

# Senate Bill 2008

**Presented by:** Randy Christmann, Chairman  
Public Service Commission

**Before:** Senate Appropriations Committee  
Honorable Brad Bekkedahl, Chairman

**Date:** January 9, 2023

## TESTIMONY

Mr. Chair and members of the committee, I'm Commissioner Randy Christmann, Chairman of the Public Service Commission, here to present our 2023-2025 biennial budget request. Commissioners Julie Fedorchak and Sheri Haugen-Hoffart 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;
- Siting of energy conversion, transmission and generation facilities;
- Pipeline safety of intrastate natural gas pipelines;

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

Attachment A will provide you with a summary of each program, including citations 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. This biennium to date we have sited 91.2 miles of pipelines, 1.5 miles of electric transmission lines crossing the Missouri River on the north end of Bismarck/Mandan, and 251.6 MW of wind generation. This represents more than \$515 million of economic investment in North Dakota. Biennium to date, the PSC has received two general utility rate cases. We also review on an annual basis rate riders where each of the electric IOUs recover expenses for transmission, generation and renewable resource investments.

The Reclamation Division currently has more than 132,000 acres permitted for mining activities under 22 permits at 8 mines and more than 6,000 acres are proposed to be added during the current biennium. They also completed final bond release on 948 acres and are currently reviewing 6 bond release applications that total 1,204 acres. The Abandoned Mine Lands Program completed 8 projects and approximately 280 dangerous sinkholes were filled in the past two years. Both the

Reclamation and Abandoned Mine Lands Program continue to receive excellent evaluation reports from the federal Office of Surface Mining.

Our Compliance Division continues to educate about the importance of Call Before You Dig and have received 52 complaints for this biennium to date, which resulted in \$67,900 in fines which were deposited into the general fund. The Commission also licenses 303 auctioneers, 144 auction clerks, and inspects and tests more than 5,100 commercial weighing devices in the state. We also verify the work of commercial testers. Since the start of the Railroad Safety Program in 2015, inspectors have completed more than 1,900 inspections finding more than 13,000 defects and 157 violations. The Commission was proud to announce that one of our rail inspectors is now dual certified, meaning they can inspect two different specialized disciplines.

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 19, 2022.

### **2019-21 Audit Findings:**

The Commission's 2019-21 audit did not identify any areas of concern.

### **Federal Recovery Funding:**

The Commission did not receive any federal recovery funding from the November 2021 special legislative session.

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

### Capital Assets:

The Commission received one-time funding last session 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 were used to replace the current real-time kinematic survey equipment, which saves 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 previous equipment was purchased over ten years ago and reliability and support were becoming an issue. This purchase came in under budget as we received trade-in value for the old equipment.

The second piece of equipment that was intended to be replaced was the borehole camera for the AML program. This camera 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. While the current equipment was purchased over ten years ago and support is no longer available, there is currently not a good replacement available. The camera has been temporarily repaired and we are evaluating modern technology alternatives, including if an out-right equipment purchase or rental as needed would be most advantageous for the state.

## Major Funding Components in the Base Budget (2021-23):

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

Appropriation	General Funds	Federal Funds	Special Funds	TOTAL
Salaries and Wages	\$5,282,887	\$4,083,601	\$625,000	\$9,991,488
Operating	\$1,097,800	\$578,770	\$125,000	\$1,801,570
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		\$20,000	\$594,724	\$614,724
Specialized Legal Services*	\$20,000	\$400,000		\$420,000
<b>TOTAL</b>	<b>\$6,425,687</b>	<b>\$11,102,371</b>	<b>\$2,244,724</b>	<b>\$19,772,782</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 four 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 licensing, weights and measures, rail safety, pipeline safety and risk management 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. We have also streamlined our administrative group to better align and serve our newly organized divisions.

As we look forward, the state is projecting to have historic turnover in the next five years, resulting in loss of efficiency and critical institutional knowledge. However, due to numerous retirements of long-term employees, the PSC is already ahead of this turnover trend. Since Jan. 2019, 80 percent of PSC employees are new or have been hired into a new or expanded role. It has been a challenge to manage this turnover while maintaining the level of service expected throughout all of our programs and finding a way to effectively pass on institutional knowledge. This places an increased burden on experienced staff who spend a large portion of their time training and mentoring new employees while still performing their full-time job duties. Sadly, there are limited ways to recognize and compensate veteran employees for their increased workload.

Recruitment has also been a tremendous challenge as current state compensation levels are drastically behind the private sector. This is compounded due to the energy industry interacting with and competing for many of our people. While being able to offer fully paid health insurance and offer a defined benefit plan are valuable benefits, this does not make up for the shortfall in salaries. Many positions at the Commission are extremely technical and specialized with a limited applicant pool to draw from. Fortunately, our current employees have been strong

advocates for our agency and have helped us recruit a number of key individuals to fill our vacant positions. However, often we have had to provide new hires the same or higher compensation as current employees. This has led to several equity problems throughout our agency. While we are proud of how we have handled this transition within our agency, we still have equity issues to correct. We've been fortunate to recruit and hire well educated, talented people but due to compensation levels, struggled to attract applicants with experience. While we have hired excellent recruits, their limited experience will require extensive training to be as effective and efficient as previous employees with many years of experience.

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 and would encourage the legislature to consider even higher salary increases to keep up with inflation.

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

### Railroad Safety Program:

First, as recommended in the Governor's budget, 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 ammonia that originate from and pass through our state. A summary of accomplishments is included in attachment B.

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.

Environmental Scientist Position:

The Reclamation Division carries out the Surface Mining Control and Reclamation Act of 1977 (SMCRA) in a partnership effort between the State of ND and the U.S. Department of Interior's Office of Surface Mining (OSM). The Reclamation Division evaluates surface mining permit, permit revision and renewal applications, makes recommendations to the Commissioners regarding permit

issuance, and carries out inspections of coal mines to ensure compliance with the program's requirements.

Since the inception of the program in the 1970s, the state has operated at the minimum staffing required to maintain the state program. Due to the complexities of this program, it requires at least three years of on-the-job training before the full breadth of rules, laws, and processes are understood.

In addition to the changing workforce, the coal mining industry is also having challenges retaining employees due to industry perception and in some cases, companies filing for bankruptcy. This adds additional work to already limited staff. An additional position would allow effective cross training, aid in succession planning, and provide a backstop from the federal government stepping in to take over the administration of this program if we cannot maintain minimum staffing and appropriate program support. We are currently overseeing the reclamation of a mine that has gone through bankruptcy and is no longer producing coal with 8,778 permitted acres.

We are requesting 1 FTE to hire an Environmental Scientist. No operating funding is needed as all training will be covered by OSM. The federal government will cover 64% of the salaries and benefit costs through an ongoing federal grant with the remaining 36% being funded by matching general funds.

This position protects the environment and property owners while being responsive to needs of the mining industry. Without this position, our ability to succession plan and transfer institutional knowledge is limited and we continue to

be at risk of losing the primacy of the program to the federal government if we cannot maintain minimum staffing and meet federal requirements.

Public Utility Analyst and Electrical Engineer:

The Public Utility Division covers a wide breadth of services to the citizens of North Dakota including:

- Engaging and monitoring Regional Transmission Organizations (RTOs) and the Federal Energy Regulatory Commission (FERC) both regionally and nationally to ensure North Dakota's interests and voices are being heard in the discussions on energy generation mix, resource planning and pricing, and grid reliability.
- Conducting a thorough and meaningful review of rate cases, advanced determinations of prudence, certificates of public convenience and necessity requests, and other miscellaneous economic regulation applications of seven, multi-billion-dollar, investor-owned retail electric and gas utility operators to ensure fair, just, and reasonable rates.
- Siting energy generation, electrical power transmission and transmission pipeline infrastructure.
- Limited regulation of telecommunications.

All of this work is covered by three analysts and a director. Due to the rapid and dynamic changes happening in the energy industry locally, regionally and nationally, this is no longer sufficient staff to cover these critical areas.

We are requesting 2 FTEs – one Public Utility Analyst and one Electrical Engineer. We also are requesting operating funds to cover professional development. The entire funding request is general fund, however we could explore the possibility of self-funding a portion of this request. Self-funding would require an additional assessment on utilities, which is passed to consumers.

It cannot be stressed enough how much the evolution of RTOs has impacted our agency with the required time and resources it takes to be effectively engaged. To further complicate things, we have two RTO's to cover – both MISO and SPP are integrated throughout our entire state. Some states have 2 to 3 full-time employees working with each respective RTO; comparatively, we have 4 analysts for the entire PUD Division. Decisions being made at the RTO level include changes to reliability that effect energy generation make up and the rate at which different types of resources are being retired. The way renewable and traditional energy resources are dispatched, incentivized and reimbursed for cost are also determined at the RTO level. All these decisions have a significant economic and reliability impact for our state, its citizens and businesses. These complex issues are being compounded by FERC attempting to extend federal authority and jurisdiction.

The Commission is involved in leadership roles within these multi-jurisdictional organizations, and we need adequate staffing to maintain, to become more involved in order to keep up with this complex system, and most importantly to ensure North Dakota has a voice in the long-term reliability and affordability of energy. Without these positions, we will be unable to effectively intervene on behalf

of N.D. citizens and industry in front of FERC and influence RTO decisions effecting reliability, cost, and resource mix. This will impact North Dakota's power production and consumers for years to come.

Another area of regulation our Public Utilities Division is responsible for is telecommunications. This is another industry that is evolving and changing with new technologies being used and adequate staff is needed to respond to emerging issues. One example is the efforts taken in the past biennium to preserve North Dakota's seven-digit dialing. Due to the new Suicide Prevention Hotline of 988, states needed to ensure that 988 is not used as a prefix for any phone numbers, or the state would be required to switch to ten-digit dialing. Public Utilities staff worked with providers using this prefix and they were able to transition those customers to a different prefix, clearing North Dakota from the list required to transition to 10-digit dialing.

Staff has also worked hard to implement processes that utilize phone numbers more efficiently and sparingly, allowing North Dakota to remain with only one area code.

#### Operating Money for Ongoing Operations:

We are requesting additional operating funding for various divisions to continue and enhance ongoing operations and keep up on industry standards and education. Last biennium we were assigned the task of conducting a more in-depth review and analysis of Integrated Resource Plans submitted to the Commission. The Commission is requesting funding for the same modeling software used by

utilities for load forecasts, generation resource selections, and economic results. Having access to the same modeling system utilized by the utilities we regulate will allow staff to more effectively analyze and validate the assumptions and outcomes of those plans. We are also requesting additional funding for:

- Professional development and travel so staff can maintain professional certifications like CPAs, JDs, and PE,
- Third-party support costs in order to extend the life of current equipment instead of purchasing new equipment as a replacement, and
- Funds to cover increased membership dues for NARUC.

Legal Assistant:

As a quasi-judicial agency, legal processes are engrained in everything we do. We are requesting a legal assistant to be a dedicated resource to the legal division to assist with tracking open cases filed at the PSC, FERC, and FCC, and to coordinate with PSC General Counsel to execute open record and open meeting requirements, administrative rulemaking, and administrative appeals. The Legal Assistant would also assist with preparing records and exhibits, scheduling, and hearing organization and preparation. This will help shorten the amount of administrative time for the attorneys so they can engage further in the growing federal, regional, and multistate interactions and respond accordingly.

We are requesting 1 FTE for a Legal Assistant and minimal operating funds to cover professional development. This position will be eligible for indirect cost

recovery, so 57% of funding will be general fund and the remaining 43% is supported with federal funds.

FERC Contractor:

The Commission continues to increase engagement with the Federal Energy Regulatory Commission (FERC) to ensure reliable, safe, secure, and economically efficient energy for consumers at a reasonable cost. If we are unable to secure in-house resources through additional staffing, we would use this money as a backstop to retain a consultant to assist with tracking FERC cases, advising the Commission on critical issues and drafting comments for Commission review and submission. FERC cases are as numerous as are the filings within them. Ensuring we have adequate staff or resources to review those cases and filings and make recommendations for comments that North Dakota should file in those cases is important and necessary to maintaining state's rights.

If we are able to obtain the 2 FTEs and resources requested for the Public Utility Analyst and Electrical Engineer, we do not believe this funding will be necessary. However, just as we are seeing RTOs develop regional energy transmission policies that have an impact on ND, FERC is taking up many topics that will have an impact on our state. Engaging in FERC cases and filing meaningful comments is necessary to ensure our voice is heard and our citizens are protected from the added costs and reduced reliability that will result from the absence of our engagements.

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

### Indirect Cost Recovery:

The PSC has an indirect cost agreement with the federal government that allows the agency to negotiate an indirect cost percentage and apply this percentage to federal salary and benefit costs involving the Reclamation, AML and Pipeline Safety programs. This indirect cost recovery is used to support employee salary costs for critical positions that support the entire agency which subsequently reduces the need for general funds. This indirect cost agreement is based on actual expenditures negotiated every two years. Our indirect cost agreement in the 2021-23 budget request was 30.50%. Due to reduced actual expenditures, primarily due to the extensive turnover of staff, we project the indirect cost agreement for the 2023-25 budget to be 26.50%. This anticipated 4% rate reduction will lead to additional general fund needs of approximately \$101,700 to support base salaries of current staff. We expect this to be a one-time issue.

### Drone for Reclamation and AML:

We are requesting a drone that would be used by two divisions at the PSC, the Reclamation Division and the Abandoned Mine Lands Division. The Reclamation division could use the drone when mine access is restricted or hazardous; to create timely aerial imagery when adding acres to a new or existing permit, at bond release, at end of the year, for landowner complaints about land impacts, and immediately following Notice of Violations (NOVs). It would also be useful to create timely digital surface models (DSM)s to estimate mine reclamation

progress, estimate earthwork volumes, identify surface water flow paths, identify surface water ponding, and find erosional features.

The Abandoned Mine Lands (AML) division would use the drone to inspect areas where access is limited or terrain presents challenges on foot. Images collected can be used to make maps, monitor progress and collaborate with other AML staff, contractors, landowners and the public. Autonomous flight missions would allow AML to create digital elevation models of existing ground conditions much faster than traditional survey methods. This would help AML compute earthwork volumes more efficiently and accurately for reclamation projects.

We are requesting one-time funding to purchase a U.S. Department of Defense cleared drone. Most of this funding will be provided by the federal grants supporting each program.

#### Weights and Measures Equipment:

The Commission currently does not have the ability to test high-flow devices, verify the work of registered service companies or technicians who certify high-flow diesel dispensers, or respond to complaints on these devices. These devices are used at truck stops to dispense diesel fuel into semis and other large over the road vehicles. This funding would be used to purchase a prover trailer to allow the PSC to test these devices and provide increased driving safety for our inspectors and reduced wear and tear on vehicles.

### Copier Replacement:

The Commission is looking to replace a copier purchased in June 2015. We could continue to use the current copier until it gives out, but ongoing service maintenance costs will continue to rise on this aging machine. At some point maintenance may no longer be available due to the age of the machine. We anticipate saving around 35% on service maintenance costs with a new machine.

### Temporary Salary Funding:

While we have had significant turnover within our agency, we still anticipate upcoming retirements in a handful of critical positions in the next biennium. These upcoming retiring employees have specialized skill sets and we would like the ability to bring them back if necessary in a temporary capacity to assist the agency with training during the transition. The Commission has been able to utilize this model in the current biennium and it has been exceptionally successful.

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

Appropriation	2021-23 Biennium Appropriation	2023-25 Governor's Recommendation
Salaries and Wages	\$9,991,488	\$11,354,106
Operating Expenses	\$1,801,570	\$2,196,237
Capital Assets	\$145,000	\$45,000
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	\$614,724	\$684,654
Specialized Legal Services	\$420,000	\$420,000
FTEs	43	44
General Funds	\$6,431,087	\$7,631,372

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

The Commission requests the following changes to the Executive

Recommendation:

- Two FTEs and applicable funding for a Public Utility Analyst and an Electrical Engineer
- One FTE and applicable funding for a Legal Assistant
- Purchase liquid fuels prover trailer
- Funding for copier replacement
- Funding for temporary salaries

**Comparison of Major Budget Requests to Governor's  
Recommendation (one-pager)**

<b>Description</b>	<b>Executive Recommendation</b>	<b>Comments</b>
Environmental Scientist	Included	This position is critical to maintain state primacy from federal government.
Public Utility Analyst and Electrical Engineer	Not Included	We believe it is critical to receive these positions and could explore self-funding a portion
Indirect Cost Recovery	Included	One-time funding to address shortfall in the 2023-25 biennium
Operating Money for Ongoing Operations	Included	Includes NARUC funding, training, travel, third-party support costs, and public utilities modeling software subscription
Legal Assistant	Not Included	Dedicated resource for the legal division
Drone for Reclamation and AML	Included	Most funding will be provided by federal grants supporting each program
Weights and Measures Equipment	Not Included	Purchase of liquid fuels prover trailer
Copier Replacement	Not Included	Cost savings will be achieved through reduced maintenance and operating costs
FERC Contractor	Included	May not be needed if we can secure in-house resources through additional staffing
Temporary Salary Funding	Not Included	Aid in knowledge transfer and succession planning

## **Agency Collections:**

### General Fund Collections:

- Public Utility filing fees – \$50 fee assessed on filings submitted to the Commission by regulated entities. HB 1063 proposes to eliminate this fee. The PSC is supportive of this change.
- Auctioneer/Auction Clerk licensing fees – There will be a bill to remove Commission oversight by creating a Board of Auctioneers. The PSC is supportive of this change.
- Various fines – The Commission has the authority to assess fines for noncompliance with laws and rules. No anticipated changes in 2021-23 biennium or upcoming 2023-25 biennium.
- Fees assessed for new coal mining permits – No anticipated changes in 2021-23 biennium or upcoming 2023-25 biennium.

## **Other Sections to be Included in Appropriation Bill:**

### Funding Source for Rail Rate Complaint Case:

Since 2005, the PSC receives funding for a possible rail rate complaint case from the Beginning Farmers Revolving Loan Fund at the Bank of North Dakota. While the PSC has not incurred any expenses related to a rail rate complaint case since 2005-2007, this is a valuable deterrent for railroad companies to charge unjust rates to producers. The Bank of North Dakota has indicated they will need all funding available in the Beginning Farmers Revolving Loan Fund and have proposed to extend a line of credit, with deficiency appropriation if necessary, to

the PSC to provide funding. The PSC and Bank of North Dakota are supportive of this change and will be presenting appropriate amendment language.

## **Federal Funding for 2023-25 Biennium:**

The PSC has numerous programs that receive federal funding including:

- Reclamation
- AML
- Pipeline Safety
- Rail Safety
- Damage Prevention (ND One-Call)

These funds are long-standing, reoccurring (usually on an annual basis) to support program objectives and costs. The 2022 Bipartisan Infrastructure Law (BIL) does include an additional \$3 million in funding for the AML program. We have submitted a grant application for the first year of funding, however we are still evaluating if we will continue to apply for this funding going forward and determining resource and budget needs. At this point, the federal government has not adopted rules and guidance for this program after 2023.

## **Self-Funding**

Last biennium, the Legislature implemented a self-funding model at our agency to self-fund a small portion of our Public Utility and Weights and Measures Divisions. The total amount budgeted to be self-funded is \$625,000 and is made

up of fixed and variable funding sources. As you can see from the following report, the emergency clause implemented by the Legislature was helpful to get the funds started. However, we are concerned if we will receive enough siting applications this biennium to meet the budgeted amount for the siting admin fee.

Variable Funding Sources (as of Nov. 30, 2022):

	Emergency Clause 19-21 Biennium	21-23 Revenue as of Nov. 30, 2022	Total Fund Balance as of Nov. 30, 2022	21-23 Biennium to Date Budget	Difference	Total Budget
Interest		80	80			
W&M - Scale Inspection Fees	14,468	109,396	123,864			
W&M - Registered Service Companies		22,210	22,210			
<b>Total W&amp;M</b>	14,468	<b>131,606</b>	146,074	123,958	22,116	175,000
Siting Admin. Fee		<b>97,356</b>	97,356	106,250	(8,894)	150,000

Fixed Funding Sources:

The PSC will receive \$300,000 per biennium from an economic regulation assessment that is proportionally assessed based on each electric and gas utility's respective gross operating revenues from the retail sale of gas and electric service within the state.

**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 locally, regionally and nationally 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 and innovation in our agency. We embrace technology 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 operating efficiently while offering innovative solutions to the constant challenges we face. 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.

## **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 132,584 acres are currently permitted for mining activities under 22 mine permits.
- During the current biennium, approximately 6,021 acres are proposed to be added to existing permit areas and are under review by the Reclamation Division.
- To date, approximately 17,360 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 was held on a pending revision application for the Coyote Creek Mine.
- An adjacent surface owner to the Freedom Mine filed a citizen's complaint in 2019. The Commission responded to the complaint and informed the

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surface owner of his options to request an informal conference or formal hearing. In 2022, the surface owner requested a formal hearing and the hearing was held.

- Staff continued monitoring the Westmoreland bankruptcy and reviewed the permit transfer documents. The permit transfers to the new post-bankruptcy company were approved by the Commission.
- Two program Amendments to North Dakota Coal Regulatory Program were submitted to the Office of Surface Mining Reclamation and Enforcement.
- Staff worked extensively with the Falkirk Mine, Rainbow Energy, and other state agencies to replace Falkirk’s performance bonds prior to the sale of the Coal Creek Station from Great River Energy to Rainbow Energy.
- During this biennium, the Commission approved and adopted the updated Revegetation Success Guidelines document that had been under review for several years.
- The Reclamation Division lost over 100 years of experience in 2021 due to retirements. The division became fully staffed again on February 1, 2022. We are currently in the process of training the entire division as each employee is either newly hired or in a new position since the end of 2019.
- The PSC’s coal regulatory and Abandoned Mine Lands programs continue to receive excellent annual evaluation reports from the federal Office of Surface Mining (OSM), which concluded that no issues or concerns were raised. In their report they stated that the Reclamation Division “continues to implement the program in a professional, cooperative, and fair manner.

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The NDPSC has the necessary technical expertise for carrying out its functions to ensure that all requirements are met.” In their report of the AML Program, OSM stated that “the state administers an excellent program in full compliance with their approved plan.” Additional statements included “The NDPSC continues to administer an efficient and successful AML program. These projects have reduced the likelihood of death or injury to property owners and the public.”

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

The goal of the Abandoned Mine Lands (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. These funds are distributed as federal grants

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to AML programs in 28 states and tribes, including North Dakota. North Dakota typically receives about \$3 million annually.

The Office of Surface Mining Reclamation and Enforcement's AML fee collection authority was extended through September 30, 2034, as part of the Infrastructure Investment and Jobs Act, commonly known as the Bipartisan Infrastructure Law (BIL), that was signed into law on November 15, 2021. The BIL reduced the reclamation fee rate for lignite coal from eight cents per ton to 6.4 cents per ton and extended the annual AML grant distributions to eligible states and tribes by 13 years. In addition to the extension of AML fee collections and mandatory AML grant distributions, \$11.293 billion in new funding was authorized to expand investment in the AML program over a 15-year period. North Dakota recently submitted our first BIL grant application for \$3,101,700. Response time from the federal government is unpredictable.

- In the current biennium, 8 abandoned mine land reclamation projects were completed.
- About 280 dangerous sinkholes caused by the collapse of underground mine workings were filled in the past two years.
- Since 1982, 193 primary reclamation projects and 35 emergency projects have been conducted to eliminate hazardous conditions, totaling over \$62.5 million.
- More than 40 miles of dangerous surface mine highwalls have been eliminated and over 1,500 acres of subsidence issues have been addressed since the AML reclamation program began.

## Attachment A – Department Overview

- We have records of more than 1,500 abandoned coal mine sites in North Dakota. At the current rate of federal funding, we estimate it will take at least 15 years and over \$35 million to address the highest priority AML problems in our state.

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

Telecommunications: The Commission continued and refocused its efforts on telecommunications regulation. During the past biennium, the Commission collaborated with telecommunications companies operating in North Dakota to reassign numbers associated with the 701-988 prefix. This effort was necessitated by the new 988 three-digit code that was set to be implemented for suicide prevention. Absent our efforts to reassign the phone numbers in that prefix, the entire state would have been forced to utilize ten-digit rather than seven-digit dialing. As a point of reference, 35 other states and 82 area codes were forced to utilize ten-digit dialing as a result of this. We furthered our efforts in this area to collaborate not only with telecommunication companies, but also other states in our efforts to save numbering resources in our lone area code of 701.

As many may not be aware, North Dakota is one of a small number of states who retain a single area code across the entire state. However, this will not be the case in perpetuity. At present we are forecasted to exhaust the available numbers in the 701 area code by the second quarter of 2028. Absent the Commission's efforts to utilize phone numbers more efficiently and sparingly, we would already be looking to add another area code to our state.

## Attachment A – Department Overview

During the past biennium we joined other states such as Maine, New Hampshire and Montana in filings before the Federal Communications Commission that would permit us to grant numbering resources to telecommunications companies in smaller blocks, thereby pushing our exhaust date out by many years.

Electric and Natural Gas: North Dakota continues to have among the lowest residential electric and natural gas utility rates in the nation, as shown in the charts on page A9. Biennium to date, the PSC has received two general rate cases for Montana-Dakota Utilities Co.'s electric operations and Northern States Power Company's natural gas operations.

Consistent with the Commission's least-cost standard, the PSC has made two advanced determinations of prudence. One concerning 200 megawatts of new wind generation to be added to Northern States Power Company's system, and the other concerning a new advanced metering infrastructure to be added to Otter Tail Power Company'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.

The Commission continues to participate as a member of the organization of MISO States and Southwest Power Pool (SPP), which are both Regional Transmission Organizations (RTOs). MISO began operating a regional energy market in 2005 that continues to serve the loads of all MISO participants, including the three jurisdictional investor-owned electric utilities providing service in North

## Attachment A – Department Overview

Dakota (Montana-Dakota Utilities Co, Northern States Power Company, and Otter Tail Power Company). The SPP operates a similar regional energy market that serves Basin Electric Power Cooperative and its member Cooperatives. Both provide a centralized generating unit dispatch procedure that co-optimizes the energy and ancillary services markets to ensure that the lowest-cost generators are always being used throughout the regions regardless of utility control area boundaries. The markets establish Locational Marginal Prices (LMP's) for electric energy at specific local pricing nodes. All energy must be provided through the markets. Producers are paid the LMP for their energy at the time and node where it enters the market. The load pays the LMP at the time and node where the energy is delivered.

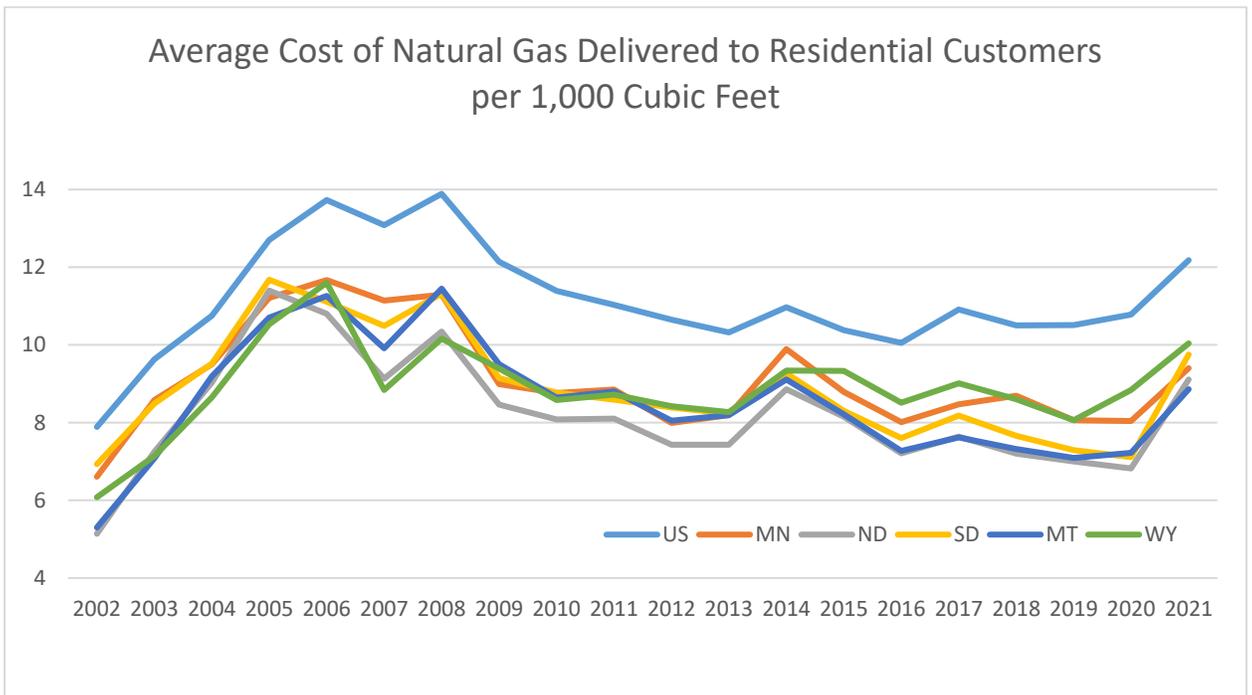
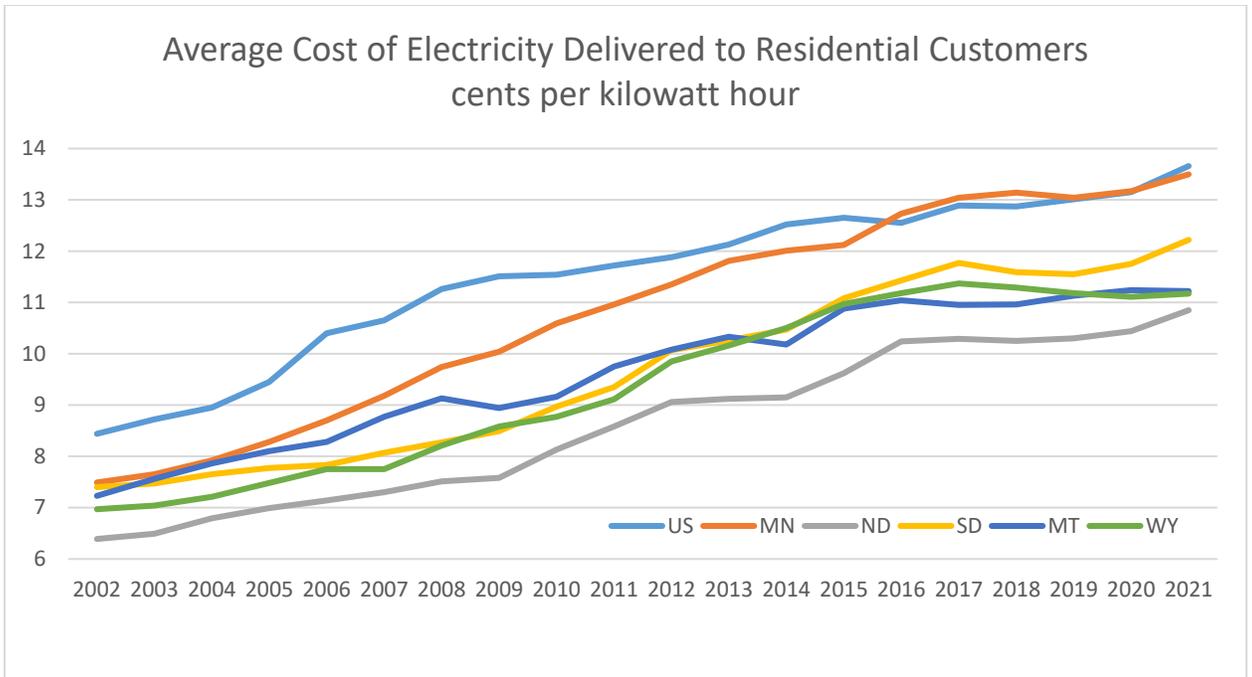
Collaborating with MISO and SPP while representing North Dakota's interests in addressing gaps in an electric resource's ability to show up during times of need and to properly incentivize those resources for doing so will be increasingly important for a fleet undergoing significant change. Continuing to work with MISO and SPP to balance the cost and need for interstate transmission lines under federal jurisdiction with the cost and need for resources under local jurisdiction is critical to ensuring ratepayers are served with affordable and reliable electricity. Such transmission investments are forecasted to be significant, and the Commission must ensure both local and regional industries are working to advance ratepayers interests. Becoming more and more involved and keeping up with this complex system takes increased staff time and specific staff expertise.

## Attachment A – Department Overview

Participation in these regional groups is becoming more important as decisions they make impact all North Dakota utilities. States are ultimately responsible for resource adequacy. However, due to the interconnected nature of the power grid, steps that North Dakota takes to ensure its own reliability will not be considered when the entire grid is in need (just as we saw with winter storm Uri in February 2021). The Commission is involved in leadership roles within these organizations, but having adequate staffing to become more involved and keeping up with this complex system is necessary to ensure North Dakota has a voice in our long-term reliability and affordability of energy. In order to ensure that North Dakota's interests are represented in decisions that are made by MISO and SPP, the challenge will be finding resources to assign to these important tasks.

In addition to the RTOs, another critical area for North Dakota is the Federal Energy Regulatory Commission (FERC). Just as we are seeing RTOs develop regional energy and transmission policies that have an impact on North Dakota, FERC is taking up many topics that will have an impact on North Dakota. Therefore, engaging in FERC cases and filing impactful comments is necessary to ensure that our voice is heard, and our citizens are protected from the added costs and reduced reliability that will result from the absence of our engagement. FERC cases are numerous, as are the filings within them. We must ensure we have adequate staff to review FERC cases and filings, make recommendations for comments, and take the appropriate steps to file comments.

Attachment A – Department Overview



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

**Pipelines**

Description	Miles	County	Est. Project Cost
Montana-Dakota Utilities Co.	.5	Morton	1,600,000
Hiland Crude, LLC	2.9	Williams	5,400,000
Dakota Gasification Company	6.8	Mercer	25,000,000
Bridger Pipeline LLC	81	McKenzie & Golden Valley	122,000,000
Total	91.2		154,000,000

**Electric Transmission**

Description	Miles	County	Est. Project Cost
Montana-Dakota Utilities Co.	1.5	Morton	1,300,000
Total	1.5		1,300,000

**Wind Generation**

Description	MW	County	Est. Project Cost
Badger Wind, LLC	251.6	Logan & McIntosh	360,000,000
Total	251.6		360,000,000

Note: 4,249 MW of total wind generation in service as of December 20, 2022.

**These tables represent completion of the complex siting process of 91.2 miles of pipelines, 1.5 miles of electric transmission line, and 251.6 MW of wind generation. It represents over \$515 million of economic investment in North Dakota.**

**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 Commission currently licenses 303 auctioneers and 144 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 5,155 commercial devices from July 1, 2021, thru June 30, 2022, by PSC inspectors.
- Conducting quality control testing and monitoring the documentation of 19,978 weighing or measuring devices installed or serviced by registered service companies from July 1, 2021, thru June 30, 2022.
- Creating and implementing a quality assurance feedback process to ensure issues identified by inspections are communicated back to Registered Service Companies and Registered Service Persons.

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

## Attachment A – Department Overview

with responding to heavy-scale complaints. From July 1, 2021, thru June 30, 2022, the PSC has conducted quality assurance inspections on 118 heavy scales, of which 33 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. Workload requirements for light duty inspectors does not allow for much, if any, quality assurance inspections on light duty devices (gas pumps, grocery store scales, etc.). Additional staffing would allow for increased quality assurance inspections. Additionally, the program does not currently have the necessary equipment to test high flow meters, such as diesel fuel pumps. In order to conduct our own high flow testing, the program has made a request for funding to purchase the necessary equipment.

### **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 Commission is the clearinghouse for rail service and safety issues statewide. As part of public engagement and outreach, the Commission hosts an annual meeting 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.

## Attachment A – Department Overview

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 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, one of which is dual certified, meaning they can inspect two out of the six FRA inspection disciplines. The three inspection disciplines the Commission inspectors are certified in are 1) Track and 2) Motive Power & Equipment (Mechanical) / Hazardous Materials (HAZMAT). The remaining three FRA inspection disciplines are Operating Practices, Signal and Train Control, and Grade Crossing Safety and Trespasser Prevention. The state inspectors coordinate with and complement the federal inspectors to maximize coverage but are autonomous and entirely accountable to the Public Service Commission.

## Attachment A – Department Overview

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 such as Mechanical inspector is in rail yards and hazardous material trans-loading facilities.
- Allows the rail safety program to utilize existing resources to provide additional oversight and safety to North Dakotans.
- 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.

Since the start of the program, the track inspector has conducted 942 inspections, noting 5,621 defects, and has issued 47 violations with civil penalties. The mechanical inspector has conducted 968 inspections, noting 7,654 defects, and has issued 98 violations with civil penalties in addition to 61 HAZMAT inspections, noting 41 defects, and has issued 12 violations with civil penalties.

### **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 Commission conducts a Pipeline Safety Program in North Dakota

## Attachment A – Department Overview

involving intrastate natural gas transmission, gathering, and distribution systems, intrastate liquified natural gas (LNG) facilities, and a propane distribution system. Furthermore, in November 2021, PHMSA published a final rule bringing previously unregulated natural gas gathering systems under the jurisdiction of PHMSA and thereby the Commission. Thus far, the number of regulated operators has increased from 22 to 23 with more expected. The number of regulated gas pipeline miles is anticipated to increase by thousands. The number of newly regulated operators and additional gathering line mileage will be reported to PHMSA in March 2023.

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

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

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.

## Attachment A – Department Overview

Staff for the program includes one program manager/inspector and two full-time inspectors. Biennium to date, Gas Pipeline Safety Inspectors completed a total of 351.5 inspection/audit days.

### **Damage Prevention**

Applicable North Dakota Century Code Chapter includes 49-23.

The Commission is charged with enforcement of the state's One-Call Excavation Notice System law also known as 811 or Call Before You Dig.

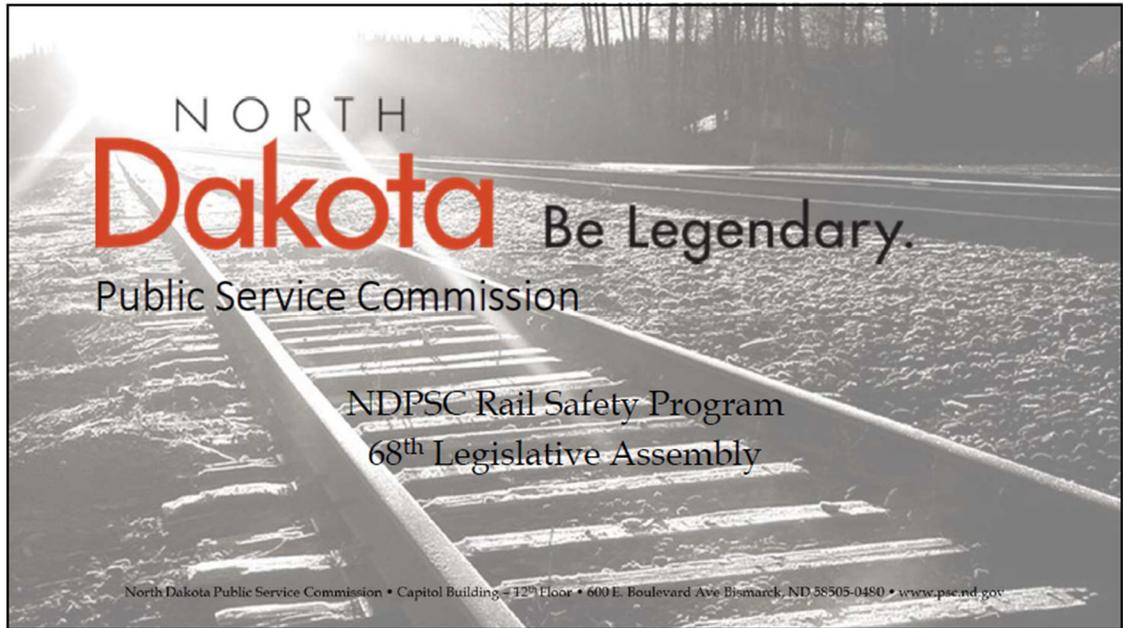
The goal of the law is to prevent damage to underground infrastructure. This biennium to date, the Commission has processed 52 complaints regarding alleged violations of the One-Call law. As a result of these proceedings, the Commission has levied fines totaling \$67,900. These fines are deposited directly 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	51
2021-2023	52 to date

## Attachment A – Department Overview

In total, the Commission has levied 181 fines totaling \$399,250 since beginning enforcement of the program in 2009. Since inception, the Commission has not been given any additional resources to process these cases. The workload has fallen to existing staff.



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## Rail Safety Program Mission

Implementing inspection and compliance programs that:

- Reduce the potential for injuries, deaths, and property damage in and along North Dakota railroads and communities.
- Reduce the number of accidents, derailments and other equipment failures experienced within the state of North Dakota.
- Reduce fatalities and injuries in addition to economic losses and environmental impacts.

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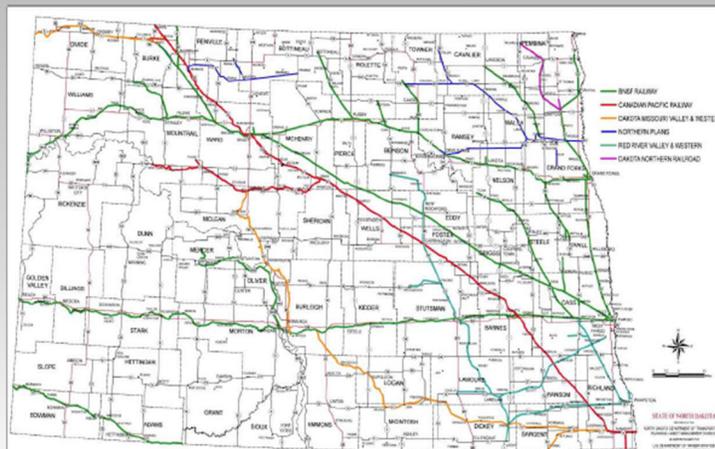
## Rail Safety Program Priorities

- Expand safety inspections of track infrastructure to include main line, sidings and industrial spurs, railroad equipment and cars.
- Use enforcement actions to include education, notification, and penalties regarding compliance with safety standards.
- Work with railroads and shippers to upgrade safety and community relations.
- Ensure crude oil/HAZMAT routes are inspected regularly, as well as components and equipment used to transport/carry commodities.
- Serve as a safety resource and provide guidance regarding federal and state laws.

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3

## North Dakota Rail System



3,532 Miles of  
Main Line Track

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## Communities Impacted by Railroads

- 290 communities intersect or are in close proximity to the railroad, many of which the Commission has inspected at:

Absaraka, Adams, Alsen, Amenia, Ambrose, Aneta, Anamoose, Ardoch, Argusville, Arvilla, Ayr, Balfour, Baldwin, Barney, Barton, Beach, Belfield, Benedict, Bergen, Berlin, Berthold, Beulah, Bisbee, Bismarck, Blaisdell, Bordulac, Bottineau, Bowbells, Bowman, Braddock, Bremen, Buchanan, Bucyrus, Buffalo, Burlington, Butte, Buxton, Calvin, Cando, Canton City, Carpio, Carrington, Casselton, Cathay, Cavalier, Cayuga, Chaffee, Churchs Ferry, Cleveland, Clifford, Cogswell, Coleharbor, Colfax, Conway, Coulee, Courtenay, Crary, Crosby, Crystal, Cuba, Cummings, Dahlen, Davenport, Dawson, Des Lacs, Devils Lake, Dickinson, Donnybrook, Douglas, Drake, Drayton, Driscoll, Dwight, Doyon, Eckelson, Edgeley, Edinburg, Egeland, Eldridge, Elliot, Emerado, Emrick, Enderlin, Englevale, Epping, Erie, Fairdale, Fairmount, East Fairview, Fargo, Fessenden, Fingal, Finley, Flaxton, Fordville, Forest River, Forman, Fortuna, Foxholm, Fredonia, Fryburg, Fullerton, Galesburg, Gardner, Garrison, Gascayne, Gladstone, Glen Ullin, Glenfield, Gilby, Grace City, Grafton, Grand Forks, Grandin, Grano, Granville, Gwinner, Hamberg, Hankinson, Hannaford, Harmon, Harvey, Harwood, Hatton, Havana, Haynes, Hazen, Hebron, Hensler, Heimdal, Hettinger, Hillsboro, Hoople, Hope, Horace, Jamestown, Juanita, Judson, Karlsruhe, Kelso, Kenaston, Kenmare, Kensal, Kindred, Kintyre, Kief, Knox, Kulm, Lakota, LaMoure, Langdon, Lankin, Lansford, Larimore, Larson, Leal, Leeds, Lehr, Lemmon, Leonard, Lidgerwood, Lignite, Lisbon, Logan, Lucca, Luverne, Maddock, Makoti, Mandan, Manfred, Mantador, Manvel, Mapleton, Marmarth, Martin, Mayville, Max, McKenzie, McLeod, McVile, Medina, Medora, Menoken, Michigan, Milnor, Milton, Minto, Minot, Moffit, Mohall, Mooreton, Munich, Nash, Napoleon, Nekoma, New Rockford, New Salem, New Town, Niagara, Niobe, Nolan, Noonan, Norma, Northgate, Northwood, Norwich, Oakes, Oberon, Oriska, Osabrock, Palermo, Page, Park River, Parshall, Pekin, Perth, Petersburg, Pillsbury, Pingree, Pisek, Plaza, Portal, Portland, Powers Lake, Prosper, Ray, Reeder, Reile's Acres, Reynolds, Rhame, Richardton, Rogers, Rolla, Ross, Rugby, Ruso, Rutland, Ryder, Sanborn, Sawyer, Scranton, Selz, Sentinel Butte, Sharon, Sheldon, Sheyenne, Simcoe, South Heart, Spiritwood, Springbrook, Stanley, Stanton, Steele, Sterling, Stirum, Surrey, Sutton, Tappen, Taylor, Thompson, Tioga, Tolna, Tolley, Tower City, Towner, Trenton, Underwood, Valley City, Velsa, Verona, Voltaire, Walcott, Walhalla, Washburn, Wellsburg, West Fargo, Wahpeton, Wheatland, White Earth, Williston, Willow City, Wilton, Wimbledon, Windsor, Wishek, Wyndmere, York.

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## Inspection Data (Program Inception thru 12-31-2022)

- Inspector #1 (Track Inspector)
  - 942 Inspections
  - 18,939 Units
  - 5,621 Defects
  - 47 Violations
- Inspector # 2 (Dual Certified in Mechanical and HAZMAT Disciplines)
  - Mechanical
    - 968 Inspections
    - 186,994 Units
    - 7,654 Defects
    - 98 Violations
  - HAZMAT (Inspector certified 09-15-2021)
    - 61 Inspections
    - 1,403 Units
    - 41 Defects
    - 12 Violations

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## Top Track Defects and Violations

Category	Description	Defects	Violations
Continuous Welded Rail	Continuous welded rail is track joined together by welding sections together rather than being bolted together using joint bars.	249	4
Rail Joints	Rail joints are the places where two sections of track are joined together using bolts and the appropriate joint bars.	1,320	13
Turnouts and Crossings	Turnouts are the portion of a switch that connects to another track and crossings refers to roadway grade crossings.	2,007	0
Switches	Track switches are equipment that enables trains to transfer from one track to another.	273	1
Ballast	Ballast is the rock that securely holds rail ties in place and supports the massive amount of weight transferred from passing trains.	163	3

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## Top Mechanical Defects and Violations

Category	Description	Defects	Violations
Railroad Freight Car Standards	This section includes the mechanical components of a freight car (wheels, axles, suspension, etc.). These defects cause the most frequent and severe mechanically related derailments.	2202	42
Reflectorization of Rail Freight Rolling Stock	Reflectorization of rail cars increases visibility and reduces highway-rail grade crossing accidents, deaths, injuries, and property damage.	341	0
Railroad Locomotive Safety Standards	Minimum Federal safety standards for all locomotives, except those propelled by steam power.	56	0
Railroad Safety Appliance Standards	This section includes handbrakes, handholds, ladders, sill steps and platforms. These defects lead to personnel safety hazards/injuries.	3363	50
Brake System Standards	This section includes brake test requirements, brake system effectiveness, head end and end of train devices.	1676	11

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## Top HAZMAT Defects and Violations

Category	Description	Defects	Violations
Carriage by Rail	This section pertains to railroads regarding operating, handling and transportation of hazardous materials in rail transportation.	21	12
Training and Security	This section pertains to shippers/revceivers of hazardous materials regarding training of HM employees and security.	5	0
Tank Car Inspection (Limited & Complete)	Inspection of the physical tank car while in transportation.	4	0
Loading /Unloading	The unloading and or loading of hazardous material, not yet in transportation.	4	0

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## MP&E Defects



- March 4, 2022
- Tank car at a facility had several defects relating to safety appliances. It was found that during a repair the safety appliances were welded instead of being secure with the proper mechanical fasteners.
- 49 CFR 231.136(c)(1)

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## Mechanical Violation

- Minot, ND 6/28/22
  - TILX 292811 tank car, not placarded located in the Minot CP Yard
  - 215.103(F)(1)(ii) L1 wheel with shelling greater than 3 inches in length
  - This wheel also had other shelled spots several adjoining that were greater than 2 ½ inches in length
  - Previous mechanical inspections completed in Alyth, AB Canada on 6/17/22, built in train and moved to Minot, ND.

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## Hazmat Defects/Violations

- 48 Hour Rule
- 49 CFR 174.14(b)
  - (a) carrier must forward each shipment of hazardous materials promptly and within 48 hours (Saturdays, Sundays, and holidays excluded), after acceptance at the originating point or receipt at any yard, transfer station, or interchange point, except that where biweekly or weekly service only is performed, a shipment of hazardous materials must be forwarded on the first available train.
  - (b) A tank car loaded with any Division 2.1 (flammable gas), Division 2.3 (poisonous gas) or Class 3 (flammable liquid) material, may not be received and held at any point, subject to forwarding orders, so as to defeat the purpose of this section or of § 174.204 of this subchapter.
- March 23, 2022, it was found that 12 tank cars loaded with Anhydrous Ammonia (Class 2.3 Poisonous Gas) had been sitting with an excess of 48 hours dwell (approximately 240 hours of dwell)

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## Track Defects



- Culverts found in area of major derailment collapsed and plugged not allowing water to drain under roadbed.

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## Track Violations



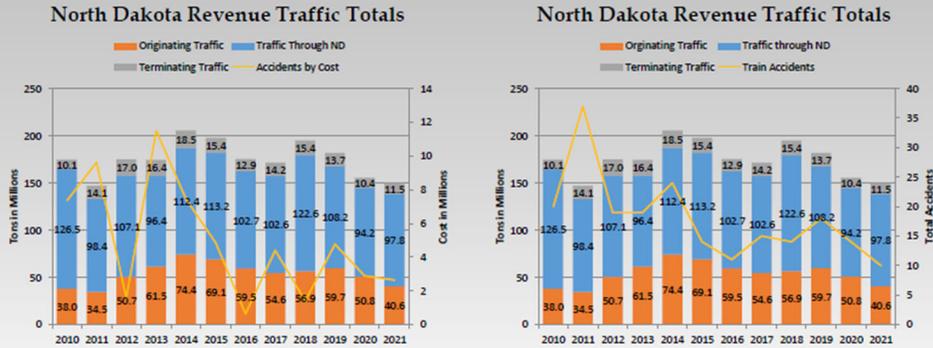
- Grand Forks, ND 6-14-22
- BNSF Grand Forks Subdivision main through Grand Forks

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## Traffic vs. Accidents



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## Other Safety Outreach and Education

- Identified critical defect in maintenance and inspection electronic tracking and log program allowing data manipulation after entry. Program used by numerous Class I railroads.
- Worked with FRA to heighten national visibility of broken side bearings on crude oil trains. This was driven by inspections conducted by the PSC's inspector.
- Worked with railroad mechanical departments to ensure all mechanical inspections of crude oil trains are being conducted at the correct locations and proper intervals.
- Cleared blocked crossings on multiple occasions by working with railroads, local government and citizens.
- Served as liaison between railroad and landowners obtaining new or repairing existing livestock fences along railroad right-of-way.
- Presented at schools and expos on the importance of safety near trains and railroad tracks; Operation Livesaver.
- Working on dual inspection certification for inspectors (Mechanical to take on HAZMAT and Track to take on Grade Crossing Safety and Trespasser Prevention).
- Provided track inspection report to help local investors determine the merits of replacing the burned rail bridge which threatened line abandonment in northeast North Dakota.
- Work with North Dakota Department of Emergency Services to coordinate rail maintenance which has the possibility of causing brush fires; ensure first responders are aware of potential risks within their jurisdictions.

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North Dakota Public Service Commission  
2023

