

Presented by: Illona A. Jeffcoat-Sacco
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Before: Administrative Rules Committee
Senator Jerry Klein, Chairman

RE: Rules relating to reclamation, siting, renewable energy
credit tracking, and agency procedure

Date: March 10, 2011

TESTIMONY

Mr. Chairman and committee members, my name is Illona Jeffcoat-Sacco, General Counsel for the North Dakota Public Service Commission. The Commission asked me to testify today concerning four rulemaking proceedings we recently filed.

The response to the questions posed to us by the Legislative Council's staff are presented below. In each case, the question is restated prior to our response.

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.

N.D. Admin. Code Sections 69-05.2-09-02 and 69-05.2-22-07

Yes.

The surface coal mining and reclamation law was amended by the 2009 Legislature to reduce the revegetation responsibility period from ten years to five years for eligible lands that are re-mined. The proposed changes will amend permit application requirements and revegetation success standards to reflect this statutory change.

N.D. Admin Code Article 69-06

One of the siting rule changes was adopted to provide the Commission more flexibility regarding corridor widths given changes made to certain siting act definitions in 2009 House Bill 1032.

N.D. Admin. Code Chapter 69-09-08

No, not regarding any statutory changes made in 2009. This rule slightly revises a rule adopted in 2006, implementing statutory changes made in 2005.

N.D. Admin. Code Section 69-02-01-06

No.

2. **Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.**

N.D. Admin. Code Sections 69-05.2-09-02 and 69-05.2-22-07

Yes.

The statutory change reduces the revegetation responsibility period from ten years to five years for eligible lands that are re-mined. Lands disturbed by coal mining activities prior to January 1, 1970 are eligible for the shortened responsibility period if they are re-mined or otherwise re-disturbed by permitted mining operations. The rules adopted by the Commission must be as effective as counterpart federal rules issued by the federal Office of Surface Mining.

N.D. Admin. Code Article 69-06

No.

N.D. Admin. Code Chapter 69-09-08

No.

N.D. Admin. Code Section 69-02-01-06

No.

3. **A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.**

N.D. Admin. Code Sections 69-05.2-09-02 and 69-05.2-22-07

On August 12, 2009, the North Dakota Public Service Commission issued a formal Notice of Intent to Amend Administrative Rules and Notice of Public Hearing and an abbreviated Notice, proposing to revise other rules and Article 69-05.2 of the N.D. Admin. Code relating to the reduction of

the revegetation responsibility period from ten years to five years for eligible lands that are re-mined and amending permit application requirements and revegetation success standards, on lands permitted for surface coal mining.

The Abbreviated Notice was published once in 52 official county newspapers the week of August 20 through August 26, 2009. The notice was also forwarded to the Legislative Council for publication on August 13, 2009, which was at least 30 days prior to the public hearing.

A public hearing was noticed for and held at 10:00 a.m., September 16, 2009. The hearing was held in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until September 26, 2009, during which data, views, or oral arguments concerning the proposed rulemaking could be received by the Commission and made a part of the rulemaking record to be considered by the Commission. The only comments received were of Commission staff and those comments were made at the time of the public hearing.

On November 12, 2009, the Commission submitted the proposed reclamation rules to the federal Office of Surface Mining (OSM). OSM approved the rules on December 27, 2010.

N.D. Admin. Code Article 69-06, Chapter 69-09-08, and
Section 69-02-01-06

On June 2, 2010, the North Dakota Public Service Commission issued a formal Notice of Intent to Amend Administrative Rules and Notice of Public Hearing and an abbreviated Notice, proposing to revise these rules.

The Abbreviated Notice was published once in 51 official county newspapers on June 13 through June 19, 2010. The Ashley Tribune published the Notice on June 30, 2010. The notice was also forwarded to the Legislative Council at least 30 days in advance of the hearing.

A public hearing was noticed for and held at 1:30 p.m., July 14, 2010. The hearing was held in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until July 26, 2010, during which data, views, or oral arguments concerning the proposed rulemaking could be received by the Commission and made a part of the rulemaking record to be considered by the Commission. The only comments received were of Commission staff and those comments were heard at the time of the public hearing.

4. **Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.**

Other than staff testimony explaining and supporting the proposed rule changes, no comments or testimony were received before, at, or after the hearings for any of the proposed rules before the Committee today. The rules were adopted as proposed.

5. **The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.**

The reclamation rulemaking before you today was combined with a gas safety rule case and the Notice of August 12, 2009 covered both proposals. The total cost for publishing the Notices was \$1,887.60. The cost for legal notice associated with just the reclamation rulemaking proceeding before you today was ½, or \$943.80. Other than staff time, no other significant costs were incurred.

The rulemaking Notice of June 2, 2010 covered the other three proposed rules before you today as well as two other proposed rules cases that are already complete. The total cost of publishing the June 2, 2010 Notice was \$2,046.18. The cost of publishing the Notice associated with just the rules relating to siting, renewable energy credit tracking, and the Commission procedures was \$1,227.70. Other than staff time, no other significant costs were incurred.

6. **An explanation of the subject matter of the rules and the reasons for adopting those rules.**

N.D. Admin. Code Sections 69-05.2-09-02 and 69-05.2-22-07

The surface coal mining and reclamation law was amended by the 2009 Legislature to reduce the revegetation responsibility period from ten years to five years for eligible lands that are re-mined. The changes to the North Dakota Administrative Code amend permit application requirements and revegetation success standards to reflect this statutory change.

N.D. Admin Code Article 69-06

The minor change related to determining corridor size specifies a minimum corridor size "unless approved by the Commission." The proposed change substitutes the language "otherwise determined" for the word "approved" to clarify that the Commission can designate a smaller corridor without first receiving a request from the applicant.

The rest of the proposed changes to the siting rules are intended to separate requests for jurisdictional determination from the letter of intent process. Language allowing a letter of intent to include a request for jurisdictional determination is removed and instead there is a new chapter to specify the information required when asking for a jurisdictional determination.

N.D. Admin. Code Chapter 69-09-08

The renewable electricity and recycled energy tracking rule standardizes the content and format of required annual reports of electric retail providers.

N.D. Admin. Code Section 69-02-01-06

This amendment repeals language regarding practice before the Commission that is inconsistent with the North Dakota Admission to Practice Rules.

7. **Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.**

No regulatory analysis was required for any of the rules because none of the rules are expected to have an impact on the regulated community in excess of \$50,000 and neither the Governor nor any member of the Legislative Assembly requested a regulatory analysis.

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8. **Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide a copy.**

the analyses indicated that the rule cases before you today have no economic impact on small entities nor would they have any adverse impact on small entities.

9. **Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. Please provide a copy if one was prepared.**

No takings assessments were required on any of the rules because they do not effect a regulatory taking.

10. **If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.**

N/A

Mr. Chairman, this completes my testimony. I would be happy to respond to any questions the committee might have.