

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

RE: N.D. Admin. Code Article 69-10, Testing and Safety
N.D. Admin. Code § 69-09-09-06, Decommissioning Plan

Date: September 14, 2010

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 two 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. The rules in question involve the North Dakota Metrology Laboratory which officially closed on June 30, 2010, and our wind decommissioning rules.

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

Article 69-10

Yes. Closure of the North Dakota Metrology Laboratory was required by 2009 House Bill 1008 and in the Commission's 2009-2011 budget appropriation. Other proposed revisions do not result from any statutory changes.

Section 69-09-09-06

Yes. The proposed rule implements the requirement in 2009 House Bill 1449 (N.D.C.C. § 49-02-27) that the commission's wind farm

decommissioning rules address present and future natural resource development.

- 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.**

No, for both proposed rules

- 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.**

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 Article 69-10 of the North Dakota Administrative Code relating to the North Dakota Metrology Laboratory, and § 69-09-09-06 relating to wind decommissioning, in addition to several other rules proposals.

The Abbreviated Notice was published once in 51 official county newspapers the week of June 13 through June 19, 2010. The Ashley Tribune published the Notice on June 30, 2010. The notices were also forwarded to the Legislative Council for publication 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.

- 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 hearing for either of the proposed rules before the Committee here 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 rulemaking Notices covered the two rules cases before you today and proposed rules relating to siting, annual reports tracking renewable electricity and recycled energy, and a procedural rule change. The Notices covered all five proposals. The total cost for publishing the Notice was \$2,046.18. The cost of publishing the Notice associated with each of the instant two cases was \$409.24. 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.**

Article 69-10

The proposed amendments repeal language to directly or indirectly reflect action by the legislature in 2009 House Bill 1008 and in the Commission's 2009-2011 budget. The 2009 Legislature determined that the North Dakota Metrology Laboratory should be closed. The North Dakota Metrology Laboratory officially closed on June 30, 2010, and metrology services must be obtained elsewhere.

The amendment to section 69-10-04-02 (1) (b), which is unrelated to the laboratory closure, provides flexibility to administer written tests at Bismarck or another location. The intent is to allow scheduling of written testing by the Weights and Measures Program Coordinator/Inspector at a location and time that can be coordinated with the Inspector's other statewide duties. It is also the intention that administering tests at

locations other than Bismarck not result in additional expense to the Commission.

In the amendment to section 69-10-04-06, the use of the word "may" is consistent with other permissive language of this section.

The language currently in section 69-10-04-06.1 is moved to new section 69-10-04-06.3 so that language concerning quality control failures follows the language concerning quality control evaluation. The new section includes more specific references to the North Dakota Century Code and North Dakota Administrative Code.

The language proposed in section 69-10-04-06.2 is intended to clarify the procedures the Commission is currently using for evaluating the work of registered service persons.

Section 69-09-09-06

The proposed rule amends N.D. Admin. Code section 69-09-09-06 to require developers to describe any expected effect on present and future natural resource development in the decommissioning plan required under that section.

- 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 either rule package as the proposed rules are not 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.

- 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.**

No small entity analyses was required for the Weights and Measures proposed rules because the revisions propose no additional compliance

standards or reporting requirements and consequently, they will have no economic impact on small entities.

Regarding the decommissioning proposed rule, no less stringent requirement or exemption is necessary. This addition to the rules is written to allow substantial flexibility.

- 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 assessment was required on either proposed rule because the proposed rules 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.