

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE

Wednesday, March 17, 2010
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Rich Wardner, Chairman, called the meeting to order at 9:30 a.m.

Members present: Senators Rich Wardner, John M. Andrist, Robert M. Horne, Joe Miller, George Nodland; Representatives Mike Brandenburg, Matthew M. Klein, Dave Weiler

Members absent: Senator Jim Dotzenrod; Representatives Tracy Boe, Lee Kaldor, Todd Porter

Others present: Representative Shirley Meyer, member of the Legislative Management, was also in attendance.

See [Appendix A](#) for additional persons present.

Chairman Wardner said he was notified that the reserve market for electricity was transferred to the Midwest ISO on January 6, 2009, not on January 6, 2010, as stated in the previous minutes.

It was moved by Senator Andrist, seconded by Senator Horne, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

COMPREHENSIVE ENERGY POLICY STUDY - PUBLIC SERVICE COMMISSION UPDATE

Commissioner Brian P. Kalk, Public Service Commission, presented written testimony ([Appendix B](#)) on recent energy developments and transmission issues. He provided information on the status of the Big Stone II generating plant. He said the Big Stone II project would have created transmission lines that would have moved wind energy as well as power created at the Big Stone II generating plant. He said approximately \$13 million was invested by Otter Tail Power Company and \$16 million by Montana-Dakota Utilities Company (MDU) in the Big Stone II project. He provided information on the hearings as to whether Otter Tail Power Company's and MDU's continued participation in the Big Stone II generating station is no longer prudent; whether authorization for deferred accounting of costs incurred by Otter Tail Power Company during participation in the Big Stone II project is in the public interest; and whether authorization for deferred accounting of costs related to MDU's efforts in securing new generation, including participation in the Big Stone II project, is in the public interest. Since the last meeting, he said, the Public Service Commission has:

- Received one letter of intent for the construction of the Bridger pipeline--an 85-mile, 10-inch crude oil pipeline;
- Received one new application for project siting for Otter Tail Power Company's .53-mile emergency reroute of the Hankinson-Ellendale 230-kilovolt electric transmission line in Sargent County;
- Received one formal hearing on Allete, Inc.'s, construction of the 230-kilovolt transmission line near Center to interconnect the new substation at the Bison 1 wind project and the Square Butte substation;
- Issued four new siting orders--one for an oil pipeline in Mountrail County, one for the emergency reroute of the Hankinson-Ellendale transmission line, one for the Allete, Inc., transmission line, and one for the Williston to Tioga 230-kilovolt electric transmission line in Williams County; and
- Monitored and received updates on 12 permitted construction projects--2 for electric transmission, 4 for wind farms, and 6 for pipelines.

Commissioner Kalk said the Office of Surface Mining will significantly reduce the amount of federal funds for state regulatory program grants which are expected to be replaced by states increasing fees assessed to mining companies.

In response to a question from Senator Wardner, Commissioner Kalk said due to the reduction in federal funds for state regulatory program grants, the Public Service Commission will not be able to do what the commission is supposed to do without the Legislative Assembly authorizing fee increases.

In response to a question from Senator Wardner, Commissioner Kalk said the delay in hiring the new full-time equivalent position will result in making it more difficult for the Public Service Commission to do the appropriate regulatory oversight.

In response to a question from Representative Brandenburg, Commissioner Kalk said the Public Service Commission has three positions allowed for with federal stimulus money. He said one position will focus on transmission, one on corridors, and the other will be legal counsel.

In response to a question from Senator Horne, Commissioner Kalk said the permit fees are for the

cost of the Public Service Commission doing business.

Senator Wardner said the federal government will create more situations like this, where the funding is cut with the expectation that the state will cover the shortfall.

In response to a question from Senator Miller, Commissioner Kalk said the stimulus funds provide for some flexibility, but the Office of Surface Mining grants need to be used for a specific position.

In response to a question from Senator Andrist, Commissioner Kalk said there appears to be a federal effort to make coal more expensive as an energy source.

In response to a question from Senator Horne, Commissioner Kalk said wind farm hearings have changed over time. He said in the beginning there were no negative comments. He said now the discussions have progressed to an argument between the people who have a wind tower and the people who do not have a tower. He said counties have a great benefit from wind farms because of an increased tax base. He said the various setback requirements in the counties are from 700 feet to 2,000 feet. He said the industry would like consistent rules.

In response to a question from Senator Wardner, Commissioner Kalk said if the setbacks from residences are shorter, there have been instances when three or four more turbines can be added to a property. He said he personally has voted for a 1,400-foot setback.

In response to a question from Senator Wardner, Commissioner Kalk said there are some projects under 60 megawatts for which the Public Service Commission does not have any siting jurisdiction. He said the Public Service Commission has jurisdiction over most all decommissioning.

In response to a question from Representative Meyer, Commissioner Kalk said the Public Service Commission does not have jurisdiction over a small wind tower on a farm and the jurisdiction belongs to a local political subdivision with zoning jurisdiction.

In response to a question from Senator Wardner, Commissioner Kalk said developers go to the county of least resistance. He said there is not enough research on the impacts of wind farms.

In response to a question from Representative Brandenburg, Commissioner Kalk said certainty at the state level may result in more development.

In response to a question from Representative Brandenburg, Commissioner Kalk said most plans for transmission lines that need to go through Minnesota, go through Minnesota. He said he has not seen a plan to go around Minnesota due to transmission line siting difficulties.

In response to a question from Senator Andrist, Commissioner Kalk said companies conduct testing to determine the best placement for a wind tower. He said the pattern of wind towers is individualized to the area.

In response to a question from Senator Wardner, Commissioner Kalk said small companies would like a feed-in tariff. He said a feed-in tariff requires investor-owned utilities to buy back excess energy at a high enough price to make small projects viable.

In response to a question from Senator Wardner, Commissioner Kalk said as to the 60-megawatt threshold for Public Service Commission jurisdiction, the Public Service Commission follows the law enacted by the Legislative Assembly. He said there needs to be some certainty for development and for safety. He said at some threshold, the Public Service Commission should not be involved in the siting of wind towers.

In response to a question from Senator Horne, Commissioner Kalk said that some counties request information from the Public Service Commission and some do not. He said counties need information on the true impacts of wind, including the impact on flyways and safety.

In response to a question from Representative Meyer, Commissioner Kalk said the Public Service Commission has regulation over price as to Otter Tail Power Company, Xcel Energy, Inc., and MDU. He said the price of the energy sold from a wind farm is up to the wind farm and the purchaser for entities that are not investor-owned.

In response to a question from Representative Klein, Commissioner Kalk said integrating small operators into a large system creates issues on how to keep energy moving around. He said a consistent baseload of a coal plant is best.

In response to a question from Senator Andrist, Commissioner Kalk said it is impossible to tell the source of energy once it is in the electric lines.

In response to a question from Representative Brandenburg, Commissioner Kalk said the economy in Minnesota is not doing well and large industry is not using that much energy. He said as demand goes up, the companies will have to pay much higher costs or suffer blackouts as a result of mandating green energy and not allowing the construction of transmission lines.

In response to a question from Representative Weiler, Commissioner Kalk said in Minnesota the Public Utilities Commission is appointed by the Governor. He said if the Governor supports green mandates, then the Public Utilities Commission supports green mandates. He said the members are not independent as they are in North Dakota.

COMPREHENSIVE ENERGY POLICY STUDY - REFINERY STUDY

Mr. Dennis Hill, Executive Vice President and General Manager, North Dakota Association of Rural Electric Cooperatives, made a presentation ([Appendix C](#)) on the study of the feasibility of increasing refining capacity in North Dakota. He said North Dakota has 4 billion to 6 billion barrels of commercially recoverable oil. He said there are over

100 rigs in this state, and each can drill a new well every 25 days. He said Phase 1 of the study is focused on a market assessment, and Phase 2 of the study will only be done if the market assessment recommends increasing refining capacity. He said Phase 2 is an economic and refining analysis, refinery plot plan, and compilation of benefits to the state of North Dakota.

In response to a question from Representative Meyer, Mr. Hill said Phase 1 is the most important part of the study.

In response to a question from Senator Horne, Mr. Hill said if Phase 1 determines that increased refining capacity is not a good idea for North Dakota, then the study will not go any further.

In response to a question from Senator Miller, Mr. Hill said the study is a matter of public record and whoever reads the report can act upon the information in the report. He said the report will hopefully provide information for a strategic planning document for oil companies. He said he thinks Tesoro is open to expansion in North Dakota.

In response to a question from Senator Andrist, Mr. Hill said deciding whether it is a good idea to build a refinery in the United States versus a foreign country is part of Phase 1.

Mr. Kurt Swenson, Vice President of the Northwest Region, Corval Group, Beulah, made a presentation ([Appendix D](#)) on the North Dakota refining capacity feasibility study. He reviewed the history of the Corval Group and the partners in the study--Purvin & Gertz and Mustang Engineering. He said there appears to be large net transfers of diesel fuel into the state.

In response to a question from Senator Miller, Mr. Swenson said there has been an uptake in diesel consumption. He said more diesel is being used than gasoline in the economy. He said diesel fuel is used to power the trucks and machines that produce oil.

In response to a question from Representative Meyer, Mr. Swenson said the number of refined gallons imported into the United States is relatively stable.

In response to a question from Senator Horne, Mr. Swenson said the availability and pricing of crude oil affects refining capacity. He said this will be considered in Phase 1 of the study.

In response to a question from Senator Nodland, Mr. Swenson said there has not been a new refinery built since 1976; however, there has been a substantial expansion of refining capacity since 1976.

In response to a question from Senator Andrist, Mr. Swenson said crude oil prices are not the only thing that affects refining capacity. He said if the price is up, then the costs are up. He said if the refinery is integrated as part of an oil company, increased prices are good. He said if the perspective is from downstream, lower prices are better.

In response to a question from Senator Nodland, Mr. Swenson said pipelines are represented on the committee overseeing the study through Tesoro and

Cenex. He said the committee has been advised by the North Dakota Pipeline Authority.

COMPREHENSIVE ENERGY POLICY STUDY - EMPOWER NORTH DAKOTA COMMISSION

Mr. Shane C. Goettle, Commissioner, Department of Commerce, provided an update on the activities of the Empower North Dakota Commission. He said the commission has met five times and will meet three more times. He reviewed the areas of study of the commission. He said the commission has a joint area of study with the State Water Commission on water resources. He said the commission has investigated the industrial potential of using abandoned oil wells as sources of geothermal energy. He said the commission will have a final document by the end of May and will address this committee in June.

In response to a question from Representative Meyer, Mr. Goettle said the pressure and heat from the deep oil wells can produce energy.

In response to a question from Senator Horne, Mr. Goettle said part of the water study is the use of Lake Sakakawea water for fracture jobs.

NORTH DAKOTA PIPELINE AUTHORITY UPDATE

Mr. Justin Kringstad, Director, North Dakota Pipeline Authority, made a presentation ([Appendix E](#)) on recent developments with pipeline capacity.

In response to a question from Senator Wardner, Mr. Kringstad said pipeline contracts from 5 years to 20 years in term have not been attractive to oil producers in the Williston Basin to pipe oil because of the uncertainty of the future of oil in North Dakota. He said the future of oil in North Dakota is becoming more certain.

In response to a question from Representative Meyer, Mr. Kringstad said he has not heard of having a massive storage unit in North Dakota to provide the batch sizes needed to meet pipeline requirements. He said overcoming batch size requirements is a large issue. He said the long-term transportation of oil looks good; however, in the next few years there will be challenges. He said these challenges will be met by trucking oil to Canada. He said there was a decrease in the discount when pipelines recently came online.

In response to a question from Senator Andrist, Mr. Kringstad said propane is a byproduct of natural gas processing.

In response to a question from Representative Weiler, Mr. Kringstad said Blaze Energy has no systems up and operational. He said Blaze Energy captures flared gas to make electricity.

In response to a question from Senator Andrist, Mr. Kringstad said each wellhead has a price it receives for the oil which is reported to the Tax Department.

In response to a question from Senator Wardner, Mr. Kringstad said small companies with small volumes to sell to marketers have a less marketable good than larger companies with large volumes.

In response to a question from Representative Klein, Mr. Kringstad said the cost to transfer oil by train is \$8 to \$10 per barrel and by pipeline is \$4 to \$6 per barrel.

In response to a question from Senator Andrist, Mr. Kringstad said the EOG Resources, Inc., unit train destination is Cushing, Oklahoma. He said St. James, Louisiana, may become a new trade market.

In response to a question from Representative Klein, Mr. Kringstad said the tax assessed is based on the wellhead price. He said this is what the marketer pays. He said the costs of transportation affect what a marketer pays.

In response to a question from Senator Horne, Mr. Kringstad said at this time there is excess pipeline capacity. He said as production increases, capacity will be outpaced until projects are completed. He said the North Dakota Pipeline Authority is working to meet the potential increase in production.

COMPREHENSIVE ENERGY POLICY STUDY - WATER

Mr. Ron Ness, President, North Dakota Petroleum Council, made a presentation ([Appendix F](#)) on challenges facing the oil industry, including water issues. He said the Job Service North Dakota website has 81 companies that want over 800 workers. He said oil development will last for a long time and midlevel employees want to bring their families to North Dakota. He said there is a shortage of housing. He said there is a shortage of fracture sand. He said the oil industry needs to get water from Lake Sakakawea. He said the water needed from Lake Sakakawea is a small amount in relation to the total amount. He reviewed the need for water in areas around Lake Sakakawea.

In response to a question from Representative Meyer, Mr. Ness said the Southwest Water Authority would like to extend a water line from Dodge to Dunn Center. He said this 21-mile line would cost \$9 million. He said the industry would like the water moved west to Highway 22. He said he does not know if the economics of moving water 21 miles by pipeline is feasible. He said the Ray and Tioga Water Supply Association recently upgraded the system to get water to Stanley. He said there is a proposal to take water from Lake Sakakawea to Ray. He said the 18-mile line is a \$28 million project that will need substantial upfront money. He said the Parshall area just built a new water system, and the water in that area is sufficient. He said a Texas company has a plan to use steel pipes to take water off the lake to create a series of four-acre ponds and use flexible hoses to transport water from the ponds to well sites. He said there is a small portion of the water left that is used at a well site which is hauled away by truck. He

said the oil industry will find the water to do the fracture jobs.

In response to a question from Senator Miller, Mr. Ness said fracture sand is common beach sand of consistent size. He said it is mainly located in Minnesota and Michigan. He said artificial propagants are used instead of sand by some companies.

In response to a question from Senator Horne, Mr. Ness said artificial propagants are more expensive than sand.

In response to a question from Representative Meyer, Mr. Ness said oil companies do not want to be in the water business. He said the New Town aquifer is a good source of water.

In response to a question from Representative Meyer, Mr. Ness said last year Beulah started selling water to the oil industry. He said most cities are willing to sell water.

In response to a question from Senator Andrist, Mr. Ness said the permitting process for water is frustrating. He said it takes a long time and most requesters just want a decision.

Senator Andrist said most permits are challenged by environmental groups, thereby complicating the process.

In response to a question from Representative Meyer, Mr. Ness said he met with the Army Corps of Engineers and the meeting was positive. He said the Army Corps of Engineers has to follow rules, and if the rules are followed the process will move forward.

In response to a question from Representative Meyer, Mr. Ness said some companies bring their own crews and some companies hire from North Dakota. He said the first issue that needs to be addressed for people to work in the oilfield is where they are going to live.

In response to a question from Representative Weiler, Mr. Ness said it is difficult to measure the number of jobs in the oilfield. He said some jobs are not listed with Job Service North Dakota, and some jobs listed with Job Service North Dakota are listed by trucking companies and not under oilfield subject headings.

DISCUSSION

Chairman Wardner invited committee members to discuss the study of the allocation of wind rights. He said the main issue is whether everyone in the footprint should share in the payment or should the payment go to the landowner.

Senator Andrist said the sharing concept is what is done with oil rights. He said it is a great concept but said he was unsure the state could facilitate the concept on a voluntary basis.

Representative Brandenburg said there is not a problem if local groups get together to share the wind rights within a footprint. He said he does not think that there is consensus that the rights should be shared. He said the idea should be left as a matter of local concern. He said if there are too many restrictions or

administrative burdens, wind developers will look elsewhere to build wind farms.

Senator Horne said he likes the concept of shared rights, but does not know all of the pitfalls. He said perhaps a model agreement would be useful to local groups.

Senator Miller said the line at where the resource ends has to be somewhere. He said the placement of wind towers is based on the local terrain.

Senator Wardner said the committee received testimony that there was a plan used in the past and that there had been testimony that a wind tower close to a property line can take the wind from nearby property. He said the most important issue in siting a wind farm is where each individual machine is located. He said moving a tower a few feet makes a large difference. He said the spot on the land where the tower is located is the most important. He said the present system should stay in place, and a local group can choose to share if the group desires.

Chairman Wardner invited committee members to discuss the study of wind easement and lease provisions. He said the biggest issue is confidentiality clauses. He said the committee received testimony that most companies do not put in a confidentiality clause.

Representative Brandenburg said the reason that companies want a confidentiality clause is if a payment is based on the percentage of energy produced, a competitor could figure out the power purchase agreement. He said he does not think it is an issue if there is confidentiality when there is a payment of a flat rate. He said some companies and some landowners like confidentiality.

Senator Wardner said he does not know if the committee wanted to be involved in a contract between a willing buyer and seller.

Representative Brandenburg said there is some confidentiality required in all business.

Representative Meyer said at one point the main issue was whether there was confidentiality before the final agreement.

Representative Brandenburg said no violation of a confidentiality agreement has ever resulted in a landowner being taken to court.

Senator Andrist said he does not want to impede business or impede free speech.

Mr. John Olson, appearing for NextEra Energy Resources and Otter Tail Power Company, provided information on the study. He said the compromise last legislative session was to have confidentiality in the final agreement only. He said the landowner can discuss the terms before signing the final agreement. He said some companies have proprietary information and some landowners want confidentiality. He said this compromise seems to be working, and the committee should be cautious about future legislation. He said in practice there is very little secrecy. He said large wind farms have public meetings and share most information.

In response to a question from Senator Horne, Mr. Olson said the confidentiality clause prohibits the landowner from talking about the contract after it is signed.

In response to a question from Senator Horne, Senator Wardner said normally there is not a confidentiality clause for oil production.

In response to a question from Representative Meyer, committee counsel read a portion of North Dakota Century Code Section 17-04-06, which states that an easement or lease may not require either party to maintain the confidentiality of any negotiations or the terms of any proposed lease or easement except that the parties may agree to a mutual confidentiality agreement in the final executed lease or easement.

Senator Wardner said it appears the committee does not have an issue with the present law; however, the committee will continue to monitor the issue and receive input on any new developments.

No further business appearing, Chairman Wardner adjourned the meeting at 2:10 p.m.

Timothy J. Dawson
Committee Counsel

ATTACH:6