

# House Bill 1008

**Presented by:** Julie Fedorchak, Chair  
Public Service Commission

**Before:** House Appropriations Committee  
Government Operations Division  
Honorable Don Vigesaa, Chair

**Date:** January 11, 2021

## TESTIMONY

Mr. Chair and members of the committee, I'm Commissioner Julie Fedorchak, Chair of the Public Service Commission, here to present our 2021-2023 biennial budget request. Commissioners Randy Christmann and Brian Kroshus are also in attendance today and available for any questions you may have. Thank you for the opportunity to present our budget bill and explain why we feel it benefits the State of North Dakota. I look forward to answering any questions you may have at the end of my testimony.

### **Introductions and Responsibilities:**

The Public Service Commission (PSC) is a constitutional agency with varying degrees of statutory authority over the following areas:

- Coal mining and reclamation;
- Abandoned mine lands;
- Energy conversion, transmission and generation facility siting;

- Pipeline safety;
- Electric, gas and telephone public utility regulation;
- Damage prevention (enforcement of the One-Call Law);
- Commercial scales and measuring devices;
- Railroad safety;
- Auctioneers.

Attachment 1 will provide you with a summary of each program, including citation to the applicable North Dakota Century Code chapter(s) associated with that program, major statutory responsibilities, and current biennium accomplishments.

The work at the Commission continues at a brisk pace. We processed 463 cases this year. This biennium to date we have sited 95 miles of pipelines, 41 miles of electric transmission lines, 200 MW of wind generation, 250 MCFD of gas processing capacity, and 20,000 barrels/day of oil processing capacity. This represents nearly \$650 million of economic investment in North Dakota. The Reclamation Division has added 640 acres to existing permit areas and an additional 2,660 are proposed to be added and under review. The Abandoned Mine Lands Program completed 7 projects totaling about \$3.6 million. Both the Reclamation and Abandoned Mine Lands Program continue to receive excellent evaluation reports from the federal Office of Surface Mining. Biennium to date, the PSC has received and is processing two general rate cases. We also review on an annual basis 8 rate riders where each of the electric IOUs recover expenses for transmission, generation and renewable resource investments. We

continue to educate about the importance of Call Before You Dig, and process on average 55-65 violation cases per biennium. The Commission also licenses 331 auctioneers, 160 auction clerks, and inspects and tests more than 3,700 commercial weighing devices in the state. Our Railroad Safety Program inspectors completed more than 1,500 inspections finding 10,903 defects and 126 violations.

The following information provides details regarding the PSC's budget priorities for the upcoming biennium and addresses the information requested in Legislative Council's letter dated December 17, 2020.

### **2017-19 Audit Findings:**

The Commission had one audit exception in its 2017-19 audit. The Public Service Commission did not have blanket bond coverage starting on January 1, 2018 through May 31, 2019. It was recommended the Public Service Commission obtain blanket bond coverage and ensure that coverage is renewed on a biennial basis. The Commission agreed with the recommendation and immediately put a control in place to rectify the issue. The Commission has listed the contact email address as a group PSC email that notifies multiple individuals. The Commission renewed blanket bond coverage immediately when this was identified.

## **Federal Funding Related to COVID-19:**

The Commission has not received any federal funding related to COVID-19.

## **One-Time Funding-Current Biennium:**

The Commission currently has two one-time funding items. The first is \$336,000 in federal funding for specialized legal services. None of this funding has been expended. This funding could only be used for an Office of Surface Mining or Pipeline Hazardous Materials Safety Administration (PHMSA) approved case and the Commission did not have to intervene on any federal cases during this biennium.

The second one-time funding item is \$100,000 in the Agriculture Department budget to continue to provide services related to grain insolvency litigation initiated prior to July 1, 2019. All claimants have been paid. The Commission anticipates spending approximately \$3,900 of the remaining \$24,500 in 2021.

## Major Funding Components in the Base Budget (2019-21):

The following line items make up the major components of our base level:

Appropriation	General Funds	Federal Funds	Special Funds	TOTAL
Salaries and Wages	\$5,628,068	\$3,867,492		\$9,495,560
Operating	\$1,031,860	\$606,966	\$125,000	\$1,763,826
Capital Assets	\$25,000			\$25,000
Grants		\$20,000		\$20,000
AML Contractual		\$6,000,000		\$6,000,000
Rail Rate Complaint Case			\$900,000	\$900,000
Railroad Safety Program			\$589,018	\$589,018
Specialized Legal Services*	\$30,000	\$64,000		\$94,000
<b>TOTAL</b>	<b>\$6,714,928</b>	<b>\$10,558,458</b>	<b>\$1,614,018</b>	<b>\$18,887,404</b>

\*Federal funds are only available for rare and specific federal cases and must be approved by the applicable federal agency. As a result, the Commission relies on state general fund appropriation for this line item.

In the last three budget cycles, the Public Service Commission has undergone significant reorganization in order to meet the increasing demands of the industries we regulate. This includes the utility industries that are undergoing major transformations driven by new technology, aging infrastructure and policy changes, as well as the significant growth of North Dakota's oil and gas industry. Our agency has worked hard to meet these needs by restructuring staff, increasing the use of technology, and improving administrative efficiencies.

The Commission has reorganized over the course of the last several biennia resulting in greater efficiencies and additional focus in certain areas. We created the Compliance Division by consolidating three different programs – licensing, weights and measures, and rail safety – under one director, which allowed for a

more efficient and effective approach to regulatory enforcement and compliance with these programs. In addition, the director of economic regulation position was eliminated and we organized our Public Utilities Division under one director.

Last session, the legislature transferred the Grain Licensing Program to the Ag Department. This biennium, we streamlined our administrative group and moved Gas Safety to the Compliance Division.

The chart below details the impact these changes have had on FTEs:

Biennium	FTEs	Comments
2011-13	43	
2013-15	44	<ul style="list-style-type: none"> <li>• 1 Weights &amp; Measures Inspector eliminated</li> <li>• 1 Public Utility Analyst added</li> <li>• 1 Gas Pipeline Safety Inspector added</li> </ul>
2015-17	46	<ul style="list-style-type: none"> <li>• 1 Public Utility Analyst added</li> <li>• 1 Railroad Safety Inspector added</li> </ul>
2017-19	45	<ul style="list-style-type: none"> <li>• 1 Public Utility Director eliminated</li> <li>• 1 Accountant eliminated</li> <li>• 1 Railroad Safety Inspector added</li> <li>• No funding for a Public Utility Analyst</li> </ul>
2019-21	43	<ul style="list-style-type: none"> <li>• 2 Grain Warehouse Inspectors eliminated</li> </ul>
2021-23 proposed	43	<ul style="list-style-type: none"> <li>• Existing FTE proposed as a Gas Pipeline Safety Inspector</li> </ul>

Maintaining professional, trained staff and minimizing turnover whenever possible is critical to the smooth functioning of our agency. Competitive salary and benefit packages are a key part of recruitment and retention. The Commission is supportive of the Governor’s proposed compensation increases for employees.

## **Requested Enhancements to Legislative Base Budget:**

As you can see by our budget numbers, we support what is essentially a hold even budget with the following changes.

### Railroad Safety Program:

First, we request that “temporary status” of the Railroad Safety Program be eliminated and the program be established as a normal part of the Commission’s biennial budget. This program involves direct inspection and compliance efforts that reduce the potential for injuries, death and property damage in and along North Dakota’s substantial railroad system. The Railroad Safety Program is funded not with general funds, but with an existing diesel fuel tax the railroads pay, a portion of which is dedicated for safety improvements.

The Railroad Safety Program was approved by the 2015 Legislative Assembly to supplement federal oversight of rail safety. Nationally, the Federal Railroad Administration (FRA) only has resources to inspect 0.2 percent of railroad operations. Federally certified state inspectors, like ours, are critical to ensuring safe rail operations and are an important commitment from North Dakota to do our part to support safe transport of products like crude oil and anhydrous that originate from and pass through our state. Included in the attachment is a summary highlighting the work of the rail safety program this biennium to date.

Eliminating the temporary status improves the stability of the program and sends an important message to the highly skilled employees who dedicate their careers to this important work.

### Federal Railroad Administration (FRA) Grant Funding:

The FRA is moving to a federal grant program to pay for required annual inspector training. Previously, the FRA reimbursed inspectors directly. This funding authority is needed to reflect the change in how the federal government is handling reimbursement.

### Natural Gas Pipeline Inspector:

The Commission's jurisdiction over gas distribution systems was authorized in 1971. Since 1981, the PSC has operated the intrastate natural gas pipeline safety program on behalf of the U.S. Dept. of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA). Our program has two skilled inspectors that are responsible for inspecting roughly 6,600 miles of gas distribution, 175,000 gas services, 258 miles of gas transmission, 16 miles of gas gathering and one LNG facility. The amount of infrastructure continues to grow in North Dakota and the regulatory requirements of PHMSA are also constantly changing.

PHMSA noted in their evaluation of our program this year that states with similar portfolios have three to four inspectors each. With only two inspectors in North Dakota, retirements or resignations make succession planning nearly impossible and negatively impacts the program. It takes an inspector two to three years to become fully PHMSA qualified. Even with two fully qualified inspectors, the inspection demand (based on the number of operators and the inspection interval requirements) is tight for our program. North Dakota has received

deductions on the last two annual Program Evaluations for not inspecting all types of operators and inspection units in accordance with time intervals established in written procedures. This is due in large part to only having two inspectors. These deductions affect the level of federal funding that is received. PHMSA concluded in its evaluation this year: “I recommend that the North Dakota Public Service Commission seriously consider adding an inspector to the Gas Pipeline Safety Program.”

Based on these factors, we are requesting funding for an additional natural gas pipeline inspector, plus operating expenses, to complete inspections and support the existing natural gas pipeline safety program. The total funding request is \$335,095 and is approximately 50% federal funds.

Specialized Legal Services-Federal Share:

As you all know, our state’s energy industry is under constant attack from environmental groups seeking to complicate or halt production of fossil fuels. For the past many years, the legislature has provided the PSC access to litigation funds in order to provide certainty, expedite the legal process, and ensure the Commission can effectively address lawsuits. These attacks – whether a result of EPA regulations or lawsuits by environmental groups against coal mining or reclamation – are difficult to predict, extremely challenging to budget for and often demand specialized outside legal counsel to effectively counter.

We are requesting the same level of funding for the 2021-23 biennium. Currently we receive \$336,000 in one-time federal funding. However, any federal

funding could only be used for a case approved by Office of Surface Mining or PHMSA. Therefore, the Commission is requesting continued access to the statewide litigation pool funding.

## **One-Time Funding Requests:**

### Capital Assets:

The Commission is requesting one-time funding to purchase capital assets to replace existing equipment in the federal Abandoned Mine Lands (AML) and Coal Reclamation Programs. The total one-time funding is \$120,000 with 96% being federal funds. The funds would be used to replace the current real-time kinematic survey equipment, which would save time, energy and manpower resources for surveying, allowing more work to get done with extremely accurate results and fewer man hours used as one person can survey when necessary. The current equipment was purchased over ten years ago and reliability and support are becoming an issue.

The second piece of equipment that would be replaced is the borehole camera for the AML program. This important tool helps inspectors understand the condition of underground mines and estimate the type and amount of fill material needed to reclaim the mine. It is also important for safety when looking into very large sinkholes with horizontal subsidence. The current equipment was purchased over ten years ago and support is no longer available.

## **Budget Changes to Meet Governor's Budget Guidelines:**

The Governor's Budget request called for the Commission to take a 10% general fund budget reduction, which came to about \$750,000.

This was the third consecutive budget cycle where the Commission was asked to reduce general funds. As I referenced previously, in previous sessions we found efficiencies by streamlining programs and reducing personnel and operations. Because of these previous cuts and our agency's limited General Fund programs, our ability to find additional budget reductions for this cycle was limited. As a result, we developed a combination of cuts as well as a package of alternative funding sources to reduce general funds.

First, the Commission proposed reductions in funding for travel, professional development, and specialized legal services.

The Commission also proposed to self-fund a portion of its operations related to economic regulation, siting, and weights & measures. The self-funding proposals, if approved, allow the Commission to substitute general funds with special funds.

**Economic Regulation:** Each regulated electric and gas utility would be assessed an annual fee in proportion to their respective gross operating revenues for retail sale of gas and electric service within the state during the preceding calendar year. The total assessment would not exceed \$225,000 per biennium.

**W&M:** The PSC would retain all revenue generated from Weights and Measures with increased and new fees as illustrated in the chart on the next page.

Description	Current Fee	Proposed Fee
64-02-10 Fees to test or calibrate weighing and measuring devices	\$11	\$20
64-02-10 Fees to test or calibrate weighing and measuring devices	\$53	\$95
Licensing Fee: Registered Service Company	\$0	\$100 annually
Licensing Fee: Registered Service Person	\$0	\$50 annually
Testing Fee	\$0	Not to exceed \$25 per test

The proposed fee schedule would raise \$175,000. Fees in N.D.C.C § 64-02-10 were last increased during the 58<sup>th</sup> Legislative Assembly (2003) when fees referenced above increased from \$10 to \$11 (a \$1 increase) and \$48 to \$53 (a \$5 increase). Please note during the 63<sup>rd</sup> Legislative Assembly (2013) certain fees were removed when legislative cuts were made to the program and the Commission could no longer offer testing services for large scale devices. The large scale program is now strictly quality assurance and collects no fees.

**Siting:** A siting applicant would pay an administrative fee equal to \$100 for each \$1,000,000 of original investment, not to exceed \$25,000. This proposal would generate approximately \$150,000.

**Fund Cap:** Funds generated by these self-fund proposals will be collected in the PSC Programs Fund. The fund is capped at \$1.1 million. Any excess generated would be transferred to the general fund.

While the Commission does not believe self-funding is the best budget model going forward, it provides a viable alternative to reasonably fund programs

so we can meet our statutory obligations while reducing general fund appropriations.

**Current Biennium Appropriation  
Compared to Next Biennium Recommendation**

Appropriation	2019-21 Biennium Appropriation	2021-23 Governor's Recommendation
Salaries and Wages	\$9,495,560	\$9,920,226
Operating Expenses	\$1,763,826	\$2,011,857
Capital Assets	\$25,000	\$145,000
Grants	\$20,000	\$20,000
Abandoned Mine Lands Contractual	\$6,000,000	\$6,000,000
Rail Rate Complaint Case	\$900,000	\$900,000
Railroad Safety Program	\$589,018	\$619,686
Specialized Legal Services	\$430,000	\$420,000
Grain Insolvency Litigation	\$100,000	\$0
FTEs	43	43
General Funds	\$6,714,928	\$6,613,408

## **Requested Changes to the Executive Recommendation (one-pager)**

The Commission requests the following changes to the Executive

Recommendation:

- Continue to fund programs using general funds (as reflected in change package #AC2), as opposed to using the self-funding model.
- Eliminate temporary status of the Rail Safety Program, as opposed to two-year funding.

## Optional Adjustment Requests (one-pager)

Description	Executive Recommendation	Comments
Self-fund operations related to Economic Regulation, Siting and Weights & Measures	This was included in the Governor's Recommendation	The Commission is in favor of continuing to fund programs using general funds as reflected in the legislative base budget.
Restore program funding using general funds	Not included as the Governor's Recommendation was to self-fund operations	The Commission would prefer to continue funding programs using general funds as opposed to using the self-funding model.
Natural Gas Pipeline Inspector	Included	Federal audits have identified we do not have enough inspectors to adequately inspect all the rapidly increasing infrastructure.
Capital Assets (one-time funding)	Included	Used to replace existing equipment in federal programs where reliability and support are becoming an issue.

## **Agency Collections:**

### General Fund Collections:

- Weights & Measures Program inspection fees – No anticipated changes in 2019-21 biennium. Collections in 2021-23 biennium are dependent on the outcome of proposed fee changes and self-funding model.
- Public Utility filing fees – \$50 fee assessed on filings submitted to the Commission by regulated entities. No anticipated changes in 2019-21 biennium or upcoming 2021-23 biennium.
- Various fines – the Commission has the authority to assess fines for noncompliance with laws and rules. No anticipated changes in 2019-21 biennium or upcoming 2021-23 biennium.
- Auctioneer/Auction Clerk licensing fees – No anticipated changes in 2019-21 biennium or upcoming 2021-23 biennium.
- Fees assessed for new coal mining permits – No anticipated changes in 2019-21 biennium or upcoming 2021-23 biennium.

### **SUMMARY:**

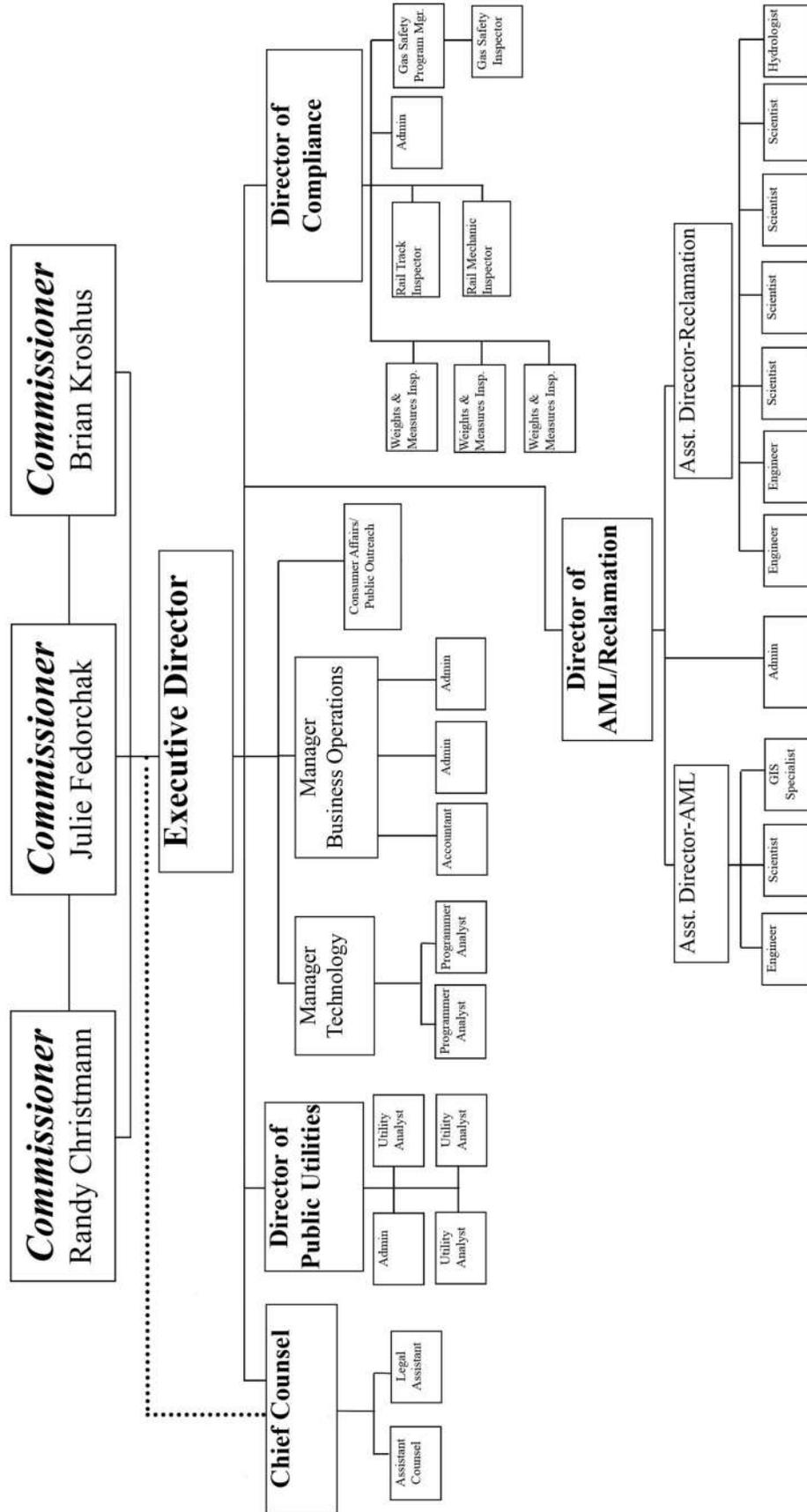
The Commission has been able to operate within its appropriation for the current biennium during a time of ongoing and in many ways unprecedented change in the industries we regulate. Challenges in the oil and gas and coal mining and reclamation industry are constant. That, combined with the revolution occurring in the electric industry, demands that we have a strong and able staff of

high quality professionals who can be full players advocating in multistate and federal arenas for the interests of North Dakota citizens and rate payers.

We have an attitude of continual improvement in our agency and are constantly seeking ways to be more responsive to the public and the industries we regulate, to recognize the burden we place on business and reduce unnecessary red tape, while also recognizing the important oversight role North Dakota citizens count on us to fulfill.

This budget proposal continues our tradition of being as efficient as possible while offering innovative solutions to the constant challenge you as legislators have to fund the important work of agencies like ours. We stand ready to work with you in coming weeks and months to design the best possible budget solution for the Public Service Commission. Thank you Mr. Chair and I look forward to answering questions from you and your committee.

North Dakota Public Service Commission  
2021



## **Department Overview**

### **Reclamation Division (64% Federal Funds plus Indirect Cost Reimbursement)**

The Reclamation Division of the Public Service Commission is responsible for administering and enforcing the state's reclamation law for minimizing the environmental effects of surface coal mining and ensuring mined lands are properly reclaimed. Under N.D.C.C § 38-14-1, the PSC administers a comprehensive program that consists of permitting and inspection and enforcement responsibilities. There are 7 active surface coal mining operations (5 lignite and 2 leonardite mines) operating in the state.

- Approximately 134,600 acres are currently permitted for mining activities under 26 mine permits.
- During the current biennium, approximately 640 acres were added to existing permit areas and approximately an additional 2,660 acres are proposed to be added to existing permit areas and are under review by the Reclamation Division.
- To date, approximately 16,400 acres have received final bond release (met all the requirements of the reclamation law) and Commission jurisdiction has ended.
- During the current biennium, an informal conference and formal hearing were held on the first permit renewal of the Coyote Creek Mine and the renewal was granted.

## Attachment 1 – Department Overview

- Staff also monitored the Westmoreland bankruptcy and began review of the permit transfer documents for the new post-bankruptcy company.
- The PSC's coal regulatory and Abandoned Mine Lands programs continue to receive excellent annual evaluation reports from the federal Office of Surface Mining.

### **Abandoned Mine Lands (100% Federal Funds plus Indirect Cost Reimbursement)**

The goal of the AML Program is to eliminate hazards related to coal mining that occurred prior to the enactment of the 1977 Surface Mining Control and Reclamation Act (SMCRA). Under N.D.C.C. § 38-14.2, the PSC is authorized to develop and administer an abandoned mine reclamation plan on lands adversely affected by pre-SMCRA mining. N.D.C.C. § 38-14.2 also created a state abandoned mine reclamation fund to collect funds pursuant to title IV of Public Law 95-87 [91 Stat. 456; 30 U.S.C.1231 et seq.] and to disburse funds for the reclamation and restoration of land and water resources adversely affected by past mining as defined by section 38-14.2-06. PSC staff in the AML Program design and manage the reclamation projects. Private contractors, selected by competitive bidding, conduct the construction work. A federal fee assessed on coal production funds the AML Program. The current AML fee on North Dakota lignite is eight cents per ton. These funds are distributed as federal grants to AML programs in 28 states and tribes, including North Dakota. The AML fee that funds the AML

## Attachment 1 – Department Overview

Program will expire September 30, 2021, unless Congress reauthorizes legislation to extend it.

- In the current biennium, 7 abandoned mine land reclamation projects were completed, totaling about \$3.6 million in construction costs.
- About 280 dangerous sinkholes caused by the collapse of underground mine workings were filled in the past two years.
- Since 1982, 181 primary reclamation projects and 33 emergency projects have been conducted to eliminate hazardous conditions, totaling \$59 million.
- More than 38 miles of dangerous surface mine highwalls have been eliminated since the AML reclamation program began.
- We have records of more than 1700 abandoned coal mine sites in North Dakota. At the current rate of federal funding, we estimate it will take at least 20 years and \$40 million to address the highest priority AML problems in our state.

### **Regulation of electric, natural gas, and telephone utilities**

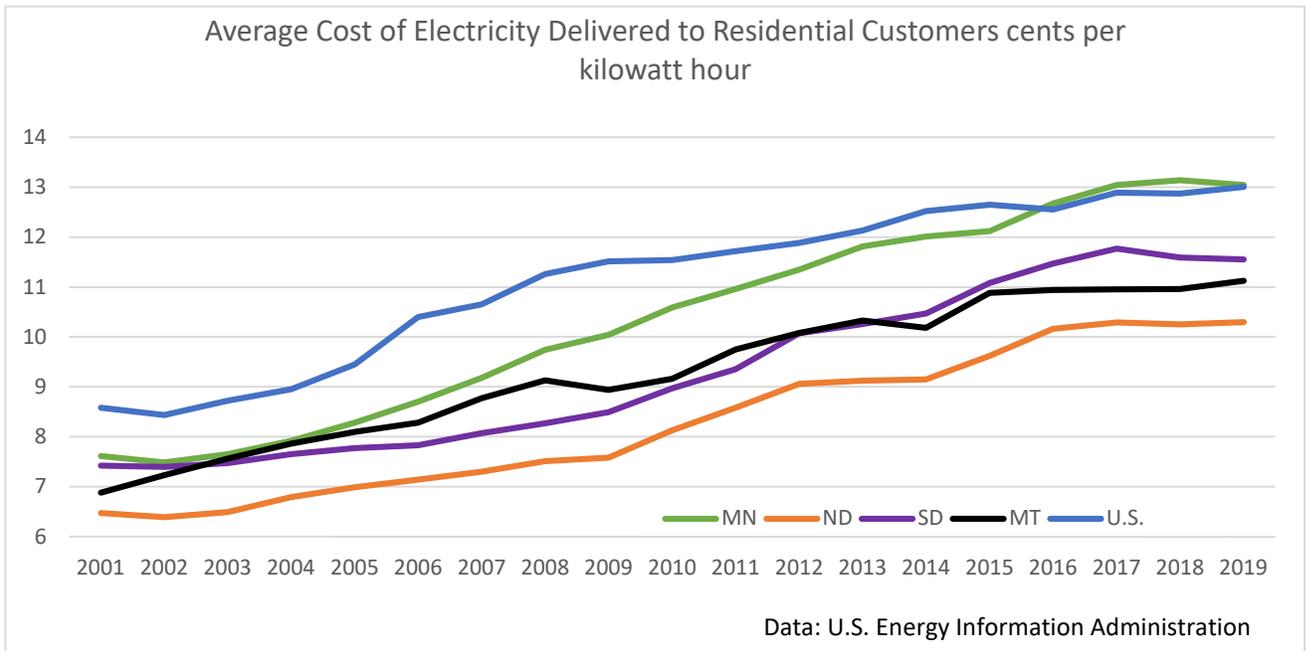
North Dakota continues to have among the lowest electric and natural gas utility rates in the nation. Biennium to date, the PSC has received two general rate cases for Montana-Dakota Utilities Co.'s natural gas operations and Northern States Power Company's electric operations.

In addition to the rate cases, the PSC has granted a certificate of public convenience and necessity and approved tariffs and rates for a new natural gas

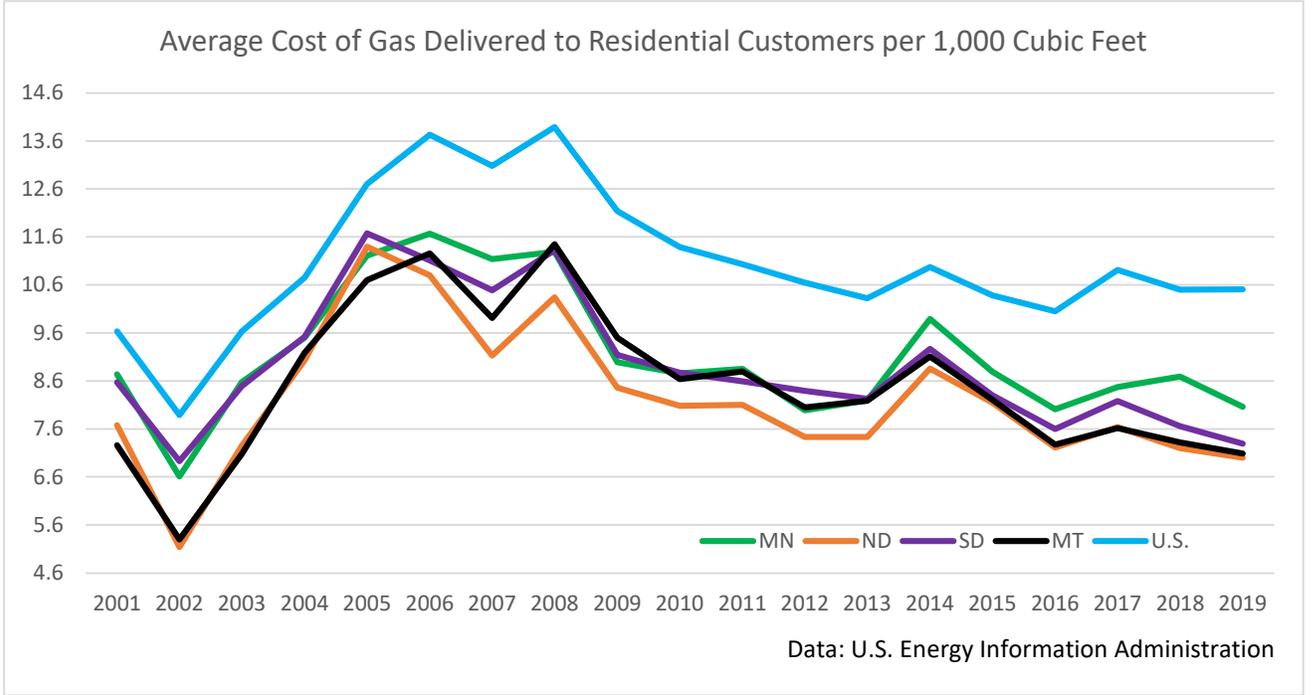
## Attachment 1 – Department Overview

utility (Dakota Natural Gas, LLC) to operate in the communities of Drayton, Hillsboro and Mayville.

Consistent with the Commission’s least-cost standard, the PSC has made three advanced determinations of prudence on new or modified electric generation including 151.2 megawatts of new and 98.9 megawatts of repowered wind generation to be added to Northern States Power Company’s system, and an 88 megawatt simple cycle natural gas combustion turbine facility to be added to Montana-Dakota Utility Co.’s system. In accordance with N.D.C.C. § 49-05-16, the investor-owned electric utilities operating in North Dakota may request an advance determination of prudence for certain major capital investments. In an effort to avoid future rate spikes for wind energy generation due to the expiration of their associated Production Tax Credits (PTCs), the PSC required all three investor owned electric utilities to levelize PTC benefits over the entire lives of the facilities rather than using them as they are earned in the first ten years.



Attachment 1 – Department Overview



**Siting (current biennium) – N.D.C.C. § 49-22 and 49-22.1**

**Pipelines**

Description	Miles	County	Est. Project Cost
OE2 North LLC	6	Williams	6,000,000
Liberty Midstream Solutions, LLC	4.7	Mountrail & Williams	4,600,000
ONEOK Bakken Pipeline, LLC	75	Williams	100,000,000
Denbury Green Pipeline – North Dakota, LLC	9.2	Bowman & Slope	9,200,000
Dakota Access, LLC (pump station)		Emmons	40,000,000
Total	94.9		159,800,000

## Attachment 1 – Department Overview

### Electric Transmission

Description	Miles	County	Est. Project Cost
Northern Divide Wind, LLC 345kV	41	Burke & Mountrail	30,000,000
Total	41		30,000,000

### Wind Generation

Description	MW	County	Est. Project Cost
Northern Divide Wind, LLC	200	Burke	300,000,000
Total	200		300,000,000

Note: 3616 MW of total wind generation in service as of December 29, 2020. Anticipate another 450 MW scheduled to be in service early 2021.

### Gas Processing

Description	MMSCFD	County	Est. Project Cost
OE2 North LLC	250	Williams	150,000,000
Total	250		150,000,000

Note: Million standard cubic feet per day (MMSCFD)

### Oil Processing

Description	BPD	County	Est. Project Cost
Whiting Oil and Gas Corporation (expansion)	20,000	Mountrail	7,200,000
Total	20,000		7,200,000

Note: Barrels per day (BPD)

**These tables represent completion of the complex siting process of 94.9 miles of pipelines, 41 miles of electric transmission line, 200 MW of wind generation, gas processing capacity of another 250 MMSCFD, and oil processing capacity of another 20,000 BPD. It represents almost \$650 million of economic investment in North Dakota.**

## Damage Prevention

The PSC has authority for enforcement of the state’s One-Call Excavation Notice System law (N.D.C.C. § 49-23). The goal of the law is to prevent damage to underground infrastructure. Biennium to date, the PSC has processed 46 complaints regarding alleged violations of the One-Call law. As a result of these proceedings, the PSC has levied fines totaling \$53,300. These fines are deposited directly into the general fund.

### Damage Prevention Cases Processed:

2009-2011	1
2011-2013	18
2013-2015	58
2015-2017	52
2017-2019	64
2019-2021	46 to date

In total, the PSC has levied 149 fines totaling \$327,250 since beginning enforcement of the program in 2009. Since inception, the PSC has not been given any additional resources to process these cases. The workload has fallen to existing staff.

## **Licensed Auctioneers and Auction Clerks**

Applicable N.D.C.C. Chapters include 3-05, 9-06, and 51-05.1.

Commission statutory responsibilities include:

- Issuing and renewing auctioneer, auction clerk, and bank auction clerk licenses.
- Investigation of auction related complaints.

The PSC currently licenses 331 auctioneers and 160 clerks.

## **Weights and Measures**

Applicable North Dakota Century Code Chapters include 64-01, 64-02, 64-03, and 64-04.

The Weights and Measures Program, comprised of three full-time inspectors, is designed to meet the needs of both the buyer and seller in the commercial marketplace. This is accomplished through the enforcement of the state's weights and measures laws by the inspection and testing of commercial weighing and measuring devices such as supermarket scales, grain elevator truck scales, dockage scales, livestock scales, gas station pumps, liquified petroleum gas meters, and medical marijuana packaging scales, to name a few. Some of the accomplishments and work of the program include:

- Testing and inspecting 3,706 commercial devices from July 1, 2019, to June 30, 2020.

## Attachment 1 – Department Overview

- Conducting quality control testing and monitoring the documentation of 19,535 weighing or measuring devices installed or serviced by registered service companies.
- Collaborated with the North Dakota Department of Health to ensure the two facilities licensed to manufacture medical marijuana are using appropriate and accurate scales for packaging operations.
- Conducted an extensive review and updated the administrative rules governing the weights and measures program in cooperation with industry stakeholders, device owners and operators, and the public.

Additionally, the Commission is continuing work on the heavy-scale quality assurance program. This program has allowed the PSC to review the work of registered service companies and addresses concerns with their operations along with responding to heavy-scale complaints. This biennium to date, the PSC has conducted quality assurance inspections on 158 heavy scales, of which 18 failed the inspection.

The Weights and Measures Program is minimally staffed with much of the work being done with private contractors and oversight being done by the Public Service Commission. Due to the nominal testing fees outlined in statute for the state weights and measures program which have not changed in many years, the revenue collected for this service does not cover the cost of operating the program. The state inspectors are utilized primarily by small town businesses who find our fees significantly more attractive compared to private contractors. With the

## Attachment 1 – Department Overview

implementation of the medical marijuana program, the Commission is faced with additional time intensive inspection requirements for these facilities.

### **Railroad Safety and Regulation**

Applicable North Dakota Century Code Chapters include 24-09, 49-01, 49-02, 49-09, 49-09.1, 49-10.1, 49-11, 49-16, 49-17.1, and 60-06.

The PSC is the clearinghouse for rail service and safety issues statewide. We host annual meetings on service and safety for all the statewide stakeholders including ag producers, grain marketers, emergency responders, county, and city leaders to address issues with railroad representatives. This biennium to date, the PSC fielded complaints and intervened on behalf of 35 communities and citizens on rail-related issues.

Since 2015, the PSC has operated a Rail Safety Program, which supplements federal rail safety oversight. The Federal Rail Administration (FRA) only has the resources to inspect 0.2 percent of railroad operations nationally each year. Federally certified state inspectors constitute 30 percent of the FRA's total inspection force and are critical to ensuring safe rail operations. Having state inspectors that are dedicated to North Dakota is a big benefit and helps to ensure adequate inspections in our state; whereas, federal inspectors have responsibility over multiple states. Funding for the state Rail Safety Program comes not from the general fund, but from existing diesel fuel tax the railroads pay, a portion of which is dedicated for safety improvements. The goal of the program is to reduce the number of accidents, derailments and other equipment failures in order to reduce

## Attachment 1 – Department Overview

fatalities, injuries, economic losses and environmental impacts. As one measure of the program's effectiveness, the number of defects found are decreasing after increasing for several years.

The Commission employs two certified inspectors in the following FRA safety inspection disciplines 1) Track and 2) Motive Power & Equipment (Mechanical). In addition to the two previously mentioned safety disciplines, there are four additional safety inspection disciplines: Hazardous Materials (HAZMAT), Operating Practices, Signal & Train Control, and Grade Crossing Safety & Trespasser Prevention (Grade Crossing). The state inspectors coordinate with and complement the federal inspectors to maximize coverage but are autonomous and entirely accountable to the Public Service Commission.

Recently, the FRA has offered opportunities for certified inspectors to obtain certification in a second FRA safety inspection discipline allowing the inspector to conduct inspections in two safety inspection disciplines. The Commission is working with the FRA to obtain approval for each inspector to be certified in a second safety inspection discipline. FRA approval to begin the process was recently received for the Commission's mechanical inspector to start training in the HAZMAT safety inspection discipline. Future plans include the track inspector to receive a second certification in the grade crossing and trespassing safety inspection discipline. The addition of the second certification for each inspector will not impact the capabilities of either inspector's primary safety inspection discipline.

## Attachment 1 – Department Overview

The grade crossing discipline was selected for the track inspector due to the number of grade crossing and trespasser incidents resulting in severe injuries and fatalities. Many of these incidents are preventable. With the addition of the Grade Crossing certification, the Commission can take an active role in the prevention of these tragic incidents. Similarly, carrying the HAZMAT certification will allow the inspector to inspect HAZMAT shipments for proper securement and documentation in trans-loading facilities and rail yards all in an effort to minimize, and where possible, eliminate risks inherent to the transportation of HAZMAT by rail such as non-accidental releases of product, proper car inspection and sealing, and qualifications and training of employees performing these responsibilities.

There are many advantages and efficiencies gained for the inspectors to carry dual certifications in these categories such as:

- Inspectors are already present in locations which offer the opportunity for a dual inspection:
  - Mechanical inspector is in rail yards and hazardous material trans-loading facilities.
  - Track inspector uses grade crossing locations to access sections of track to inspect.
- Allows the rail safety program to utilize existing resources to provide additional oversight and safety to North Dakotans.

## Attachment 1 – Department Overview

- Offers opportunities for the inspector to interact directly with the public through grade crossing safety and trespasser prevention initiatives and programs.
- Offers opportunities for the inspector to interact with loaders and shippers of HAZMAT materials to ensure proper sealing, inspection, and shipment of hazardous materials at origin and destination points.

The track inspector has conducted 793 inspections, noting 4,812 defects, and has issued 39 violations with civil penalties. The mechanical inspector has conducted 735 inspections, noting 6,091 defects, and has issued 87 violations with civil penalties.

A more comprehensive summary of the rail program's accomplishments since its inception is available upon request.

### **Gas Pipeline Safety (Approx. 50% Federal Funds plus Indirect Cost Reimbursement)**

Applicable North Dakota Century Code Chapters include 49-02 and 49-07. On behalf of the Pipeline and Hazardous Materials Safety Administration (PHMSA), the PSC conducts a Pipeline Safety Program in North Dakota involving intrastate gas transmission systems and gas distribution systems. The goal of the program is to enhance public safety by enforcing state laws governing gas pipeline safety through inspections and enforcement regarding qualification of pipeline personnel, pipeline components, design, construction, cathodic protection,

## Attachment 1 – Department Overview

operations, maintenance, public awareness and damage prevention programs, and emergency response.

Commission inspectors perform audits of four natural gas distribution system operators, one liquefied petroleum gas distribution system operator, nine transmission system operators, seven gathering system operators, and one liquefied natural gas facility operator.

Gas pipeline safety inspectors conduct inspections dealing with records audits, compliance follow-up, design/testing and construction, gas incidents, on-site operator training, operator qualifications, control-room management, drug and alcohol testing, damage prevention, public awareness, operations and maintenance, and integrity management.

Staff for the program includes a program manager/inspector and one full-time inspector. North Dakota inspectors ended 2020 with a total of 204 inspection/audit days.