

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE

Tuesday, March 20, 2012
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Rich Wardner, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Rich Wardner, John M. Andrisc, Lonnie J. Laffen, Stanley W. Lyson, Ryan M. Taylor, John Warner; Representatives Michael D. Brandenburg, Shirley Meyer, Todd Porter, Mike Schatz, Gary R. Sukut

Member absent: Representative Scot Kelsh

Others present: Representative Jerry Kelsh, member of the Legislative Management, was also in attendance.

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

It was moved by Senator Lyson, seconded by Representative Sukut, and carried on a voice vote that the minutes of the January 26, 2012, meeting be approved as distributed.

IMPACT OF OIL AND GAS DEVELOPMENT ON ELECTRIC ENERGY DEMAND

Mr. Dale Niezwaag, Senior Legislative Representative, Basin Electric Power Cooperative, Bismarck, provided written testimony and gave a presentation ([Appendix B](#)) on activities of Basin Electric to meet the growing need for electricity in the Williston Basin area from a generation and a high-voltage transmission line perspective. He provided information on the load growth, generation issues, and transmission issues. He said Basin Electric has forecasted an increased load in the Williston Basin area of 1,000 megawatts by 2025. He said 1,000 megawatts are equal to the capacity of either the Coal Creek Station or the Antelope Valley Station. He said Basin Electric has been adding generation through coal plants, natural gas peaking plants, intermediate natural gas plants, and power transfers into the area. He said the difference between a peaking plant and an intermediate plant is that the intermediate plant is designed to run for more hours, e.g., 7:00 a.m. to 7:00 p.m. on a regular basis versus the extreme hot or cold times for a peaking plant. He said Basin Electric is improving existing transmission lines and plans to build new transmission lines. He said when the Western Area Power Administration finishes the upgrade to the Charlie Creek to Williston line from 115 kilovolts to 230 kilovolts in 2012, there will be a loop around the load growth area in western North Dakota. He said to increase this capacity, Basin Electric is in the process of obtaining permits to

build a 200-mile, 345-kilovolt line from the Antelope Valley Station near Beulah around the west side of Lake Sakakawea to Tioga. He said the environmental impact statement will require approximately three years, and construction will take another two years.

In response to a question from Senator Warner, Mr. Niezwaag said 700 megawatts of wind have been integrated into the Basin Electric system in the last 10 years with a 700-megawatt natural gas system as a backup to provide a firm power supply. He said the incentives for wind generation are no longer available. He said the combination of wind and gas provides for a steady load supply.

In response to a question from Senator Taylor, Mr. Niezwaag said raw natural gas has liquids in it that make the gas more valuable. He said refined gas is the cheapest. He said most projections show that natural gas will be below \$4 for the next 20 years. He said Basin Electric wants a diversified supply of energy. He said coal has been reduced from 84 percent to 59 percent as the source of energy at Basin Electric. He said coal makes the best economic sense but is threatened by Environmental Protection Agency (EPA) regulation.

In response to a question from Representative Porter, Mr. Niezwaag said state regulation is not a barrier to building transmission lines within this state. He said problems occur within this state when the transmission line needs to be built across federal land.

In response to a question from Representative Porter, Mr. Niezwaag said combining new transmission lines on old towers is not an option because National Reliability Council rules do not allow collocation. He said these rules provide for the separation of lines in case of an emergency.

In response to a question from Senator Wardner, Mr. Niezwaag said Basin Electric has had good cooperation with landowners and has not had to resort to eminent domain. He said Basin Electric has a good reputation, is a local company, and is member-owned.

In response to a question from Senator Wardner, Mr. Niezwaag said recycled heat generators on pipelines produce around five megawatts, and there are eight in existence and the potential for one more.

In response to a question from Senator Andrisc, Mr. Niezwaag said growth in the Williston Basin area has come faster than expected, and there is not enough time to build a coal-fired plant to meet the demand. He said carbon sequestration will be required for a new coal plant. He said at present this

is not cost-feasible. He said the least cost alternative to a coal plant is a natural gas plant that can be built fast with less regulation.

In response to a question from Senator Wardner, Mr. Niezwaag said the approximate cost of providing carbon sequestration for Antelope Valley Station would be \$1.2 billion.

In response to a question from Representative Brandenburg, Mr. Niezwaag said environmental impact studies are required under the Environmental Protection Act and require about three years.

In response to a question from Representative Brandenburg, Mr. Niezwaag said part of the problem is there are not enough federal employees to do the work.

In response to a question from Representative Brandenburg, Mr. Niezwaag said part of the problem is that federal agencies are fearful of lawsuits by environmental groups if there is any mistake in the process.

In response to a question from Senator Andrist, Mr. Niezwaag said smaller plants are not as efficient and do not have economies of scale.

In response to a question from Representative Porter, Mr. Niezwaag said the design capabilities of an intermediate peaking plant allow it to be operated 24/7. He said permitted emissions are limited to a certain number of hours a year so constantly running the plant would use up those hours.

In response to a question from Representative Porter, Mr. Niezwaag said Basin Electric will be able to provide more power in the future through transmission and will be able to back off on peaking plants in the future.

ENERGY INFRASTRUCTURE AND IMPACT GRANT PROGRAM

Mr. Lance Gaebe, Commissioner, Department of Trust Lands, gave a presentation ([Appendix C](#)) on the energy infrastructure and impact grant program. He provided information on the process to award grants and a review of grants awarded to date. He said \$100 million was authorized by the Legislative Assembly in 2011, and \$35 million was added in the November special session. He said the grants are given at the completion of the work. He said the grants are given as reimbursements. He said the 1 percent of the 5 percent of the gross production tax received by the oil and gas impact grant fund provides approximately \$11 million to \$12 million per month. He said the Board of University and School Lands may not disburse more than 60 percent of the funds in a fiscal year. He said there are four grant rounds. He said the first round was for city infrastructure for hub cities and all other cities. He said the second round was for township roads and transportation. He said the third round was for emergency services and responders. He said the fourth round was for all other political subdivision infrastructure, including parks, counties, and airports. He said the grants are

provided to meet initial impacts affecting basic government services directly necessitated by oil and gas development.

In response to a question from Senator Wardner, Mr. Gaebe said the application is one to two pages and is not onerous. He said reimbursement requires invoices or minutes showing approval for payment. He said documentation is required so that there is accountability.

In response to a question from Senator Andrist, Mr. Gaebe said due to the cap, the Board of University and School Lands wants projects done quickly. He said it is always prudent to hold back some money in case of a new emergency.

In response to a question from Senator Andrist, Mr. Gaebe said if the \$100 million cap were removed, the money would be spent wisely. He said it takes 13 months or 14 months to reach the cap in the biennium. He said a better review could be done with more resources.

In response to a question from Senator Lyson, Mr. Gaebe said the Energy Impact Grants Advisory Committee was created by the Board of University and School Lands under authority provided by law.

In response to a question from Senator Lyson, Mr. Gaebe said the process for grant review starts with the staff taking applications and reviewing the applications, including visiting with applicants. He said staff scores the applications based on criteria, and the applicants are ranked based on the scores. He said the Energy Impact Grants Advisory Committee reviews the applications based on score. He said the advisory committee makes recommendations to the Board of University and School Lands. He said the board has made few changes to the advisory committee recommendations. He said the board chooses the members of the advisory committee.

In response to a question from Representative Porter, Mr. Gaebe said if present trends continue and the cap were removed, the impact grant fund would collect at least \$288 million in a biennium.

In response to a question from Senator Taylor, Mr. Gaebe said the additional funds provided in the special session came from the general funds. He said previously one-quarter, full-time employee was used to administer the grant program, and one full-time equivalent position was approved in the last regular legislative session. He said it takes a lot of time to travel to and review sites and grants.

In response to a question from Senator Taylor, Mr. Gaebe said large cities do better with the application process because large cities have more staff. He said there is some frustration by townships and small cities.

Representative Brandenburg said townships have difficulty with the application because of a lack of expertise, and in some cases the person applying for the grant does not have a computer.

In response to a question from Senator Andrist, Mr. Gaebe said the Department of Trust Lands

focuses on getting the money out as fast as possible. He said the department starts the process before money is received. He said because no more than 60 percent may be awarded in one year, the department is working with the Board of University and School Lands to be able to show some sort of intention for the following year before the grant is awarded. He said the department makes an effort to not be bureaucratic.

In response to a question from Representative Meyer, Mr. Gaebe said the grant program is based on the application and need. He said the law must be followed and there needs to be accountability for the funds spent.

EMINENT DOMAIN AND PIPELINE SITING

Mr. Kevin Cramer, Commissioner, Public Service Commission, provided written testimony ([Appendix D](#)) on recent activities of the commission and on the study of eminent domain and pipeline siting. He said a project developer needs to have access to the land and permission from the state through a commission corridor certificate and route permit to construct a facility. He said the two parts of this process are separate from each other except for the provision of law that provides for five landowners to sue and have the court provide information to the commission for action. He said there is a sense of helplessness from the citizens and confusion relating to the commission's role in pipeline siting.

In response to a question from Representative J. Kelsh, Mr. Cramer said the Public Service Commission's jurisdiction over a leak on a pumping station on the Keystone Pipeline is under the siting order. He said the commission does not have safety jurisdiction. He said the federal government has jurisdiction over safety. He said there was no violation of the siting order. As a result of this leak, he said, the commission and first responders are now notified immediately of a leak. He said there is a larger issue of public confidence which is a close second to safety.

In response to a question from Representative J. Kelsh, Mr. Cramer said the federal government was satisfied as to safety.

In response to a question from Senator Wardner, Mr. Cramer said the Public Service Commission has hearings on the siting jurisdiction in the communities affected. He said this provides public access to the process but is not as inviting as it could be because of formalities in the hearing. He said these hearings are an opportunity for the commission to provide information to the community. He said the main problem appears to be an issue of public understanding and knowledge, not rights. He said since he has been on the commission, there has not been one inch of route taken by eminent domain.

In response to a question from Senator Warner, Mr. Cramer said for pipelines for which the Public Service Commission has jurisdiction, the commission

receives a geographic information system database. He said a repository of gas gathering pipelines in the commission would not be a burden. He said in the past there has been resistance to provide the location of these gas gathering pipelines due to competitive issues, but this reluctance has been relaxing. He said the perpetrators have become the victims as new companies accidentally find old pipelines. He said the location of these lines should be known to local emergency management. He said companies have the information on the location of gathering pipelines presently being placed in the ground and share with local emergency management as requested.

In response to a question from Senator Warner, Mr. Cramer said the present time is a good opportunity to locate and map gathering pipelines.

Mr. Daryl Dukart, board member, Dunn County Energy Development Organization, presented written testimony ([Appendix E](#)) on pipelines and transmission lines. He testified on six areas:

1. Lessee notification of pipelines and electrical lines, especially when there are out-of-state landowners.
2. Concern for future generations being able to locate buried and abandoned facilities.
3. Operations outside of temporary easement areas.
4. The ability of the one-call system to locate facilities in a timely manner due to workload.
5. Annual payments for electrical towers with inflation clauses for future landowners.
6. The seriousness of oil spills which can scar the land for decades, e.g., Dunn County had 44 spills in January 2012.

In response to a question from Senator Wardner, Mr. Dukart said an annual payment is required because future generations are going to be impacted with no input into the impact.

In response to a question from Representative Meyer, Mr. Dukart said he has a concern with liability for buried pipelines that release hydrocarbons in the future after the company that placed the lines has gone bankrupt, or there have been multiple sales. He said he is not against pipelines, but does not want the problems with the lines that were buried 22 years ago to recur in the future with the lines placed in the ground at present.

In response to a question from Representative J. Kelsh, Mr. Dukart said oil leaks can take a long time to heal, and this is not the same as with electric lines.

In response to a question from Senator Taylor, Mr. Dukart said he does not have an issue with designating the Public Service Commission as the repository of the location of gas gathering lines.

In response to a question from Senator Wardner, Mr. Dukart said recording the location of gas gathering pipelines at the county courthouse may not be practical because of the lack of staff. He said if extra staff were needed to be hired at the county level, it would most likely be temporary.

Mr. Brain Kalk, Commissioner, Public Service Commission, provided testimony to the committee. He said gas gathering lines are not regulated by the commission, and the one-call system contacts companies that do a good job of locating the lines.

In response to a question from Representative Meyer, Mr. Kalk said information sharing upon a locate request is the solution to the problem.

Mr. Paul Mathews, landowner, Cogswell, provided testimony to the committee. He referred to previous testimony in proposing:

1. Adequate warning of pipeline route.
2. Information on rights and options for landowners.
3. Adequate options for appeal.

Mr. Mathews said not everything is negotiable. He said the Keystone Pipeline representatives would not agree to removal of the pipeline at the end of its use.

Senator Wardner said sometimes pipelines are more important than the landowner's rights, but landowners' rights must be given due consideration.

Mr. Bob Banderet, landowner, Cogswell, provided testimony to the committee. He said he was the landowner who discovered the leak and contacted TransCanada. He said he was contacted by the Pipeline and Hazardous Materials Safety Administration four or five days later.

In response to a question from Representative Meyer, Mr. Banderet said he does not believe the pipeline was being shut down when he called, although TransCanada said it knew of the problem and was shutting down the pipeline.

In response to a question from Representative Meyer, Mr. Banderet said he was 1.5 miles away, and there was a geyser of oil 60 feet to 80 feet in the air. He said the oil is under 1,000-foot pounds of pressure. He said most of the oil was contained in a berm around the pumping station because there was not any wind.

Mr. Bob Grant, Berthold, provided testimony to the committee. He said the same problems occurring in Dunn County are occurring in his area. He said the width and depth of the easement for gas gathering pipelines need to be consistent. He said the issue is not always about compensation but is about the impact on future generations as well. He said he was told by an attorney that the surface owner could be liable for the cleanup of an old line.

In response to a question from Representative Brandenburg, Mr. Grant said liability would result when the EPA forces the landowner to clean up after the company that installed the pipeline walks away.

Mr. Dean Hulse, landowner, Bottineau County, presented testimony to the committee. He said pipelines are different from cellular phone towers, because there is not any eminent domain for cellular phone towers.

In response to a question from Representative Meyer, Mr. Dukart said bonding needs to be negotiated for gathering lines. He said landowners

should try to negotiate reclamation clauses and a bond that the surface owner holds.

In response to a question from Representative Meyer, Mr. Dukart said the downfall for surface owners is the lack of education as to landowner's rights. He said he has five pipelines on one quarter section, and every offer was different as to spacing and depth. He said it took long negotiations to have some consistency.

In response to a question from Senator Andrist, Mr. Dukart said if a pipeline company installs a pipeline, the company should remove the pipeline at the end of its use. With his leases, he said, the pipeline must be flushed and capped and if not used for three years must be reclaimed.

STATE DEPARTMENT OF HEALTH UPDATE

Mr. Terry O'Clair, Air Quality Division Director, State Department of Health, provided written testimony ([Appendix F](#)) on recent activities of the State Department of Health relating to clean air and the EPA. He said a federal court found that North Dakota's determination that selective noncatalytic reduction is the best available control technology for the Milton R. Young Station was not unreasonable, arbitrary, or capricious, and the EPA did not appeal this decision.

Mr. O'Clair said on March 2, 2012, the EPA announced a final decision that the state's regional haze plan would be approved with respect to all sulfur dioxide and particulate matter controls the state had identified and also would be approved for selective noncatalytic reduction nitrous oxide controls called for in the state plan for the Minnkota Power Cooperative and Basin Electric Leland Olds Station. He said the EPA disapproved the nitrous oxide control technologies the state had recommended for the Basin Electric Antelope Valley Station and the Great River Energy Coal Creek Station.

Mr. O'Clair said the EPA has proposed to implement a one-hour sulfur dioxide ambient air quality standard that would require states to utilize predictive air quality models. He said North Dakota, along with four other states, has challenged the rule because the modeling requirement is not allowed under the Clean Air Act and results in overprediction.

In response to a question from Senator Warner, Mr. O'Clair said manufacturers that provided guarantees for the technology used in Texas would not guarantee the same technology in this state due to the increased salts in this state's lignite.

DEPARTMENT OF TRANSPORTATION UPDATE

Mr. Francis Ziegler, Director, Department of Transportation, provided written testimony ([Appendix G](#)) on the statewide construction program; recent highway improvements completed in 2011; transportation projects planned for 2012 on state

highways in oil impact areas; funding utilized on state, county, and township roads; and traffic increases.

In response to a question from Senator Warner, Mr. Ziegler said the life expectancy of the Long X Bridge is 30 years to 50 years. He said the bridge was at 86 percent deficiency rating out of 100 and was in good shape before the recent accident.

In response to a question from Representative Meyer, Mr. Ziegler said building a new bridge would take at least two years to design and build. He said the bridge needs to be repaired unless one-lane traffic is acceptable for at least two years. He said the bridge has the same height restriction as the interstate highways.

In response to a question from Representative Meyer, Mr. Ziegler said the state may not forego the environmental impact statement. He said the process would be shorter if the bridge had been completely destroyed. He said the bridge needs to be fixed.

In response to a question from Senator Warner, Mr. Ziegler said the truck operator that damaged the bridge will pay for the repair. He said the expected cost is \$500,000, and most semitrucks have that much liability coverage.

EMPOWER NORTH DAKOTA COMMISSION UPDATE

Mr. Mike Fladeland, Manager of Energy Business Development, Department of Commerce, provided written testimony ([Appendix H](#)) on recent activities of the EmPower North Dakota Commission. He said the commission has focused on four key areas that affect all energy industries. He said the areas are infrastructure, research and development, workforce, and regulations.

OIL AND GAS DEVELOPMENT UPDATE

Mr. Lynn Helms, Director, Department of Mineral Resources, gave a presentation ([Appendix I](#)) on resource plays, the developmental history and intervention points, and oil and gas development activity. He said the surface impact for a pad has decreased over time from 10 percent of the field to four-tenths of 1 percent of the field. He provided information on the Tyler, Bakken, and Three Forks Formations. He provided information on how well placement has developed to being organized into 15,000 square miles of north-south, 1,280-acre spacing and drilling units. He said the state will need 6,000 miles of high-grade gravel road to develop the play. He said semiclosed loop systems will be required for all pads on April 1, except for extremely shallow wells. He said there are 207 rigs in this state. He said 47 rigs are being built for the Bakken, and three rigs will be removed as inefficient. He said he expects 225 rigs for the next two years. He said this should complete the homesteading phase where oil companies prove up their leases. He said 80 percent of the leases will be secured by the end of 2012. He said after the homestead phase comes the farming

stage in which the field is filled in from the old pad. He said after 2014 there will need to be 650 semiloads to 700 semiloads per rig. He said present rigs require approximately 2,000 semiloads.

In response to a question from Senator Wardner, Mr. Helms said the high price differential for oil will last for a year or two.

Mr. Helms provided information on oil field industry jobs. He said the number of jobs required will increase from approximately 35,000 now to over 60,000 in 2020 and decrease to approximately 45,000 from 2035 to 2060. He said the multiplier for other jobs created by these jobs is 2.5.

In response to a question from Representative Meyer, Mr. Helms said he suspects that the crude oil price quoted in the media is the Flint Hills price from Minnesota.

In response to a question from Senator Wardner, Mr. Helms said gathering pipelines are treated as an appurtenance to the oil well. He said when the oil well is abandoned, the pipeline must be purged with water or nitrogen. He said if the gathering pipeline is shallower than three feet, then the pipeline must be removed. He said these rules have been in place since 2005.

In response to a question from Representative Meyer, Mr. Helms said gathering pipelines are covered under the well bond.

In response to a question from Senator Warner, Mr. Helms said the one-call system is a private system. He said the location of gathering lines is not reported to the one-call system, but the one-call system contacts pipeline companies to locate gathering lines upon a locate request.

In response to a question from Senator Andrist, Mr. Helms said before the bond on the well is released, the gathering pipeline must be removed or purged. He said most bonds on a well are for \$50,000 or a \$100,000 blanket bond. He said blanket bonds are only available if there are fewer than six compliance issues. He said there are two types of bonds--a certificate of deposit at the Bank of North Dakota or a surety bond. He said the bond stays in place until the field inspector certifies the site as reclaimed.

In response to a question from Senator Andrist, Mr. Helms said the bond is tied to the well, and a new operator has to acquire a bond or replace the bond before the transfer is allowed. He said if a well sits for a year, the bond may be used to clean up the site. He said there are no orphan wells in North Dakota.

In response to a question from Senator Andrist, Mr. Helms said the bond does not cover the full cost of reclamation. He said the most recent reclamation costs were \$85,000. He said the lower level of bonding is allowed once a company begins production and has assets in this state. He said all fines and fees go to the abandoned well restoration fund, which has a balance of \$1.5 million.

In response to a question from Senator Andrist, Mr. Helms said there is no risk to a surface owner for

liability if everyone follows the rules. He said if an operator does not follow the law and does not record the abandoned well and pit, the owner may be required to haul off the pit and plug the well if the owner wants to develop the land. He said the owner would have a cause of action against the operator.

In response to a question from Senator Taylor, Mr. Helms said a new refinery would require the gas demand of a million people and the availability of a million barrels per day. He said this is a possible vision for North Dakota. He said if the Hyperion Refinery is built in South Dakota, it may remove the economies of scale needed for a refinery in North Dakota.

In response to a question from Representative Brandenburg, Mr. Helms said there is some test drilling being done around the state to determine if the five elements needed for a resource play are in existence. He said the main thing companies are looking for is mature source rock.

In response to a question from Senator Wardner, Mr. Helms said an operator must file with the county recorder the location of the cuttings pit and reclaimed site.

In response to a question from Representative Porter, Mr. Helms said gathering pipelines are not part of the statute requiring recordation of the location and should be part of the statute. He said the office of the county recorder appears to be the best spot for the location of these records. He said the people who

know the location of the gathering pipelines are the people using the gathering pipelines.

UPDATE FROM NORTH DAKOTA PIPELINE AUTHORITY

Mr. Justin Kringstad, Director, North Dakota Pipeline Authority, provided a presentation ([Appendix J](#)) on recent activities with oil and gas pipelines in this state. He said there are two challenges--moving oil out of the Williston Basin and moving oil within the Williston Basin. He said approximately 61 percent of oil is moved out of the Williston Basin through pipeline, 23 percent shipped by rail, 6 percent trucked to Canadian pipelines, and 10 percent used by the Tesoro Mandan Refinery. He said approximately 70 percent of oil is trucked within the Williston Basin with the remainder moved with pipeline.

In response to a question from Senator Warner, Mr. Kringstad said people are studying value-added propane and butane projects. He said these projects may be active in two years to five years.

No further business appearing, Chairman Wardner adjourned the meeting at 3:00 p.m.

Timothy J. Dawson
Committee Counsel

ATTACH:10