

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE

Tuesday, March 4, 2014
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 Andrist, Kelly M. Armstrong, David Hogue, Philip M. Murphy, Connie Triplett; Representatives Tracy Boe, Chuck Damschen, Ben W. Hanson, Todd Porter, Mike Schatz, Peter F. Silbernagel

Others present: Representative Marvin E. Nelson, member of the Legislative Management, was also in attendance.

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

It was moved by Senator Armstrong, seconded by Representative Silbernagel, and carried on a voice vote that the minutes of the February 11, 2014, meeting be approved as distributed.

Chairman Wardner said the next meeting will be in Minot, and he hopes to meet in the western part of the state and perhaps tour a clean coal plant in Saskatchewan, north of Crosby. He said the committee would also tour a natural gas plant at that meeting.

FUTURE OF THE OIL INDUSTRY STUDY

Committee Counsel said \$25,000 of the \$125,000 for the study must be disbursed to KLJ after each oral, in-person phase completion with a hard copy report by KLJ to the committee, after accepted completion of each phase by the committee, and after proper billing.

Mr. Mike Wamboldt, Project Manager, KLJ, gave a presentation ([Appendix B](#)) on Phase 1 of the study update. He said Phase 1 is a data gathering process that will result in forming key indicators. He said Phase 1 will compile a draft of baseline assumptions. He said Phase 2 will be validating the key indicators. He said there are many wild cards that could have a dramatic effect on the direction of oil and gas development.

In response to a question from Chairman Wardner, Mr. Wamboldt said the oil sands in Alberta and the opening of Mexico to private companies are wild cards.

In response to a question from Representative Silbernagel, Mr. Wamboldt said the study will present facts and statistics and will not make recommendations on taxes.

Chairman Wardner said the committee has no expectation for recommendations on taxes.

Ms. Kayla Ver Helst, KLJ, answered questions for the committee. In response to a question from Representative Schatz, she said the counties looked at in the area of study will be the 19 oil and gas-producing counties. She said the population numbers will be updated.

In response to a question from Senator Triplett, Mr. Wamboldt said he would provide a list of the 28 recent and relevant studies being reviewed by KLJ for the study.

In response to a question from Senator Triplett, Mr. Wamboldt said as part of the study relating to the environment, he had met with industry representatives and the North Dakota Petroleum Council and had no date yet to meet with the State Department of Health. He said he would meet with the State Department of Health in the future.

In response to a question from Senator Triplett, Mr. Wamboldt said the environmental issues discussed with industry representatives and the North Dakota Petroleum Council included Environmental Protection Agency regulation on fracking, endangered species, regional haze, rail issues, and technologically enhanced naturally occurring radioactive material (TENORM).

In response to a question from Senator Triplett, Ms. Ver Helst said the study will review information from Workforce Safety and Insurance, but reporting in this state is different from other states and the process is being reviewed as well.

In response to a question from Senator Triplett, Ms. Ver Helst said a preliminary request for information from the Occupational Safety and Health Administration has been made, and the main issue is to make sure the information is interpreted correctly.

In response to a question from Senator Triplett, Mr. Wamboldt said the slide on oil production rates was from November 2012. He said the slide was included as an example of the information that is being reviewed, not as an example of the actual information being reviewed.

Senator Triplett said the environmental spills graphics are a disservice because of the size of the dots. She said the 20-gallon spills should be much smaller than the spill by Tesoro. She said the many small spills look too big on the graphic.

In response to a question from Senator Triplett, Mr. Wamboldt said he would provide the committee a document of the key indicators being used as part of the study. Ms. Ver Helst said in Phase 1 the goal is to make base assumptions, but these assumptions need to be validated to maintain the integrity of the study.

Senator Triplett said the study is a public study, and the committee needs to see the base assumptions before the assumptions are used so as to provide input.

Ms. Sandi Tabor, KLJ, answered questions for the committee. In response to a question from Chairman Wardner, she said the study is a work in progress, and the base assumptions that have not been validated should not be made public because it would provide misinformation. She said the goal of the study is to provide the best information, and to do this, the process requires validation.

In response to a question from Senator Triplett, Ms. Tabor said the committee will see the validated assumptions as part of Phase 2. She said Phase 1 is data gathering. She said the base assumptions will be sent out to 10 or 15 people for validation. She said these people will be asked if the study is missing anything as part of the information gathering process.

Chairman Wardner said the committee has given some freedom to KLJ to do a study, and the committee has a high expectation. He said the decisionmaking based upon the data will be done by the committee at the end of the study.

In response to a question from Senator Andrist, Ms. Tabor said North Dakota State University (NDSU) is doing the work on population projections. She said a study on temporary employees will be done by NDSU with \$150,000 appropriated during the 2013 legislative session. She said this information will help and hopefully will be incorporated into the study.

In response to a question from Senator Armstrong, Mr. Wamboldt said the effect of housing challenges on industries will be reviewed.

In response to a question from Chairman Wardner, Mr. Wamboldt said to maintain the integrity of the study, the current plan was chosen; however, some of the information could be provided to the committee.

In response to a question from Chairman Wardner, Mr. Wamboldt said the study would summarize indicators and make assumptions for the next four years.

In response to a question from Representative Schatz, Ms. Tabor said the NDSU study will include part-time workers to do oilfield work this summer. She said the study is more than looking at the census.

In response to a question from Representative Nelson, Ms. Tabor said how TENORM affects the future development of oil is what is being reviewed. She said she is hearing it is not a significant impact. She said the study will not look at TENORM issues. She said the study is to see how environmental issues affect oil and gas development.

In response to a question from Senator Andrist, Ms. Tabor said the study by NDSU will not count noses. She said the NDSU study will use a methodology. She said she will not judge the methodology but will report on it.

EMPOWER NORTH DAKOTA COMMISSION

Mr. Alan Anderson, Commissioner, Department of Commerce, provided written testimony ([Appendix C](#)) on the recent activities of the EmPower North Dakota Commission, the value-added energy study, the renewable energy program, and the energy conservation grant program.

In response to a question from Chairman Wardner, Mr. Anderson said the most exciting takeaway from the value-added energy study is for the possibilities of a natural gas liquids plant in this state. He said there are some small areas in which this state can compete on a world basis. He said the study will show where this state can compete.

In response to a question from Senator Hogue, Mr. Anderson said it is difficult to determine whether the federal tax credits for wind will be extended and for how long. He said he would provide information on the various states' incentives for wind.

In response to a question from Senator Triplett, Mr. Anderson said he would provide the committee the two reports--one on ethanol and one on natural gas already made as part of the value-added study.

PUBLIC SERVICE COMMISSION UPDATE

Ms. Julie Fedorchak, Commissioner, Public Service Commission, gave a presentation ([Appendix D](#)) on 2013 siting highlights, the recent CO₂ symposium, and pipeline regulation.

In response to a question from Chairman Wardner, Ms. Fedorchak said the present pipeline staff was increased from one individual to two individuals last legislative session. She said the reviews are desktop reviews, and the inspectors do not go onsite. She said there are enough employees for the present program. She said if oil pipelines were included, the Public Service Commission (PSC) would need more employees.

In response to a question from Representative Hanson, Ms. Fedorchak said the number of inspectors is determined by the United States Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) through a formula. She said the formula is the number of miles of pipeline divided by 20 to determine the number of inspection days.

Ms. Fedorchak said she recommends the state should monitor hazardous liquid pipelines.

In response to a question from Senator Andrist, Ms. Fedorchak said there are 119 miles of hazardous liquid pipelines and many miles of gathering pipelines. She said hazardous liquids include oil by definition.

Senator Triplett said she was pleased with what the PSC was doing in regard to hazardous liquid pipelines and invited the PSC to propose any legislation needed to the committee.

Chairman Wardner said the PSC can regulate intrastate hazardous liquid pipelines without legislation. He said the legislature needs to know what is going on when something happens to a pipeline.

Committee Counsel presented a memorandum entitled [Pipeline Safety Regulation](#).

In response to a question from Representative Porter, Committee Counsel said having the PSC take over hazardous liquids would be analogous to the PSC's program for natural gas. He said some states do PHMSA's work for interstate pipelines, and he does not know if this is done through yearly certification as it is for intrastate pipelines.

PROPANE

Mr. Mike Rud, President, North Dakota Petroleum Marketers Association, provided information ([Appendix E](#)) on the shortage of propane. He said the reason for the shortage was because of the need for propane for drying corn from November through January. He said approximately 40,000 homes in this state use propane. He said approximately 1,000 to 2,000 businesses in this state use propane. He said the eastern part of the country is moving away from heating oil to propane. He said one corn drying system uses as much propane as a home may use in a year. He said a corn drying system may use 1,000 gallons of propane per day. He said an oil well uses 250,000 gallons of propane from completion to the end of fracking. He said the United States exports 10 to 12 percent of the propane produced in the United States on an annual basis. He said this was increased to 25 to 30 percent this year because of the demand by China and Japan. He said one way the high prices were mitigated was by making small fills to reduce costs for customers when propane prices were extremely high. He said the Cochin Pipeline will be reversed this spring to bring condensate to the tar sands and will not be used for bringing propane to the midwest. He said the Hess - Tioga plant will make approximately 17,000 barrels a day of propane. He said this is equal to the amount of propane being lost to the Cochin Pipeline.

In response to a question from Senator Triplett, Mr. Rud said the Cochin Pipeline has signed a 10-year contract to bring condensate to the tar sands.

In response to a question from Senator Andrist, Mr. Rud said the spike in prices was caused by a huge demand and record cold. He said the extremely high prices were for approximately two weeks.

In response to a question from Senator Murphy, Mr. Rud said the federal government may wish to review whether to limit exports of propane. He said with the present free market system, one option for mitigating the cost of propane is to contract for a supply.

In response to a question from Chairman Wardner, Mr. Rud said not a lot of propane is stored in North Dakota. He said there are 10 million gallons stored at the Kinder Morgan storage area. He said the Hess plant at Minto has deep caverns.

In response to a question from Chairman Wardner, Mr. Rud said he hopes Hess sees a market in this area and keeps the propane that is needed in this area.

In response to a question from Representative Nelson, Mr. Rud said using natural gas to dry grain has transportation issues.

TRANSPORTATION

At the request of Chairman Wardner, Committee Counsel re-presented a bill draft [[15.0022.01000](#)] on transferring highway maintenance from counties to the Department of Transportation (DOT).

Mr. Terry Traynor, Assistant Director, North Dakota Association of Counties, provided testimony ([Appendix F](#)) on the bill draft. He said he shared the bill draft with several county engineers and commissioners, and the response was the bill draft did not solve the problem. He said county officials believe a mechanism or procedure should be available to formally consider whether routes warrant reclassification as state routes, or some special consideration for funding improvements. He said North Dakota Century Code Section 24-05-18 provides for cost-sharing on county routes and does what most of what the bill draft does.

Mr. Grant Levi, Director, Department of Transportation, gave a presentation ([Appendix G](#)) on transportation projects and the proposed bill draft. His presentation included a review of the increase in truck traffic and vehicle miles traveled, traffic delays, road damage, construction cost inflation, and federal road funding. He said the United States Highway 85 four-lane project between Watford City and Williston will be under construction this year. He said the Watford City United States Highway 85 southwest bypass will be completed this year. He said the Watford City State Highway 23 southeast bypass will be under construction this summer. He said the Alexander bypass will be completed this year. He said the Williston northwest bypass will be under construction this year. He said the Dickinson interim bypass will be completed in 2014. He said the New Town northeast bypass will begin construction this year. He said the estimated cost to four-lane the remainder of United States Highway 85 in 2016 is \$2.817 billion.

Mr. Levi said the bill draft is a way of providing funding to counties. He said additional funding has been provided to counties from last legislative session. He said the bill draft would require the DOT's budget authority to be adjusted to expend funds received from counties for doing maintenance for the county or the DOT would have to fund the county maintenance work. He said the DOT would be required to outsource this work. He said either option results in moving resources from the state to the counties. He said if the DOT took over county roadways, the DOT would have to establish load limits, set a speed limit at 65 miles per hour, maintain road access control, and upgrade county roads to meet the state system standards.

In response to a question from Representative Hanson, Mr. Levi said when discussing the east-west dividing line, Williston, Dickinson, and Minot are in the west and Bismarck and the remainder of the state are in the east.

Mr. Levi said the federal highway trust fund will run out of money by July. He said the program is a reimbursement program. He said 25 percent of the funds go to cities and counties. He said it appears there will not be a federal program in 2015. He said for there to be a federal program, there will need to be \$19 billion in new revenue.

In response to a question from Representative Nelson, Mr. Levi said a reimbursement program pays for items of work when the work is completed. He said the DOT pays the contractor and then requests reimbursement from the federal government. He said this is a constant process.

In response to a question from Representative Porter, Mr. Levi said the DOT has not started the formal process for four lanes south of Watford City. He said the DOT has started the process for the project from Alexander to Williston.

In response to a question from Representative Porter, Mr. Levi said the DOT owns most of the right of way along United States Highway 85. He said the DOT has an easement through park property. He said he would report on the width of the right of way.

In response to a question from Representative Porter, Mr. Levi said the DOT grants utility permits that are limited to utilities to use right of way for public use. He said the DOT recently adopted a policy for allowing the temporary use of highway right of way for water in temporary pipelines. He said this permit process allows for water to be transported in the ditch. He said as a condition of transporting the water on highway right of way, there needs to be evidence of the pipeline company first working with landowners and being unsuccessful or there being poor terrain. He said the permits to cross highway right of way are generally horizontal with limited longitudinal use.

In response to a question from Representative Porter, Mr. Levi said allowing the oil and gas industry to use highway right of way would create competition against landowners. He said the DOT should not compete against landowners.

In response to a question from Chairman Wardner, Mr. Levi said the Lewis and Clark Bridge needs environmental clearance. He said after environmental clearance, it will take two years to two and a half years to build the bridge. He said there will be four lanes up to the present bridge without a four-lane bridge.

Mr. Levi said the DOT works with counties to plan projects with federal funding under Section 24-05-18. He said Section 24-02-36 limits the state's ability to expend state funds, and it would need to be amended for the bill draft to work. He said after the bypass construction, there will be 56 miles of state highway available under the law. He said when reviewing a county's road to determine whether it should be transferred to the DOT, the whole county needs to be reviewed because there may be roads that are maintained by the state that should be county roads.

In response to a question from Senator Triplett, Mr. Levi said the state taking over a county road would require a major construction project for many county roads.

In response to a question from Senator Murphy, Mr. Levi said the Legislative Assembly placed a cap on the number of miles in the state highway system to create a balance between counties and the state. He said the DOT has taken on many miles of county road in the past.

DISCUSSION

Chairman Wardner said acceptance of the Phase 1 report by KLJ will be considered at the next meeting in Minot. He said if the committee goes to Canada, the members will need a passport. He said he is looking at a meeting in May or June with a tour of a plant in Canada north of Crosby.

No further business appearing, Chairman Wardner adjourned the meeting at 1:50 p.m.

Timothy J. Dawson
Committee Counsel

ATTACH:7