

Testimony of the North Dakota Public Service Commission**Tony Clark, Chairman****Presented Before the Interim Legislative Energy Development and Transmission Committee****Sen. Rich Wardner, Chairman****August 18, 2011**

Chairman Wardner and members of the Committee, I am Tony Clark, Chairman of the North Dakota Public Service Commission (PSC). Thank you for the invitation to be with you this morning. It is my pleasure to be able to deliver this testimony on behalf of the PSC.

My goal today is to give you a broad overview of what is happening in the energy sector in North Dakota from the perspective of the regulatory agency that oversees a large portion of its development.

By any measure, these are remarkable times in North Dakota, and the data available at the PSC supports that conclusion. Perhaps the best indicator of this development is a review of the PSC siting caseload. Development and investment is taking place across the industry sectors overseen by the PSC. Since 2005, the PSC has overseen and processed the following completed and pending siting cases:

- 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 \$817 million, and have increased the capture and export of natural gas from the Bakken by several hundred million cubic feet per day.
- 40 pipeline cases have been docketed by the PSC. These cases involve oil, gas and CO₂. 29 of these cases are completed, 11 are pending. Total investment related to completed cases is \$988 million. Total proposed investment related to pending cases is \$684 million.
- 17 electric transmission line cases. 14 of these are completed, 3 are pending. The total investment of completed cases is nearly \$144 million. The total investment of pending cases is \$710 million. 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.

- 23 cases related to wind farms. 15 of these cases are completed, totaling \$3.5 billion in investments. 8 of these are pending, totaling \$9.5 billion in investments.

In all, since this recent energy boom began, the PSC has completed cases involving \$5.5 billion in investments in North Dakota. And there are an additional \$13 billion in proposed projects that are in various stages of permitting.

The PSC is pleased to be able to report that this investment has been done in a manner that has continued to uphold North Dakota's history of responsible development. Our siting act is a sound one. It allows the PSC to take various factors into consideration to protect our state's natural, cultural and human resources. And when we site these projects we do it in such a way that we do not cut any corners. At the same time, we strive to process them in a timely manner, so that unnecessary red tape does not become an impediment to our state's economy. We believe we have been successful in striking an appropriate balance.

In regards to staffing issues, the PSC has only been able to process this caseload without adding significant staff because of forward-looking changes the legislature approved several sessions ago. Because of these changes, project developers' siting fees are available to the PSC to process these cases, and to hire outside consultants and experts. This has allowed us to manage our caseload to this point, without breaking the PSC budget. But be assured, the PSC will not hesitate to notify this Committee and the Legislature should we feel that we have reached a point that we need additional FTE to handle the workload.

Other Energy Related Issues of Note

In my remaining time, I would like to briefly cover a few additional issues that may be of interest to this Committee.

- **Transmission development:** The State of North Dakota, through the participation of the PSC and others, continues to be involved with regional transmission planning efforts. While our state has seen tremendous electricity generation development in recent years, continued and even greater investments will be dependent on additional transmission assets being constructed throughout the region, and indeed, the entire Eastern Interconnect. Within our local Midwest ISO region (the MISO independently operates the regional transmission grid), there have been a slew of recent activities. Perhaps most noteworthy are recent proposals that, if approved, would provide for a new category of transmission projects (multi-value projects or "MVP's") that could expand the available transmission assets that serve both reliability and generation needs within the Midwest. In addition, there are ongoing efforts amongst the 40 states in the Eastern Interconnect to plan for transmission on a forward-looking basis (Sandi Tabor, PSC staff member Jerry Lein, and myself are North Dakota's representatives on this "Eastern Interconnection States Planning Council"). Finally, the Federal Energy Regulatory Commission (FERC) has been actively promoting future grid planning – especially in regards to supporting ways of meeting individual states' renewable portfolio standards – through such things as its recent Order 1000, which seeks to compel greater regional and interregional transmission planning.

- **Gas Pipeline Safety:** Nationally, and within North Dakota, gas pipeline safety has become an increasingly important issue. Several high-profile incidents have highlighted it as a concern, and the industry, and state and federal regulators are all interested in finding ways to ensure we have the safest gas pipeline system possible. In North Dakota, the PSC has jurisdiction, in cooperation with the US Department of Transportation, for intrastate gas transmission and distribution. In recent years, the PSC has devoted additional staff time to this important area through internal reorganization. However, as we expressed last legislative session, this may be an area in which the PSC eventually determines that more resources are needed. Additionally, federal regulations may be promulgated, and if so, we would hope that the federal government also finally fully fund state cost reimbursement at a level of 80% as provided in law (states have traditionally been shortchanged this amount). If additional resources are needed, we will keep the Committee apprised, and of course, would welcome any input or suggestions you have in this regard.
- **Coal Mine Reclamation:** The PSC has become increasingly concerned with programmatic changes being implemented through the federal Office of Surface Mining (OSM). Most of these changes appear to have the goal of making it more difficult and expensive to mine coal, as opposed to correcting any identified problems. As an example, OSM has begun sending its own inspectors to duplicate the work of state inspectors. There have been no problems identified and no event precipitated the change, but the effect is to have mine operators answer to multiple levels of inspectors, which only serves to unnecessarily increase regulatory confusion. As another example, OSM is in the process of developing a new nationwide rule to protect any stream that may be impacted by coal mining. While the primary purpose of the proposed rule relates to mountaintop mining and valley fill issues in Appalachia, it will unnecessarily add new requirements for coal mining in all areas of the country. The additional baseline data requirements for streams and more comprehensive water monitoring throughout the mining and reclamation process will add to the cost of mining. At the same time, the OSM has indicated it intends to explore cutting federal funding to state programs and to require states to increase their own taxes on coal to fund the federal share of these programs. As an alternative to states increasing industry taxes or fees, OSM is also considering a new rule to assess fees to the coal industry that would be returned to the states to cover all or part of the federal share of the regulatory program costs. It appears that OSM is trying to do through regulation what has not been accomplished through legislation. Namely, the intent appears to be to erect regulations simply to raise the cost of coal. The PSC notes that these are concerns that are shared by a number of other states and we continue to express these concerns via a number of mechanisms, including our participation in the Interstate Mining Compact Commission.
- **Economic Regulation:** The PSC is also seeing an increase in the frequency of economic regulation cases. These rate cases determine how much North Dakotans served by investor owned utilities will pay for their regulated services. The PSC recently approved new rates for MDU electric, and is currently in the midst of an Xcel electric rate case. In

addition, the PSC has processed a number of cases referred to as “Advanced Determinations of Prudence.” These are cases brought to the PSC by utilities seeking PSC approval of projects in advance of their commencement.

- **Environmental Compliance Costs:** Interrelated to economic regulation are issues related to environmental compliance costs. Because the PSC will ultimately be asked to pass along these costs to consumers, we have been proactive in efforts to understand the impact of new environmental regulations being proposed for the energy sector. In April, we held a forum with our utilities and environmental regulators to learn more about the proposed rules. This forum was subsequent to a similar forum in April 2009 that focused specifically on carbon regulation. While it is still too early to know exactly the costs related to a potential suite of proposed rules, it is clear the costs may be significant. While compliance costs vary by utility, across the Midwest region, the MISO projects that environmental retrofit costs will total in the neighborhood of a 7% increase in customer bills. Separately, MISO estimates that a \$50/ton cost of carbon, if imposed by the federal government, would equate to an approximately 40% increase in electric rates. From what we have learned from our North Dakota utilities, these estimates are fairly consistent with what we might ultimately be expected to see here.

Mr. Chairman and members of the Committee, this completes my testimony. I would be happy to answer any questions you may have.