

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE**

Tuesday, November 24, 2015  
Harvest 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, Kelly M. Armstrong, Bill L. Bowman, Philip M. Murphy, John M. Warner; Representatives Dick Anderson, Mike Brandenburg, Chuck Damschen, Ben Hanson, Corey Mock, Todd Porter

**Member absent:** Senator Brad Bekkedahl

**Others present:** Senator Jessica Unruh, member of the Legislative Management, was also in attendance. See [Appendix A](#) for additional persons present.

**It was moved by Representative Mock, seconded by Representative Anderson, and carried on a voice vote that the minutes of the October 29, 2015, meeting be approved as distributed.**

Chairman Wardner said the committee has the responsibility to study oil and gas tax allocation formulas and to study federal regulations of carbon dioxide emissions. He said some of the committee's future meetings will be in western North Dakota as the committee continues to gather information from political subdivisions.

**STUDY OF ENVIRONMENTAL PROTECTION AGENCY REGULATIONS****Lignite Energy Council**

Mr. Jason Bohrer, President and Chief Executive Officer, Lignite Energy Council, presented information ([Appendix B](#)) regarding the committee's study of federal Environmental Protection Agency (EPA) regulations of carbon dioxide emissions. He said the EPA's Clean Power Plan establishes a federal-state process for limiting carbon dioxide emissions from power plants. He said the final rules focus on the following three primary methods for reducing carbon dioxide emissions:

- Improving the average efficiency of existing coal-fired power plants.
- Displacing fossil steam-based electrical generation systems by increasing generation from existing natural gas-based systems.
- Reducing the need for future fossil fuel-based electrical generation systems by increasing electrical generation from zero-carbon systems.

In response to a question from Chairman Wardner, Mr. Bohrer said North Dakota will not receive credit for the installation of zero-carbon systems (wind turbines) installed after 2012 based on the final rules.

Mr. Bohrer said reducing the amount of coal burned at power plants by 45 percent would allow the state to comply with the Clean Power Plan but at a high cost to the state. He said power companies have invested billions of dollars in assets at coal-fired plants in the state, which would result in industry-wide losses and stranded assets if coal burning were reduced by 45 percent. He said the coal industry, including mining and power generation, provides approximately 16,000 jobs and contributes \$3 billion of annual economic activity for North Dakota.

Mr. Bohrer said the state could reach compliance by partially capturing carbon dioxide emissions at all power plants or by fully capturing carbon dioxide emissions at some power plants. He said no commercially viable examples of fully capturing carbon dioxide emissions currently exists. He said pilot projects for carbon dioxide emissions capturing resulted in high infrastructure costs.

Mr. Bohrer said North Dakota could purchase credits from the renewable energy credit market as a way to comply with the Clean Power Plan final rules. He said the availability of credits is uncertain. He said the estimated cost to purchase credits is \$200 million to \$400 million per year.

In response to a question from Chairman Wardner, Mr. Bohrer said the availability of credits is uncertain because most states would need to retain their credits for their own compliance.

Mr. Bohrer said additional renewable energy systems or zero-carbon systems are another option for compliance. He said North Dakota would need to increase power generation from renewable energy by 6,000 to 8,000 megawatts or construct nuclear power plants. He said both options would require billions of dollars of investment and public support. He said permitting new renewable energy systems or nuclear power plants could be a regulatory challenge.

Mr. Bohrer said the Congressional Budget Office estimated the cost of complying through renewable energy credits to be approximately \$890 per household by the year 2020. He said based on a study conducted by the National Economic Research Associates, average annual electricity prices in North Dakota would increase by approximately 43 percent under the final rules of the Clean Power Plan.

In response to a question from Representative Porter, Mr. Bohrer said various groups are researching the estimated direct costs to consumers related to compliance with the Clean Power Plan. He said data is not yet available for direct costs in North Dakota. He said the costs will vary based on the method of compliance.

In response to a question from Representative Brandenburg, Mr. Bohrer said the criteria for the renewable energy credits would be developed in each state's compliance plan. He said the plan would identify ownership of the credits. He said ownership of the credits may be difficult to determine because the operations of many power companies cross state lines.

In response to a question from Chairman Wardner, Mr. Bohrer said the Allam Cycle project is still being researched and will not be ready for commercial development until 2030. He said if the compliance deadlines under the Clean Power Plan were delayed, the Allam Cycle could be a solution for compliance.

### **Attorney General's Office**

Ms. Margaret I. Olson, Assistant Attorney General, Attorney General's office, presented information ([Appendix C](#)) regarding the status of any legal action related to EPA regulations of carbon dioxide emissions. She said North Dakota submitted extensive comments related to the proposed Clean Power Plan. She said some states entered litigation proceedings prior to the issuance of the final rules resulting in dismissal of the cases. She said North Dakota filed a petition for review on October 23, 2015, related to the final rules for new power plants. She said North Dakota was the first to file and filed separately from other states. She said all other cases related to the final rules for new power plants will be consolidated with the North Dakota case, since North Dakota was the first to file. She said 27 other states filed petitions opposing the rules. She said some power companies, environmental groups, and states actively support the rules.

Ms. Olson said North Dakota also filed a petition to challenge the final rules related to existing power plants. She said North Dakota's case will be consolidated with West Virginia's case, because West Virginia was the first to file. She said the case also includes a motion for stay to suspend the required implementation of the rules while the litigation is under way. She said North Dakota and power companies will need to move forward with plans to comply with the final rules because the motion for stay may not be granted.

Ms. Olson said North Dakota's primary legal arguments in the cases include the following:

- The EPA cannot regulate existing power plants under the new rules, because existing power plants are already regulated under a different set of existing rules.
- The EPA exceeded its authority in violation of state's rights under the federal Clean Air Act.
- The EPA did not provide an opportunity for comments on the changes in the final rules from the proposed rules.

### **Public Service Commission**

Mr. Randel Christmann, Commissioner, Public Service Commission, provided comments ([Appendix D](#)) regarding the committee's study of EPA regulations of carbon dioxide emissions. He said the cost for North Dakota to comply with the EPA's Clean Power Plan is estimated to be \$375 million per year, or approximately \$50 per person per month. He said low-income ratepayers would need assistance with the increased utility costs. He said ratepayers in rural areas would have larger cost increases because they heat their homes with electricity. He said the most likely option for compliance is participation in a credit trading program, which still has a very high cost. He said the Public Service Commission is not obligated to grant cost recovery to power providers for expenses incurred with compliance, which could create a financial burden for power companies.

In response to a question from Representative Brandenburg, Mr. Christmann said the structure of the Clean Power Plan does not restrict the EPA from further lowering the carbon dioxide emissions limits in the future.

### **State Department of Health**

Mr. Dave Glatt, Chief, Environmental Health Section, State Department of Health, provided comments ([Appendix E](#)) regarding the committee's study of EPA regulations of carbon dioxide emissions. He said the Clean Power Plan final rules changed significantly compared to the proposed rules for North Dakota. He said the rate-based reductions increased from a reduction of 24.7 percent under the proposed rules to a reduction of 44.9 percent under the final rules. He said the mass-based reductions increased from a reduction of 10.5 percent to a reduction of 37.4 percent. He said North Dakota had the second largest increase in the reductions under the final regulations compared to all other states. He said from the perspective of state regulators and power companies, compliance under the proposed regulations would have been a challenge but were attainable. He said compliance under the final rules will probably be a significant challenge and financial burden for state regulators and power companies.

Mr. Glatt said state regulators need to develop a plan for compliance that includes a variety of options even if the compliance costs are significant. He said the State Department of Health does not want to rely on a plan that meets compliance standards by shutting down existing coal power plants but recognizes that all options must be explored. He said the deadline for compliance plans is September 2016 unless the state receives a two-year extension. He said the department held four public meetings in October 2015 to gather public input and to inform the public of the developments of the Clean Power Plan. He said approximately 1,500 people attended the meetings.

In response to a question from Representative Brandenburg, Mr. Glatt said developing a plan for compliance may give the state leverage in any legal action against the EPA.

In response to a question from Senator Bowman, Mr. Glatt said the cost to develop a plan for compliance is not yet known. He said the department may need additional funding or other resources to develop a plan.

### **Tax Department**

Mr. Joe Morrissette, Deputy Tax Commissioner, Tax Department, presented information ([Appendix F](#)) regarding the coal severance tax and the coal conversions facilities privilege tax. He said the coal severance tax is 39.5 cents per ton of coal mined, which includes a 2 cent per ton levy for the lignite research fund. He said revenue from the coal severance tax is distributed to the coal development trust fund (30 percent) and to coal-producing counties (70 percent). He said the coal conversion facilities privilege tax includes a levy of .65 mills on 60 percent of the installed electrical generation capacity and a levy of .25 mills per kilowatt hour of electricity produced for sale. He said revenue from the .65 mill levy is allocated 85 percent to the general fund and 15 percent to the county in which the electrical generation plant is located. He said revenue from the .25 mill levy is allocated to the general fund. He said the combined annual tax collections for both tax types have been approximately \$35 million to \$40 million per year since 1999.

### **Job Service North Dakota - Coal-Related Employment**

Mr. Michael Ziesch, Manager, Labor Market Information Center, Job Service North Dakota, presented information ([Appendix G](#)) regarding employment in the coal industry. He said coal-related employment consistently has some of the highest annual wages in the state. He said in the first quarter of 2015, coal mining jobs paid an average quarterly wage of approximately \$25,000 while the state average was \$12,775. He said the utility industry is closely related to the coal industry in North Dakota because coal is used in electrical generation. He said utility-related jobs paid an average quarterly wage of approximately \$21,000. He said employment in the coal industry and the utility industry has historically been very consistent.

### **OTHER**

#### **Job Service North Dakota - Oil- and Gas-Related Employment**

Mr. Ziesch presented information ([Appendix H](#)) regarding employment in oil- and gas-related industries. He said lower oil prices have resulted in decreases in oil- and gas-related employment and lower wages in the mining industry. He said the unemployment rate in October 2015 was 2 percent. He said the unemployment rate is based on North Dakota residents and does not include out-of-state workers. He said out-of-state workers are included in the jobs data in North Dakota, but are reflected in the unemployment data in their state of residency. He said approximately 54 percent of the unemployment benefit claims, or \$85 million, were paid to out-of-state recipients during the 12-month period ended October 31, 2015. He said the majority of claims in the past year have been paid to individuals who were employed in oil- and gas-related jobs, including transportation jobs. He said the claimants are usually eligible for the maximum duration of benefits and the maximum benefit amounts.

In response to a question from Representative Porter, Mr. Ziesch said Job Service North Dakota works with other states in the administration of the unemployment benefit claims paid to out-of-state residents. He said the payment system is electronic and largely automated so involvement with other states is minimal.

### **EmPower North Dakota Commission**

Mr. Alan Anderson, Commissioner, Department of Commerce, presented information ([Appendix I](#)) regarding the recent activities of the EmPower North Dakota Commission. He said the EmPower North Dakota Commission selected three key focus areas for the interim, including regulatory, research and development, and infrastructure. He said under the focus area related to regulations, the commission will study the impact of EPA initiatives on the North Dakota economy. He said research and development efforts will focus on the Allam Cycle and enhanced oil recovery. He said under the focus area related to infrastructure, the commission will discuss issues with easements, permits, and tax policies.

Chairman Wardner said the next committee meeting will be in Bismarck on Wednesday, February 3, 2016.

No further business appearing, Chairman Wardner adjourned the meeting at 1:45 p.m.

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Adam Mathiak  
Fiscal Analyst

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