

Testimony of the North Dakota Public Service Commission**Kevin Cramer, Commissioner****Presented Before the Interim Legislative Energy Development and Transmission Committee****Sen. Rich Wardner, Chairman****March 20, 2012**

Chairman Wardner and members of the Interim Committee, I am Public Service Commissioner Kevin Cramer. On behalf of the Public Service Commission, thank you for your invitation to be with you here today. The PSC has been asked to provide a brief update of its recent activities, as well as to discuss the relationship between eminent domain and PSC pipeline siting .

As you might suspect, this is an exceptionally active time for the members and staff of the North Dakota PSC as illustrated by the following list of project types;

- A letter of intent for a proposed \$2.2 billion coal-to-electricity plant at South Heart.
- Four cases related to new gas plants and expansions to existing gas plants. These investments totaled \$948,000,000 and have increased the capture and export of natural gas from the Bakken by several hundred million cubic feet per day.
- 49 pipeline cases have been docketed by the PSC. These cases involve oil, gas and CO2. 29 of these cases are completed, 12 are pending. Total investment related to completed cases is \$1,526,421,000. Total proposed investment related to pending cases is \$430,442,899.
- 21 electric transmission line cases. 15 of these are completed, 5 are pending. The total investment of completed cases is nearly \$453,620,000. The total investment of pending cases is \$713,000,000. Approximately half the pending investment is related to the proposed Minnkota 345kV line from Center to Grand Forks – solely contained within North Dakota. The roughly other half of that total is related to the Fargo-Monticello CapX 2020 line, most of which is physically located in Minnesota, but which supports reliability needs for Eastern North Dakota and the entire region.
- 29 cases related to wind farms. 17 of these cases are completed, totaling \$3,538,250,000 in investments. 12 of these are pending, totaling \$10,159,600,000 in investments. In all, since this recent energy boom began, the PSC has completed cases involving \$6,635,591,000 in investments in North Dakota. And there are an additional \$13,507,042,899 in proposed projects that are in various stages of permitting.

- The Commission currently has 15 contracts awarded for siting construction inspections, with 5 different engineering firms, totaling \$138,220.
- In 2011 the Commission approved the addition of 17,602 acres to existing permitted areas, and is currently in the process of reviewing applications to add an additional 19,130 acres to existing or new surface coal mining operations.
- The Commission is reviewing 6 final bond release application totaling 4,410 acres and approved one final bond release in 2011 totaling 1,018 acres.

Finally, the Committee asked us to provide information regarding eminent domain. For North Dakota jurisdictional facilities (oil pipelines, intrastate natural gas pipelines and electric transmission lines), placing a facility into use may be described, at its simplest, as a two-part process. The project developer needs to have both *access* to the land and *permission from the state* through a PSC corridor certificate and route permit to construct the facility. The two parts of this process are essentially separate from each other.

Access is gained through private negotiations with landowners. To the degree a developer cannot come to terms with a landowner, they may file for eminent domain. Any access granted through eminent domain, and/or compensation fixed through such proceedings are the exclusive jurisdiction of the courts. A PSC corridor certificate or route permit does not, in and of itself, grant a developer access to any landowner's property, nor does it fix compensation for the access or an easement.

The state siting process is rather, the state's attempt to protect the public's interest in ensuring facilities are constructed properly. The legislature's intent is clearly provided in state statute:

N.D.C.C. Section 49-22-02. Statement of policy.

The legislative assembly finds that the construction of energy conversion facilities and transmission facilities affects the environment and the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and upon the welfare of the citizens of this state by providing that no energy conversion facility or transmission facility shall be located, constructed, and operated within this state without a certificate of site compatibility or a route permit acquired pursuant to this chapter. The legislative assembly hereby declares it to be the policy of this state to site energy conversion facilities and to route transmission facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy, sites and routes shall be chosen which minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

In short, a developer of a jurisdictional project needs *both* access from a landowner, and permission from the state. The means to obtain both are separate endeavors.

There is an exception to this separation. N.D.C.C. Section 49-22-16.1 provides potential relief for landowners who feel aggrieved by the tactics used by a developer in gaining access. Essentially, the law provides an avenue for a court to determine that the acquisition tactics were so unfair, threatening, etc. that such information should be made available to the PSC. If so ordered by a court, the PSC can then take that information and either revoke or decline to authorize a site permit for that section of line. The law can be seen as a way of keeping a check on the easement acquisition tactics of project developers.

Mr. Chairman and committee members, that ends my testimony. I would be happy to answer any questions you may have.