regulatory Analysis, Small Entity Analysis and Impact, Takings Assessment

November 6, 2014

The purpose of this rulemaking is to adopt, by reference in state administrative rule, the most recent amendments to pipeline safety regulations adopted by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA).

For gas pipeline safety, this rule change adopts amendments to safety regulations that have been adopted by PHMSA since June 22, 2011, current to November 6, 2014. A summary/explanation of the specific changes to be adopted by reference for gas pipeline safety is attached.

For hazardous liquids pipeline safety, the Public Service Commission currently has statutory authority concerning pipeline safety but hasn't initiated a safety program agreement with PHMSA. The Public Service Commission has submitted a budget to the Governor (or is it in the Governor's budget already – going to the legislature???) that includes additional full time employee positions to implement a hazardous liquids pipeline safety program under PHMSA. In order to implement the program, in additional to receiving the appropriation of additional staff, the Public Service Commission must adopt all pipeline safety rules adopted by PHMSA. The Commission is proposing to adopt PHMSA regulations for hazardous liquids pipeline safety in effect as of November 6, 2014.

Regulatory Analysis

N.D.C.C. § 28-32-08 requires an agency to prepare a regulatory analysis if the rule is expected to have an impact on the regulated community in excess of fifty thousand dollars. The law provides, in part:

2. The regulatory analysis must contain:

a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear

the costs of the proposed rule and classes that will benefit from the proposed rule;

b. A description of the probable impact, including economic impact, of the proposed rule;

c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and

d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.

North Dakota individuals subject to Commission jurisdiction who may be affected by the federal regulations proposed to be adopted by reference for the state gas pipeline safety program include intrastate natural gas transmission pipeline operators, intrastate natural gas distribution system operators, and certain natural gas gathering system operators. North Dakota individuals subject to Commission jurisdiction who may be affected by the federal regulations proposed to be adopted by reference for the state hazardous liquids pipeline safety program include intrastate hazardous liquids transmission system operators and certain intrastate hazardous liquids gathering system operators.

The Commission acts as agent for the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), in the enforcement of the minimum gas pipeline safety standards on all gas distribution and intrastate transmission facilities within the state. This is accomplished by entering into a 601055(a) Title 49 agreement with the United States Department of Transportation which requires North Dakota to adopt all of the federal gas safety standards, along with any future amendments to those standards. This rulemaking is a part of that ongoing agreement.

The intrastate natural gas transmission pipeline operators and intrastate natural gas distribution system operators must comply with the federal amendments and therefore were impacted in excess of fifty thousand dollars when PHMSA adopted the amendments. Adoption of these amendments for the state gas pipeline safety program will have no additional impact on the regulated community.

Small Entity Regulatory Analysis

N.D.C.C. § 28-32-08.1 requires that before adoption of any proposed rule, the adopting agency prepare a regulatory analysis in which the agency considers options to minimize adverse impact on small entities. The law provides, in part:

2. . . . The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:

a. Establishment of less stringent compliance or reporting requirements for small entities;

b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;

c. Consolidation or simplification of compliance or reporting requirements for small entities;

d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and

e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

A Chapter 28-32-08.1 small entity regulatory analysis and an economic impact statement are not required because the proposed amendments to existing rule for both the natural gas and hazardous liquids pipeline systems are mandated by federal law.

Takings Assessment

N.D.C.C. § 28-32-09 requires an entity to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The law provides, in part:

The proposed rules should not limit the use of private property so a Takings Assessment has not been made.

Public Service Commission
Practice and Procedure
Rulemaking

Case No. AD-14-762

FISCAL NOTE

14 January 2015

The proposed rules in this rules package will have no impact on state revenues or expenditures.

Prepared by Illona A. Jeffcoat-Sacco, General Counsel, PSC

State of North Dakota
Public Service Commission

Public Service Commission **Case No. AD-14-762**
Practice and Procedure
Rulemaking

Statement
Regulatory Analysis, Small Entity Analysis and Impact, Takings Assessment

The proposed procedural rules consist of changes to the procedural rules in four areas: service of formal complaints; individual customer notice in utility rate related cases (bill stuffers); appearances at formal hearings, and protection of information.

The existing procedure when serving formal administrative complaints and notices related to those complaints is being clarified in the proposed rules, but not changed. One additional type of utility filing will be included with the existing types of filings for which individual utility customer notice is required. The requirement that staff who work on formal cases be noted as making a formal appearance is being deleted. The changes to the rules regarding when and how the Commission will protect information from general disclosure are the most comprehensive, but do not materially change the existing process, except to make protection of certain regularly filed information easier and less costly for everyone involved.

None of these changes should have any sort of negative impact, financial or otherwise, on regulated industry, consumers, other stakeholders, the Commission, or the public. On the contrary, the proposed rules make the administrative process more efficient and most will save resources for both the regulated community and the agency.

Formal Complaints – N.D. Admin Code Sections 69-02-02-02 and 03

The proposed changes to the rule regarding serving formal complaints and notices of hearing on formal complaints, and the rule for filing an Answer to a formal complaint, simply incorporate current practice. The existing language can be ambiguous, and the proposed changes are intended to clarify that the complaint and notice may, but are not required to, be served at the same time. It is usually more efficient to serve the complaint first, and then schedule the hearing and issue notice after the parties have knowledge of the action and input into the hearing date and time frame.

Rate Case Bill Stuffers – N. D. Admin. Code Section 69-02-04-01

The proposed change to section 69-02-04-01 adds one type of case, an advance determination of prudence case, to the list of cases in which the applicant utility must provide individual notice of the application to customers. An advance determination of prudence application has ratemaking consequences and that is the reason for requiring individual customer notice. Currently, even though the specific type of application is not mentioned in the rule, individual customer notices have been required and provided in

advance determination of prudence cases because of the ratemaking impact. The proposed change will make the rule consistent with current practice and will have no fiscal or other impact on industry, customers, other stakeholders or the public.

Formal Appearance of Staff Analysts – N. D. Admin. Code Section 69-02-04-02

Existing rule requires the staff **analysts** who work on a case to be noted in the Appearances. While the staff who work on a case are introduced by counsel at hearings, the rule requiring those persons to be listed in the Appearances has been inconsistently followed and serves no discernable purpose. Repealing that language will have no impact on any stakeholder.

Protection of Information N.D. Admin. Code Chapter 69-02-09

Since the Commission's trade secret rules were originally written, the legislature has added several types of open records exemptions. The procedural rules are being revised to accommodate filings that may deserve protection from disclose under current state law, but are not strictly trade secret filings. In addition, for certain telecommunications filings, case by case protection applications and consequent Commission decisions will no longer be necessary, saving time and costs for both the telecommunications companies and the state.

Incorporating these changes will make the rules more generally applicable, more useful, easier to implement and more clear to those asking for protection for other than trade secret information. These changes will have no negative fiscal impact on the Commission, the state, any stakeholder or the public. These changes will also have no other impact on any party, except to make filing and processing such applications easier and more efficient.

The only alternative considered was not making these changes at this time, which would work to continue to make protection applications harder and less efficient to file and process. The alternative is not the best choice.

Small Entity Analysis and Economic Impact Statement

Each proposed rule could impact a small entity. However, the impact will be neutral or positive. Several of the proposals make the process involved more efficient and will save time and money for applicants and others interacting with the Public Service Commission. No alternatives were considered other than making no changes at all, which imposes a greater economic and regulatory burden on all impacted entities, including small entities and the agency.

Regulatory Analysis and Takings Assessment

Since none of the proposals will impact the regulated community by more than $50,000, and no one has requested a regulatory analysis, none is being prepared at this time for any of the proposed rule changes.

Since none of the proposed rules constitutes a taking of private real property, no Taking Assessment is being prepared.

Public Service Commission
Licensing
Rulemaking

Case No. GE-14-763

FISCAL NOTE

14 January 2015

The proposed rules in this rules package will have no impact on state revenues or expenditures.

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State of North Dakota
Public Service Commission

Public Service Commission
Licensing
Rulemaking

Case No. GE-14-763

Statements on Regulatory Analysis, Small Entity Regulatory Analysis and Economic Impact, and Takings Assessment

November 13, 2014

The Commission is proposing amendments to North Dakota Administrative Code Sections 69-07-02-02 and 69-07-02-02.1. The proposed rules change the way a grain warehouse bond is determined, including requiring additional bond coverage for newer licensees, and those with substantial annual purchase volume. A reduction is available for a licensee with a shorter scale ticket conversion policy. The proposed rules also change the way the bond is determined for a roving grain buyer. The proposed rules also increase the maximum bond for all licensees.

Regulatory Analysis

North Dakota Century Code Section 28-32-08 requires that an agency issue a regulatory analysis if the proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars or if a written request for the analysis is filed by the governor or a member of the legislative assembly.

The law provides, in part:

2. The regulatory analysis must contain:

    a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

    b. A description of the probable impact, including economic impact, of the proposed rule;

    c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and

d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.

While it is not possible to determine an exact impact, it is likely the proposed rules will impact the regulated community in excess of fifty thousand dollars.

The proposed changes will affect new grain warehouse licensees, licensees that handle a substantial annual grain purchase volume, and licensees currently bonded at the current maximum. The proposed changes will also affect roving grain buyer licensees that handle more than one hundred thousand bushels of grain and grain buyers that handle a substantial annual purchase volume.

Grain Warehouse Bonds

A grain warehouse licensee currently operating a 50,000 bushel facility is required to file a $50,000 bond. The following is an example of the proposed bond costs for a licensee operating a 50,000 bushel grain warehouse with an annual grain purchase volume of 2,600,000 bushels (50,000 bushels a week X 52 weeks). Under the proposed rules, the bond for this facility would increase substantially.

Bond – based on capacity and years licensed:			
1-6 years	$ 65,000	≥7 years	$ 50,000
Additional Bond - 20¢ per bushel:			
>7 times capacity, add	$450,000		$450,000
Total Bond	**$515,000**		**$500,000**
Credit for Conversion Policy			
≤10 days-30% discount	$154,500		$150,000
Total Bond	**$360,500**		**$350,000**
Credit for Conversion Policy			
11-21 days-15% discount	$ 77,250		$ 75,000
Total Bond	**$437,750**		**$425,000**

Using the example above, farmers will benefit from the proposed rules in the event a licensee becomes insolvent since there should be more trust fund proceeds available to distribute to unpaid noncredit-sale contract claimants. However, farmers may also be negatively affected by the proposed rules because they will likely bear the additional costs incurred by a licensee because these additional operating costs will be passed on to the farmers in the form of lower grain prices.

Increasing the maximum warehouse bond from $1,500,000 to $2,000,000 will affect twelve existing licensees. Of these twelve licensees, six will be required to increase

their bond to an amount less than $2,000,000 and six will be required to increase their bond to $2,000,000. A licensee required to increase its bond from $1,500,000 up to $2,000,000 dollars will realize additional bond costs of approximately ten dollars per thousand.

Grain Buyer Bonds

Increasing the maximum facility-based grain buyer bond from $1,000,000 to $2,000,000 will affect five existing licensees. Of these five licensees, three will be required to increase their bond from $1,000,000 to an amount less than $2,000,000 and two will be required to increase their bond to $2,000,000. A facility-based grain buyer licensee required to increase its bond from $1,000,000 up to $2,000,000 will realize additional bond costs of between five and ten dollars per thousand.

Increasing the maximum roving grain buyer bond from $1,500,000 to $2,000,000 will affect eight existing licensees who will be required to increase their $1,500,000 bond to $2,000,000. A number of additional roving grain buyer licensees will be required to increase their bonds ranging from minimal amounts to more than double current bonds and will realize additional bond costs that will likely be passed on to the farmers in the form of lower grain prices.

Probable Impact of Higher Bonds

There are a number of factors that affect bond premiums, including the costs charged by different sureties and the licensee's net worth, working capital, and business history. Although these factors may affect each licensee differently, making it difficult to identify a specific impact due to higher bond premiums, it is very likely the additional bond premium costs alone will exceed $50,000 total impact on regulated industry.

One possible impact of requiring a higher bond during the first six years of business is that a higher bond could make it more difficult or impossible for a new grain business to get established or for a beginning business to continue operating. Another possible impact on regulated industry is that when a licensee is required to collateralize a higher bond, the higher bond may make it difficult or impossible for the licensee to obtain or maintain its operating cash flow. This may force a licensee to close.

In the broadest sense, it may be the farmers who will be significantly impacted if higher operating costs result in lower grain prices or in a grain business failing. If a licensee is forced to close its doors, a farmer may have to drive a longer distance to sell his grain which will create additional operating expenses for the farmer.

On the other hand, if a farmer sells to a licensee that is inadequately bonded and the licensee becomes insolvent, this ultimately will result in a loss of income for the farmer. Raising required bonds should result in additional protection to the farmers.

Probable Cost to Agency

There should be no cost to the agency to implement and enforce the proposed rules unless these changes result in a need for additional staff for monitoring or enforcement.

Purpose of Proposed Rules

The North Dakota Office of the State Auditor performed an audit of the Public Service Commission for the biennium ended June 30, 2013. The report issued by the State Auditor included a recommendation that the Commission take steps to increase grain buyer bonds. Over the years, the Public Service Commission has considered the issue of grain bond levels and the impact of the bonding requirements on recovery in the event of insolvency. In 2008 and 2009 the Public Service Commission met with various members of the agriculture community and interested legislators to identify and discuss alternative bond options. In January 2010, the Commission testified before the Interim Legislative Agriculture Committee about whether the current bonds were inadequate, whether bonds should be increased, whether a new "processor" class should be created, or whether current bonds should remain as is. Bond discussions have been ongoing and the Commission is proposing these rules to address bonding concerns. All suggestions or comments from interested parties are welcome.

Alternatives for Achieving Purpose

The purpose of the bond is to protect holders of outstanding receipts. Recent insolvencies have resulted in noncredit-sale contract claimants recovering less than 100% and as little as 7%, in one instance. There is no way to guarantee 100% bond protection for farmers. Raising bonds too high could make bonding unattainable or unfordable for licensees. Lowering bonds to save the impact of higher bond costs, results in no increase in protection. The only possible alternative to raising bonds to an amount that provides 100% protection for farmers is to create an indemnity fund for noncredit-sale contract claimants. This would require a change in statute, not in rule.

Small Entity Regulatory Analysis and Economic Impact

North Dakota Century Code section 28-32-08.1 requires that before adoption of any proposed rule, the adopting agency prepare a regulatory analysis in which the agency considers options to minimize adverse impact on small entities. The law provides, in part:

1. As used in this section:

    a. "Small business" means a business entity, including its affiliates, which:

        (1) Is independently owned and operated; and

(2) Employs fewer than twenty-five full-time employees or has gross annual sales of less than two million five hundred thousand dollars;

b. "Small entity" includes small business, small organization, and small political subdivision;

2. The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:

a. Establishment of less stringent compliance or reporting requirements for small entities;

b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;

c. Consolidation or simplification of compliance or reporting requirements for small entities;

d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and

e. Exemption of small entities from all or any part of the requirements contained in the proposed rule. . . .

6. This section does not apply to rules mandated by federal law.

There is a good chance that requiring additional bonding could make it impossible for small businesses first licensed within the past six years to continue operating, or for a new licensee to establish a grain business in North Dakota. Requiring additional bonding for new licensees may be challenged as discriminatory. If so, licensees could initiate legal action against the State of North Dakota, resulting in legal costs to the State for defending such an action.

Takings Assessment

North Dakota Century Code Section 28-32-09(1) requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private property.

None of the proposed rules constitutes a taking of private real property so no Taking Assessment is being prepared.