

**NORTH DAKOTA**  
**P S C**  
**PUBLIC SERVICE COMMISSION**



2007-2009

**Biennial Report**



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## **Introduction**

The Public Service Commission is a constitutional agency with varying degrees of statutory authority over electric and gas utilities, telecommunications companies, power plant, transmission line and pipeline siting, railroads, grain elevators, auctioneers and auction clerks, weighing and measuring devices, pipeline safety and coal mine reclamation.

The Commission typically meets in formal session every two weeks. Special meetings are held to handle special or emergency situations. The agendas for these special meetings are prepared and distributed in the same manner as those for regular meetings. These agendas are distributed to a mailing list of approximately 165 entities, electronically. Agendas, meeting minutes, and copies of significant orders are also posted on the commission's website, [www.psc.state.nd.us](http://www.psc.state.nd.us).

The Commission is comprised of three commissioners who are elected on a statewide basis to staggered six-year terms. The Commission had 41 authorized full time employees throughout the biennium.

The Commission was established before North Dakota became a state. Lawmakers for Dakota Territory established a Board of Railroad Commissioners in 1885 to oversee railroads, sleeping car companies, express companies, and telephone companies. The North Dakota Constitution retained this board and entrusted it with powers and duties to be prescribed by law. In 1940, the board's name was changed to Public Service Commission.

As the preceding list indicates, the Legislature has broadened the Commission's duties since its early days. This trend has been reversed in some areas as technology and a changing regulatory environment at both the federal and state levels have resulted in a greater dependence on competitive market forces to regulate services and rates of what were traditionally monopoly service providers.

We anticipate that some degree of regulatory oversight will remain in most of the Commission's traditional areas of responsibility. The public's needs and legislative policy makers will ultimately decide how much regulation is required in various industries.

This report outlines the Commission's functions, goals, accomplishments, legislation affecting the agency and future challenges. The following pages contain summary discussions from each of the Commission's regulatory and support divisions. These reports will be presented following a brief biographical profile of each Commissioner.

## *Commissioners*

### **KEVIN CRAMER**

#### **Commissioner**

Kevin Cramer was elected to the North Dakota Public Service Commission on November 2, 2004 garnering over 65% of the vote. He has served on the commission since 2003 when Governor John Hoeven appointed him to fill an unexpired term. He is currently the President of the PSC.

Prior to joining the PSC, Cramer served as the first director of the Harold Schafer Leadership Foundation. The Schafer Foundation supports the mission of the Harold Schafer Leadership Center to connect business and community leaders with emerging leaders enrolled at the University of Mary in Bismarck, ND. The goal of the center is to raise a generation of leaders who model the servant leadership principles of Jesus Christ.

Cramer has a distinguished career in public life having served eight years on the cabinet of Governor Ed Schafer. He was State Tourism Director from 1993 to 1997 and State Economic Development Director from 1997 to 2000.

Cramer has received the Republican endorsement to be his party's candidate for the U.S. House of Representatives twice, including accepting a draft in 1998. Prior to government service, he served as Chairman of the North Dakota Republican Party. At 30 he was the youngest member of the Republican National Committee.

Cramer serves on many boards and commissions and is a regular host of the popular Scott Hennen show heard on radio stations across North Dakota. He is an adjunct instructor of marketing and management and serves on the board of trustees at the University of Mary. He is a popular master of ceremonies, speaker and teacher, taking his message of our call to be "servant leaders" to campuses and conferences across the United States.

Cramer has a B.A. degree from Concordia College in Moorhead, MN in Social Work with an emphasis on pre-seminary studies and a Master's degree in Management from the University of Mary. He is a native of Kindred, ND where he received all of his primary and secondary education. Kevin and his wife Kris have two adult sons; Ian and Isaac, one adult daughter; Rachel, and a 17 year old daughter, Annie.



## **TONY CLARK**

### **Commissioner**

The citizens of North Dakota first elected Tony Clark to the Public Service Commission in November 2000. He was re-elected in 2006.

Since joining the PSC, he has been an advocate for North Dakota's interests in some of the state's most important industries.

Clark holds the PSC portfolio on electric generation and transmission. As such, he is active in state and regional efforts to develop North Dakota's vast energy exporting potential and provide affordable, reliable energy to consumers. Since joining the Commission, Clark has overseen regulatory proceedings that have facilitated hundreds of millions of dollars in new investment in North Dakota through expanded wind, coal and petroleum infrastructure.

Clark is a recognized leader in telecommunications policy. He works to strengthen North Dakota's future by supporting policies that benefit consumers and promote investment in a world-class telecommunications infrastructure. He has made encouraging expansion of wireless service throughout North Dakota a priority in his time on the PSC.

He is the 2nd Vice President of the National Association of Regulatory Utility Commissioners (NARUC) and is the immediate past Chairman of the Telecommunications Committee of NARUC. He has testified multiple times before committees of both the U.S. Senate and the U.S. House of Representatives on matters related to telecommunications and energy.

Clark holds the PSC rail and grain elevator portfolios and has been a leader in North Dakota's efforts to seek rail rate relief for the state's agricultural producers. These actions have led to millions in savings for North Dakota farmers. He has actively lobbied for better rail service, both in-state and before federal officials.

Prior to his election he was Labor Commissioner, serving in the cabinet of former Gov. Ed Schafer. From 1997-99 he was Administrative Officer for the state Tax Department. He is a former state legislator, representing District 44 (Fargo) in the state House from 1994-97.

In 1998, the Council of State Governments named him a "Toll Fellow" for his achievement and service to state government. In 1996, he was selected for and completed the Program for Emerging Political Leaders at the University of Virginia Darden School of Business.

He is a graduate of Fargo North High School. He holds bachelor's degrees, with honor, from North Dakota State University (NDSU). He earned a master's degree in public administration from the University of North Dakota.



## **TONY CLARK**

### **Commissioner (continued)**

Clark is a member of the Board of Directors of the National Regulatory Research Institute and the Advisory Councils of the Upper Great Plains Transportation Institute at NDSU, The Institute for Public Utilities at Michigan State University, and the New Mexico State University Center for Public Utilities. He is a past Chairman of the Regional Oversight Committee, which is comprised of regulators in the 14 states where Qwest is the dominant local phone carrier.

Having earned the Eagle Scout award as a youth, he maintains his involvement with and support of the Scouting program. He is a past Chairman of the Frontier Trails District of the Northern Lights Council Boy Scouts of America. He currently serves as the Cubmaster of Pack 180 in Bismarck, and is a member of the Northern Lights Council Executive Board.

Tony and his wife, Amy, have three children.

## **Dr. Brian P. Kalk** **Commissioner**

Dr. Brian Kalk won the endorsement for the Public Service Commission after a spirited contest at the Republican State Convention in March of 2008. He was elected Public Service Commissioner in the November election.

Brian brings a wealth of education, experience, and expertise to the Public Service Commission. During the campaign, he focused on all aspects of the mission of the Commission. Dr. Kalk connected with the voters who agreed with the Fargo Forum when it endorsed his election by stating that he was the “Perfect Fit” for the PSC.

His educational background and experience is exceptional. He was born and raised in Bottineau, North Dakota and graduated from Bottineau High School in 1984. Brian enlisted in the Marine Corps in 1987. As an enlisted man, he served around the world as a communication non-commissioned officer. He deployed and served in both Desert Shield and Desert Storm resulting in the liberation of Kuwait.

While in the Marine Corps, he received his Bachelors’ Degree in Political Science from Campbell University, N.C., and was then selected to Officers Candidate School and commissioned in Quantico, Va. As a Logistics Officer he participated in numerous operations and exercises at home and abroad, to include the evacuations of the American Embassies in Liberia and the Central African Republic.

In June 1999, Major Kalk was selected to the Marine Corps Advanced Degree Program; returned to North Dakota and earned his Masters in Environmental Engineering from North Dakota State University. Brian was then assigned to Marine Corps Base Camp Pendleton as the Base Environmental Compliance Officer in 2001.

In February 2003, Major Kalk deployed as the Forward Operations Officer for Transportation Support Group One, providing critical logistics support to the 1st Marine Expeditionary Force in Kuwait and Iraq during Operations Enduring Freedom and Iraqi Freedom. During the summer of 2003 he returned to North Dakota and assumed command of the Fargo Military Entrance Processing Station until his retirement. During that time he received his Doctorate in Natural Resource Management from North Dakota State University.

Upon his retirement, he was hired by the Upper Great Plains Transportation Institute at NDSU. While at NDSU, he taught a variety of course in Political Science, Transportation and Logistics, and Natural Resource Management.

Brian is a member of the North Dakota State Soil Conservation Committee. He has remained very active in service organizations, such as the American Legion, the Marine Corps League, and the Veterans of Foreign Wars. His Military Awards and Decorations are as follows:

**Defense Meritorious Service Medal**  
**Navy and USMC Achievement Medal**

**Navy and USMC Commendation Medal**  
**The Combat Action Ribbon**



**Dr. Brian P. Kalk**  
**Commissioner (continued)**

**Presidential Unit Citation**

**Navy Unit Citation**

**The USMC Good Conduct Medal**

**Armed Forces Expeditionary Medal**

**Global War on Terrorism Exped Medal**

**Armed Forces Service Medal**

**Volunteer Service Medal**

**NATO Medal**

**Joint Meritorious Unit Citation**

**Meritorious Unit Citation**

**National Defense Service Medal**

**Southwest Asia Service Medal**

**Global War on Terrorism Service Medal**

**Humanitarian Service Medal**

**Sea Service Deployment Ribbons**

**Kuwait Liberation Medals**

Brian is passionate about North Dakota. He brings a lifelong commitment to our nation and our state. He knows, first hand, that energy independence is an absolute necessity in the world of the 21st Century. He believes that our state's plentiful natural resources should be utilized for the benefit of all our state and nation. He is committed to ensuring that everyone in North Dakota, consumers and producers alike, benefit from our abundant natural resources. Brian will use his experience and expertise to move North Dakota forward. Brian is married to Karen Nelson, formerly of Anamoose and Wyndmere; they have one daughter Jordee Sue.

## *Agency Overview*

### *Executive Secretary/Director of Administration*

#### **A. Statutory and Constitutional Responsibilities**

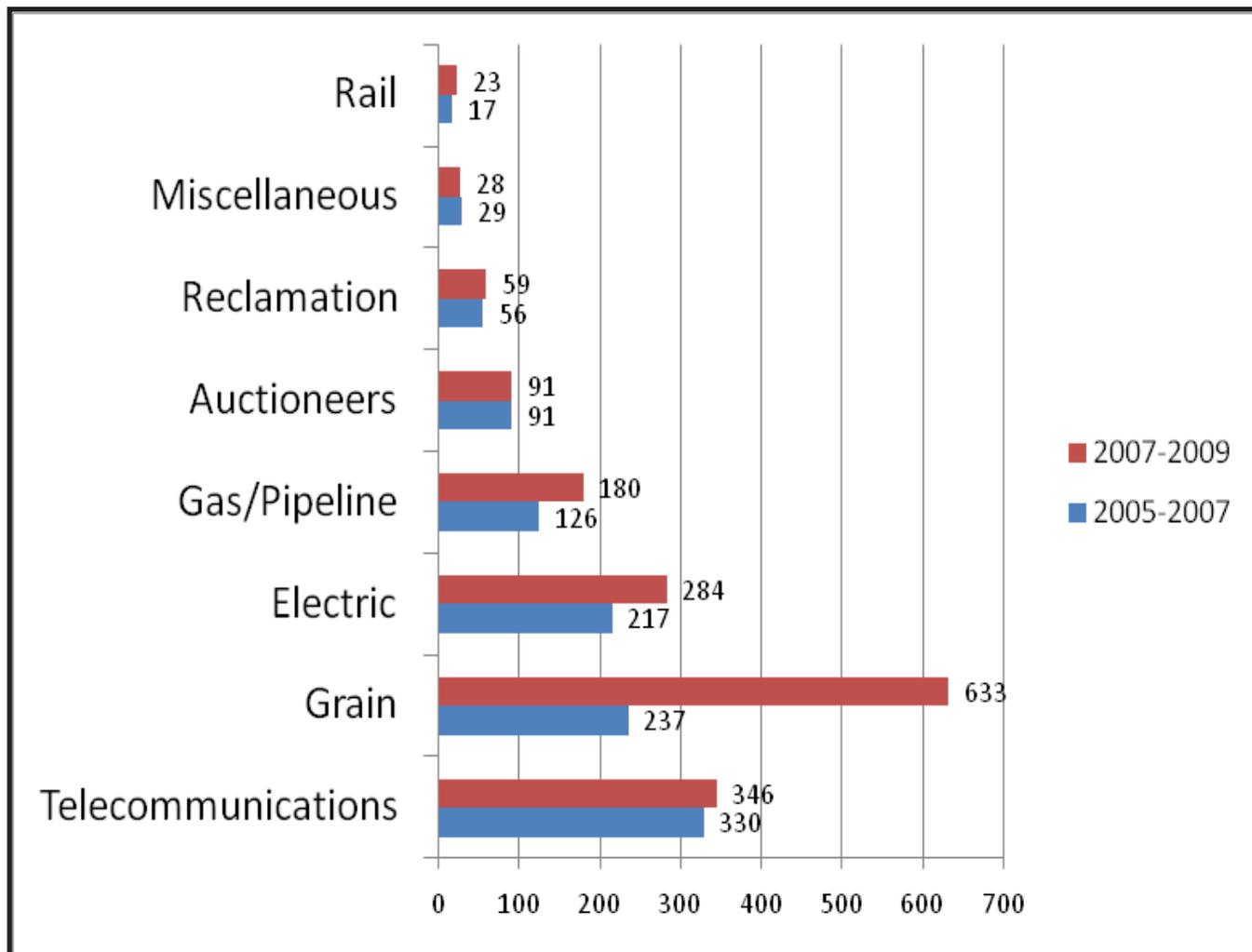
##### **Executive Secretary/Director of Administration**

- Administers the Commission's day-to-day activities.
- Serves as the point of contact for companies and individuals who are seeking information or want to make a formal filing in a particular case.
- Certifies, publishes, and maintains all official Commission documents and case records.
- Administers the Commission's biennial budget.
- Serves as the Commission's personnel and training officer.
- Provides timely recommendations and reports to the Commission on operational and policy matters.
- Coordinates efforts with other agencies and serves as the main informational liaison with other agencies on operational matters.

##### **Agency Overview**

- The Legislature has given the Commission jurisdiction over several industries. In some cases the Commission functions like a court, in other instances it operates like a licensing board, and sometimes it serves as an environmental regulatory inspection agency.
- Formal hearings are held only when necessary and are used only in more complicated or contested cases, or when required by law. The vast majority of the cases that come before the Commission are handled without the need for a formal hearing. Some of these filings take effect with little more than staff review. More involved cases are typically discussed with the parties and the Commission at informal hearings. The informal hearing is used by the Commission to give parties an opportunity to meet publicly with the Commission, but without the expense and delay that would be associated with a formal hearing.
- During the biennium, industry filings, complaint proceedings, and rule makings caused the Commission to open 1,843 cases, about 655 more cases were opened during the preceding biennium. More than 97 percent of these cases were processed without the need for a formal hearing. About 45 percent were processed and closed in less than thirty days and 28 percent were closed in sixty days or less. The following graph summarizes the number and types of cases that were processed by the Commission during the biennium.

### Cases docketed during the 2007-2009 biennium



- Increase in grain cases is a result of docketing the annual activities of licensed grain warehouses and grain buyers.

## B. Mission Statement

The mission statement of the Public Service Commission is to fulfill its statutory mandates by protecting the public interest and regulating utilities, mining companies, and licensees in a fair, efficient, responsive, and cooperative manner. Regulatory initiatives assure that:

- Utility customers receive reliable and safe service at reasonable and just rates.
- Mined coal lands are reclaimed to provide a safe and productive environment now and in the future.
- License and permit holders and operators of commercial weighing and measuring devices operate in a safe and fair manner.

## C. Public Outreach

- The Commission serves as a major resource for consumers who are having problems with the services provided by companies within the agency's areas of responsibility. Complaints or inquiries cover the gamut from utility billings to railroad lease rates and from grain protein tests to ground water near coal mines. In some cases, the Commission has direct jurisdiction over the matters involved, while in other instances the agency has little or no authority to intervene in the matter. In either case, the Commission attempts to provide assistance, either through direct intervention or by disseminating information that will help the parties resolve the problem.
- The Commission recorded approximately 1,900 complaints and inquiries during the biennium. The majority of incoming calls involved telecommunications. It is interesting to note, that this is one area of jurisdiction where federal and state lawmakers have taken steps to deregulate portions of the industry. These steps have obviously left the public with many questions, concerns, and problems; matters they look to the Commission for help resolving. This occurrence may be indicative of the role that regulatory agencies will be called to play as more industries move towards full or partial deregulation.
- The Commission has had a Website since 1995. The agency continues to update its site to keep it current and meaningful for users. The Commission continued to provide audio broadcasts of the meetings from the Website.
- The Commission has developed, maintained, updated and made available a series of "You Should Know..." brochures to help the public understand its rights. Topics covered by these brochures include information about the Commission, how to file a complaint, participation in major cases, protection from utility disconnections, federal telephone assistance plans, telephone slamming and cramming, selling grain, auctioneer/auction clerk licensing, pipeline safety, weights and measures, mine reclamation and more. Copies of these brochures are available at the Commission's office and on its Website at [www.psc.state.nd.us](http://www.psc.state.nd.us).
- The Commission's wireless outreach initiative, "Zap the Gap," was established on July 26, 2004. Several public forums have been held throughout the state to gather input from citizens regarding wireless issues at locations including Rhame, Hatton, Marion, and Anamoose. The Commission continues to be in contact with Verizon, Alltel, and the other wireless companies promoting the needs of the citizens of North Dakota.

**D. Financial Data****2007-2009 Budget**

	<b>Appropriated</b>	<b>Expended</b>	<b>Unexpended</b>
<b>Expenditures by Line Item</b>			
Salaries and Wages	5,701,864.00	5,504,288.86	197,575.14
Operating Expenses	1,735,856.00	1,500,344.35	235,511.65
Capital Assets	157,984.00		89,810.00
Grants	8,000.00	8,000.00	0.00
AML Construction	4,500,000.00	3,315,890.84	1,184,109.16
Rail Fund	900,000.00	0.00	900,000.00
<b>Total Expenditures</b>	<b>13,003,704.00</b>	<b>10,396,698.05</b>	<b>2,607,005.95</b>
<b>Expenditures by Funding Source</b>			
General Fund	4,890,887.00	4,467,920.49	422,966.51
Federal Funds	6,987,817.00	5,782,188.28	1,205,628.72
Special Funds	1,125,000.00	146,589.28	978,410.72
<b>Total Expenditures by Source</b>	<b>13,003,704.00</b>	<b>10,396,698.05</b>	<b>2,607,005.95</b>



## **Public Utilities**

### **A. Statutory and Constitutional Responsibilities**

- The Commission regulates investor-owned power and gas companies to ensure that consumers receive safe and reliable service at reasonable rates.
- The Commission is responsible for siting facilities such as power plants, pipelines and transmission lines.
- The Commission regulates many of the services offered by investor-owned phone companies. The Commission also works with consumers who are having phone-related problems.

### **B. Mission Statement and Goals**

The mission is to provide utility customers with reliable and safe service at reasonable and just rates.

Goals include:

- Establish and maintain a fair and reasonable regulatory environment in which utility services are provided.
- Provide information to consumers and the public to inform them of their rights and responsibilities.
- Continue to protect North Dakota's environment and safety by maintaining effective oversight of the construction of energy conversion and transmission facilities.

### **C. Key 2009 Legislation**

#### **Electricity**

- Senate Bill No. 2413 included a generation system that consumes wellhead gas that would otherwise be flared, vented, or wasted within the definition of renewable and recycled energy for energy credit tracking and trading by the Commission.

#### **Siting**

- House Bill No. 1032 added terms and conditions under which certain energy conversion or transmission facilities are exempt from the siting jurisdiction of the Commission including a facility constructed within the same footprint as an existing line or the same footprint previously for which a certificate or permit was granted, a transmission line that is less than one-mile long, a temporary electric transmission loop that is in place for less than one year, a transmission pipeline with an outside diameter of four and one-half inches or less that will not be trenched and will be plowed with a power mechanism having a vertical knife or horizontally directionally drilled.
- House Bill No. 1449 changed, from ninety-nine megawatts to sixty megawatts of electricity, the largest size electricity energy conversion facility that does not require a certificate of site compatibility from the Commission.

## **Telecommunications**

- House Bill No. 1353 required that if relocation, change, or removal of a facility required by governmental action impacts the cost of essential telecommunications services, the cost must be fully reflected in the price for those services and allows those increases to be immediate.

## **Other**

- House Bill No. 1449 added, to the Commission's authority to promulgate administrative rules for decommissioning of wind energy conversion facilities, the authority to promulgate decommissioning rules concerning present and future natural resource development. The bill also required that facility owners or operators of a commercial wind energy facility record the location of any portion of underground foundation not removed during decommissioning with the county recorder.

## **D. Major Activities and Accomplishments**

### **Telecommunications**

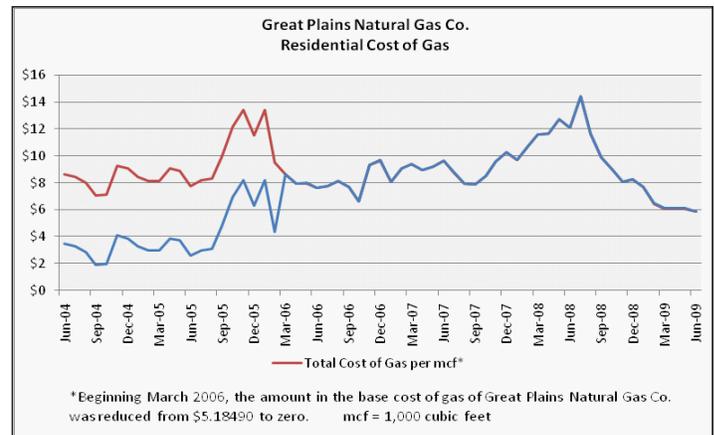
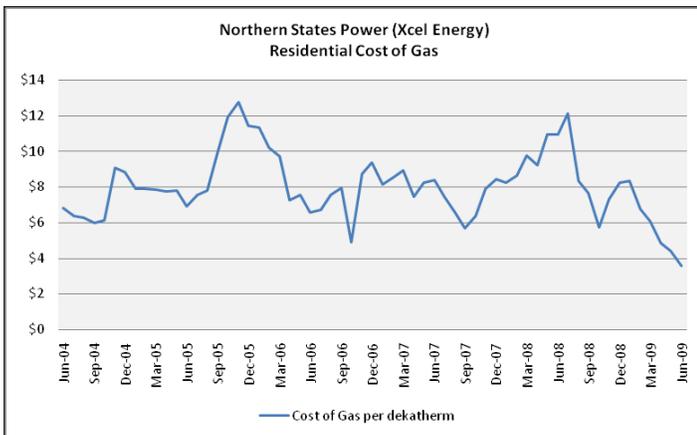
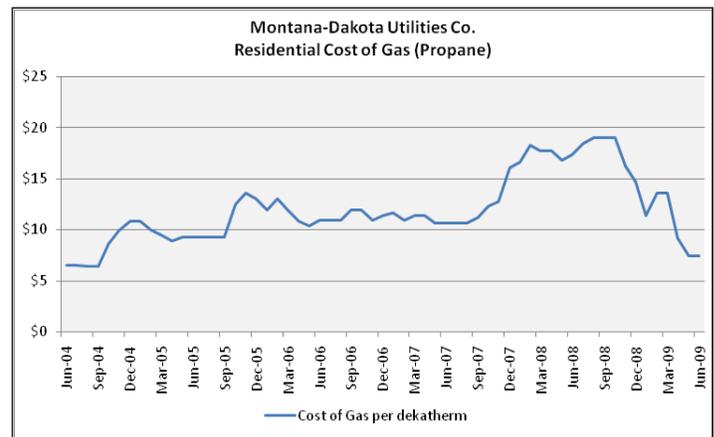
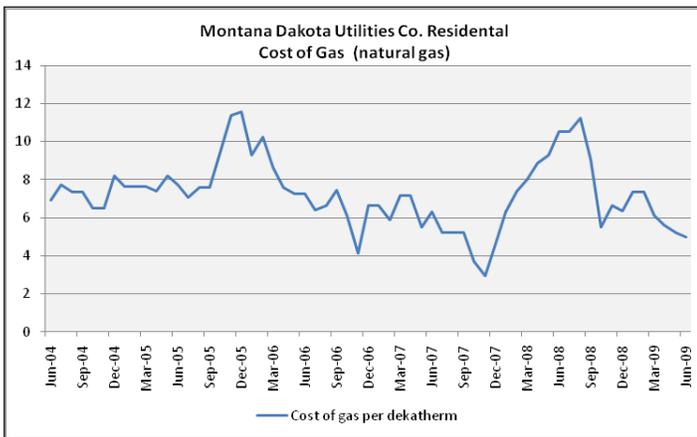
- As competition for telecommunications evolves in the state, the Commission continues to receive requests to resolve negotiations between incumbent local exchange companies and competitive local exchange companies. Issues include the need and ability of competitors to interconnect to local exchange areas served by incumbent rural telephone companies, the list of interconnection services that will be provided, wholesale prices for services that may be resold by competitors, prices for interconnection of equipment, and terms and conditions of interconnection service.
  - During the biennium, the Commission was asked to arbitrate requests for interconnection services by Midcontinent Communications from North Dakota Telephone Company in the Devils Lake exchange; and from Consolidated Telcom in the Bowman, Dodge, Halliday, Hettinger, Killdeer, Mott, Reeder, Richardton, Scranton, and South Heart exchanges. In these proceedings, interconnection agreements were eventually negotiated between the companies.
  - During the biennium, Midcontinent Communications requested that the Commission determine that its request for interconnection services from Consolidated Telcom, for the South Heart, Reeder, Dodge and Scranton exchanges; from North Dakota Telephone Company for the Rugby exchange; from United Telephone Mutual Aid Corporation for the Langdon and Walhalla; and from Missouri Valley Communications, Inc. for the Williston exchange is not unduly economically burdensome, is technically feasible, and should be implemented. In the case of Missouri Valley Communications, Inc. only, the Commission determined that Missouri Valley Communications, Inc. continued to be exempt from providing the requested interconnection services. The Commission's decision was appealed to the United States District Court and a decision is pending.

- Qwest Corporation has numerous agreements with competitors for the resale of telecommunications services and interconnection of its telecommunications facilities with competitors' telecommunications facilities. With input from the states in its service area, Qwest has established standards for the quality and timely provision of interconnection services. The Commission continues to participate with the other states in Qwest's serving area in periodic reviews of the quality and timeliness of Qwest's interconnection services.
- On June 14, 2007, Qwest Corporation filed a letter to withdraw its Statement of Generally Available Terms and Conditions (SGAT) that sets forth terms and conditions for provision of interconnection. The SGAT was initially filed to meet a legal requirement for the ability to offer interLATA toll services. Qwest states that changes in applicable law have made the SGAT out of date. A Commission decision is pending. Case No. PU-07-314.
- The Commission takes a hands-on role in reclaiming telephone numbers that have been allocated to a company but have not been activated by that company within six months. The Commission also assists in the procurement of telephone numbers not otherwise available to a telecommunications company.
- Each year by October 1, the Commission provides to the Federal Communications verification by the rural telephone companies that federal universal service funds are used only for those purposes specified by the Federal Communications Commission and therefore are eligible to receive such federal funding for the next calendar year.
- Since 2007, telecommunications companies designated by the Commission as eligible to receive federal universal service funds began filing annual reports of the federal funds received; the use made of those federal funds for the provision of universal telephone services in the state, projections for future federal funds, and anticipated projects funded by those future dollars. Federal universal funds are to be used only for those purposes specified by the Federal Communications Commission. This information supports rural company certification to receive future universal service funds.
- In December 2007, the Commission designated Sagebrush Cellular, Inc. as a wireless carrier that is eligible to receive federal universal service funding.
- The Commission continues to provide a web-based electronic self-registration system for telecommunications companies other than incumbent local exchange telecommunications companies. Approximately 227 telecommunications companies have self-registered.

## Gas

- In Case No. PU-08-490, Montana-Dakota Utilities Co. filed an application for authorization to acquire the stock of Intermountain Gas Company. Intermountain is an investor-owned gas utility with its headquarters in Boise, Idaho. Intermountain serves about 302,000 natural gas customers in southern Idaho. The acquisition provides an opportunity for growth in a new and expanding market, and will result in the sharing of expertise and administrative overhead. The Commission approved the application on September 24, 2008.

- In Case No. PU-40-08-627, the Commission opened an investigation after receiving a number of complaints regarding Xcel Energy having to estimate customer bills because of approximately 4,400 gas meter malfunctions during the winter of 2007-2008. Xcel had recently replaced automated meter reading modules on its natural gas meters. During the investigation, Xcel engaged an independent contractor to review its processes for provisioning and maintaining customers, measuring product delivery, creating customers bills, and payment collection. A preliminary report of the review was filed in September 2008, and presented to the Commission. The investigation is ongoing.
- The following graphs reflect changes in the supply cost of natural gas paid by utilities and customers:



## Energy Conversion and Transmission Facility Siting

- The Commission adopted administrative rules during the biennium:
  - Procedures for returning siting application fees that were not needed for processing energy conversion or transmission facility siting applications in accordance with North Dakota Century Code section 49-22-22.
  - Requirements for the decommissioning of commercial wind energy conversion facilities.
- Prior to beginning construction of an energy conversion or transmission facility, a certificate of site compatibility or route permit must be obtained from the Commission. It is the responsibility of the Commission to assure that such facilities are sited in an orderly manner to ensure that energy needs are met and fulfilled in an efficient manner, continuing system reliability and integrity, while minimizing adverse human and environmental effects.

**Energy Conversion and Transmission Facility Siting Activities During the Biennium**

Case No.	Applicant	Description	Date of App.	Status	Estimated Investment
PU-593-96-11	Dakota Gasification Company	CO2 Pipeline; 14- & 12-inch; 167-mile/McKenzie, Williams, & Divide Counties	6/25/97	Reinspection/ Tree Survival Oversight	40,000,000
PU-04-109	Basin Electric Power Cooperative, Inc.	AVS Cooling Line Replacement	11/17/04	Post-construction inspections	12,000,000
PU-05-205	FPL Energy Burleigh County Wind, LLC	Electric transmission; 230 kV; 30-mile/Burleigh & Oliver Counties	4/21/05	Tree survival oversight	5,000,000
PU-05-274	Enbridge Pipelines (North Dakota) LLC	Crude oil pumping stations	5/3/05	Post-construction inspections	3,200,000
PU-05-305	PPM Energy, Inc.	Electric transmission; 230 kV; 8-mile/Pierce County	6/16/05	Under construction	2,750,000
PU-05-184	Plains Pipeline, L.P.	Trenton Extension; oil pipeline; 10-inch; 9.6 mile/McKenzie & Williams Counties	6/20/05	Post-construction inspections	750,000
PU-05-185	Plains Pipeline, L.P.	Buford Loop; oil pipeline; 10-inch; 2.75 mile/McKenzie & Williams Counties	7/26/05	Post-construction inspections	1,500,000
PU-06-317	Enbridge Pipelines (North Dakota) LLC	Pipeline; pump station upgrades/Alexander, Trenton, Beaver Lodge, Stanley	7/19/06	Post-construction inspections	16,450,000
PU-06-312	FPL Energy Oliver County Wind, LLC	Electric transmission; 230 kV; 542-feet/Oliver County	7/25/06	Tree survival oversight	2,000,000
PU-06-330	Enbridge Pipelines (North Dakota) LLC	Trenton to Beaver Lodge Crude Pipeline; 10-inch; 52-mile/Williams County	7/26/06	Post-construction inspections	25,122,200

Case No.	Applicant	Description	Date of App.	Status	Estimated Investment
PU-06-349	Enbridge Pipelines (North Dakota) LLC	Pipeline: oil; new pump stations/ Blaisdell, Denbeigh, Penn, Larimore	8/4/06	Post-construction inspections	16,995,000
PU-06-443	Tatanka Wind Power, LLC	Electric transmission; 230 kV; 12-mile/Dickey & McIntosh Counties	10/13/06	Post-construction inspections	7,300,000
PU-07-26	FPL Langdon Wind, LLC	Wind-to-electricity; 160 MW/Cavalier County	3/21/07	Post-construction inspections	250,000
PU-06-421	TransCanada Keystone Pipeline, LP	Crude Oil Pipeline; 30-inch; 217-mile/Multiple ND Counties	4/11/07	Under construction	277,000,000
PU-07-75	Enbridge Pipeline (Southern Lights) LLC	LP Pipeline; 20-inch; 28-mile/ Pembina Cty	4/16/07	Under construction	31,528,800
PU-07-184	Dakota Gasification Company	CO2 Pipeline Reroute; 14-inch; 11,400-feet/ McKenzie & Williams Counties	5/11/07	Under construction	10,500,000
PU-07-108	Enbridge Energy, LP	LP Pipeline; 36-inch; 28-mile/ Pembina Cty	7/16/07	Under construction	90,700,000
PU-07-600	Enbridge Pipelines (North Dakota) LLC	Oil pipeline reroute; 8-inch; 2100-feet/ Williams County	8/9/07	Tree survival oversight	500,000
PU-07-596	Belle Fourche Pipeline Company	Oil pipeline; 8-inch; 31.3-mile/ McKenzie County	9/18/07	Under construction	10,200,000
PU-07-766	Otter Tail Power Company	Electric transmission; 230 kV; 83.8-mile; Hankinson-Ellendale reroute/ Richland County	12/14/07	Post-construction inspections	260,000

Case No.	Applicant	Description	Date of App.	Status	Estimated Investment
PU-07-722	Langdon Wind, LLC	Wind farm expansion; 40 MW/Cavalier County	2/5/08	Under construction	73,000,000
PU-07-791	Enbridge Pipelines (North Dakota) LLC	Pipeline: oil, pump station upgrades; Alexander, Trenton, Beaver Lodge, Stanley, Blaisdell, Denbigh, Penn, Larimore, Minot, Pleasant Lake, Bartlett	2/20/08	Under construction	119,700,000
PU-08-48	Minnkota Power Coop., Inc.	Electric transmission; 230 kV; 61.6-mile/ Barnes, Cass, & Steele Counties	3/18/08	Order issued 6/6/08; Appealed to District Court.	29,000,000
PU-08-73	Ashtabula Wind, LLC	Electric transmission; 230 kV; 9.5-mile; Barnes County	3/24/08	Order issued 5/30/08	3,000,000
PU-08-32	Ashtabula Wind, LLC	Wind-to-electricity; 200 MW Ashtabula Wind Farm/ Barnes County	3/24/08	Under construction	350,000,000
PU-07-169	Basin Electric Power Cooperative, Inc.	Electric transmission; 230 kV; 74-mile/Stark, Hettinger, Slope, Bowman Counties	4/18/08	Under construction	33,000,000
PU-08-107	M-Power, LLC	Electric transmission, 230 kV; 13-mile/ Barnes & Steele Counties	5/21/08	Order issued 10/30/08	4,550,000
PU-08-812	Enbridge Pipelines (North Dakota) LLC	Pipeline: oil, pump station upgrade, Stanley	10/13/08	Under construction	6,000,000

Case No.	Applicant	Description	Date of App.	Status	Estimated Investment
PU-08-797	Sequoia Energy US, Inc.	Wind-to-electricity; 150 MW Border Winds Wind Energy Project/ Rolette & Towner Counties	10/24/08	Hearing scheduled 11/3/09	300,000,000
PU-08-843	Whiting Oil and Gas Corporation	6-inch, 16.5 mile, natural gas pipeline/ Mountrail County	11/17/08	Under construction	3,300,000
PU-08-844	Whiting Oil and Gas Corporation	8-inch, 17-mile, crude oil pipeline/ Mountrail County	11/17/08	Under construction	6,100,000
PU-09-84	Rough Rider Wind 1, LLC	Wind-to-electricity; 175 MW Rough Rider Wind 1 Energy Center/Dickey County	2/19/09	Order issued 8/12/09	310,000,000
PU-08-75	Prairie Winds ND1	Wind-to-electricity; 115.5 MW Prairie Winds Wind Farm/Ward County	3/13/09	Under construction	240,000,000
PU-09-151	Allete, Inc.	Wind-to-electricity; 75.9 MW Bison 1 Wind Project/ Oliver & Morton Counties	5/12/09	Under construction	170,000,000
PU-07-671	Basin Electric Power Cooperative, Inc.	Electric transmission; 230 kV; 50-mile; Williston to Tioga /Williams County	8/10/09	Hearing scheduled 10/27/09	25,500,000
PU-09-153	Hawthorn Oil Transportation (North Dakota) Inc.	8-inch; 6-mile; crude oil pipeline/ Mountrail County	9/28/09	Hearing scheduled 11/30/09	2,500,000

Case No.	Applicant	Description	Date of App.	Status	Estimated Investment
PU-04-452	Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.	175 MW Coal Plant at Gascoyne		Letter of Intent filed 9/1/04; Awaiting Application	374,205,000
PU-07-516	Westmoreland Power, Inc.	500 MW Coal Coal Plant at Gascoyne		Letter of Intent filed 7/20/07; Awaiting application	900,000,000
PU-07-759	Northern States Power Company	Electric transmission; 345 kV; 250-mile; CapX/Cass & Richland Counties		Letter of Intent filed 11/14/07; Awaiting application	390,000,000
PU-08-46	Crown Butte Wind Power, LLC	Wind-to-electricity; 200 MW/Adams & Bowman Counties		Letter of Intent filed 2/4/08; Awaiting application	350,000,000
PU-08-52	South Heart Coal, LLC (Great Northern Power Development)	Coal-to-gas; South Heart/Stark County		Letter of Intent filed 1/23/08; Awaiting application	1,400,000,000
PU-08-424	Plains All American Pipeline LP	6-inch, 33-mile, crude oil pipeline/ Stark County		Letter of Intent filed 6/30/08; Awaiting application	16,000,000
PU-08-597	Hartland Wind Farm, LLC	Wind-to-electricity; 2000 MW/Ward, Burke & Mountrail Counties		Letter of Intent filed 7/21/08; Awaiting application	4,000,000,000
PU-08-848	Allete, Inc.	Wind-to-electricity; 125 MW/Oliver County		Letter of Intent filed 10/24/08; Awaiting application	270,000,000
PU-08-931	Just Wind, LLC	Wind-to-electricity; 900 MW Emmons County Wind Project/Emmons County		Letter of Intent filed 12/12/08; Awaiting application	2,300,000,000

Case No.	Applicant	Description	Date of App.	Status	Estimated Investment
PU-08-932	Enxco Service Corporation	Wind-to-electricity; 150 MW Merricourt Wind Power Project/McIntosh & Dickey Counties		Letter of Intent filed 12/11/08; Awaiting application	400,000,000
PU-09-370	CPV Ashley Renewable Energy Company, LLC	Wind-to-electricity; 487.6 MW Ashley Wind Power Project/McIntosh County		Letter of Intent filed 6/24/09; Application pending	1,013,000,000

## Common Pipeline Carrier

- In Case No. PU-08-413, Saddle Butte Pipeline, LLC accepted all duties and obligations required of a common pipeline carrier under North Dakota Century Code chapter 49-19. A common pipeline carrier must, without discrimination, accept, carry, or purchase, the oil, coal, gas, or carbon dioxide of the state or of any person not the owner of any pipeline. A common pipeline carrier is conferred the right to lay, maintain, and operate pipelines along, across, or under any public stream, public road or highway in the state. A common carrier also has, subject to North Dakota Century Code chapter 32-15, the right and power of eminent domain.
- In Case No. PU-08-194, NuStar Pipeline Operating Partnership, L.P. filed an application for certificate of public convenience and necessity to operate its North Product System between Mandan and Jamestown. A hearing on this matter was requested by the City of Fargo. A hearing was scheduled for the purposes of determining whether NuStar is a public utility within the meaning of North Dakota Century Code section 49-03.1-02(2) and, regardless whether NuStar is a public utility under that code, whether NuStar must obtain a certificate of public convenience and necessity. A decision is pending before the Commission.

## Electricity

- Throughout the biennium the Commission continued to participate as a member of the Organization of MISO States, Inc. The OMS is a nonprofit membership corporation consisting of one provincial and 15 state regulatory agencies having jurisdiction within the region served by the Midwest ISO. The Midwest ISO, which is headquartered in Carmel, Indiana, is an independent, nonprofit organization responsible for reliable operation of the regional electric grid owned by member utilities in 15 states and the Canadian province of Manitoba. The OMS provides a means for these regulatory agencies to share resources and to act in concert when deemed to be in their common interest.
- As part of and in addition to the OMS, the Commission participates in several regional electric transmission development efforts including the Upper Midwest Transmission Development Initiative, a regional initiative among the governors and utility Commissions of North Dakota, South Dakota, Minnesota, Iowa and Wisconsin working on regional transmission planning and cost allocation issues.
- In Case No. PU-05-551, the Commission decided a complaint by Capital Electric Cooperative that Montana-Dakota Utilities Co.'s extension of electric service into the Boulder Ridge 1st Addition to the City of Bismarck was interfering with Capitol Electric's service. After the hearing, the Commission found for Capital Electric and ordered MDU to cease and desist from providing electric service to the Boulder Ridge 1st Addition. The Commission's decision was affirmed upon appeal by district court and by the Supreme Court of North Dakota. Similar complaints by Capital Electric regarding MDU's extension of electric service into other additions to the City of Bismarck in Case Nos. PU-06-278, PU-07-425 and PU-07-682 were resolved with the negotiation of a Bismarck service area agreement in Case No. PU-07-754. Additional electric service area agreements between rural

### Midwest ISO Market Footprint



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September 2008

electric cooperatives and investor-owned utilities were approved for areas in and around Casselton (PU-08-551), Jamestown (PU-09-108), Kindred (PU-07-757), Stanley (PU-09-39), and Wahpeton (PU-08-804).

- In Case Nos. PU-06-290, PU-07-641 and PU-09-20, the Commission investigated, but did not adopt, certain energy efficiency and other electric utility standards required to be considered under the federal Energy Policies Act of 2005 and the federal Energy Independence and Security Act of 2007.
- In Case Nos. PU-06-481 and PU-06-482, Otter Tail Corporation and Montana-Dakota Utilities Co. filed applications for an advance determination of prudence for building a second coal-fired electric generation facility at the existing Big Stone site in South Dakota. Hearings were held and the Commission approved the applications. The decision was appealed to District Court where a decision was pending at the end of the biennium.
- In Case No. PU-08-130, the Commission investigated price spikes in Otter Tail Power Company's fuel cost adjustment caused by increased fuel and replacement power costs due to an extended outage of the Big Stone generating station.
- In Case No. PU-07-318, the Commission issued an Order designating APX, Inc. as Program Administrator for the Midwest Renewable Energy Tracking System (M-RETS), which is responsible for tracking, recording, and verifying transactions associated with certificates and credits for electricity generated from renewable sources.
- In June, 2009, the Commission began receiving electric service providers' first annual progress reports under section 49-02-34 of the North Dakota Century Code, toward meeting the North Dakota voluntary goal of providing 15 percent of retail electric energy sales from renewable resources by the year 2015.
- In Case No. PU-07-774, the Commission approved revised accounting procedures for Northern States Power Company to amortize the cost of nuclear refueling over the life of the fuel rather than the previous method of expensing the costs when incurred.
- In Case No. PU-07-776, Northern States Power Company filed an application for an increase of \$20,535,000 or 13.95 percent of total annual electric revenues. The parties in the case filed a settlement agreement including a net annual increase of approximately \$10,855,000 or 7.4 percent and a moratorium prohibiting further electric rate increases prior to January 1, 2011. The Commission adopted the settlement agreement effective for service rendered on or after March 1, 2009.
- In Case Nos. PU-08-907 and PU-08-908, Northern States Power Company filed applications for advance determination of prudence for building two large wind farms. The Nobles Wind Project is located in the state of Minnesota and includes 201 MW's of installed capacity. The Merricourt Wind Project is located in McIntosh and Dickey Counties, North Dakota, and includes 150 MW's of installed capacity. These applications, along with an application for a certificate of public convenience and necessity for the Merricourt project filed in Case No. PU-08-910, were pending before the Commission at the close of the biennium.
- The Commission issued certificates of public convenience and necessity to Montana-Dakota Utilities Co. authorizing construction of a 19.5 MW wind energy facility near Rhame, North Dakota (Case No. PU-08-942) and a 7.5 MW recovered energy generator at a pipeline compressor station near Glen Ullin (Case No. PU-08-358).

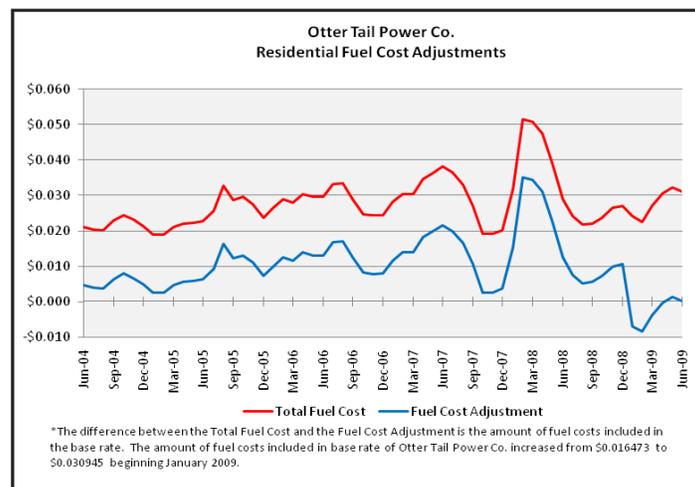
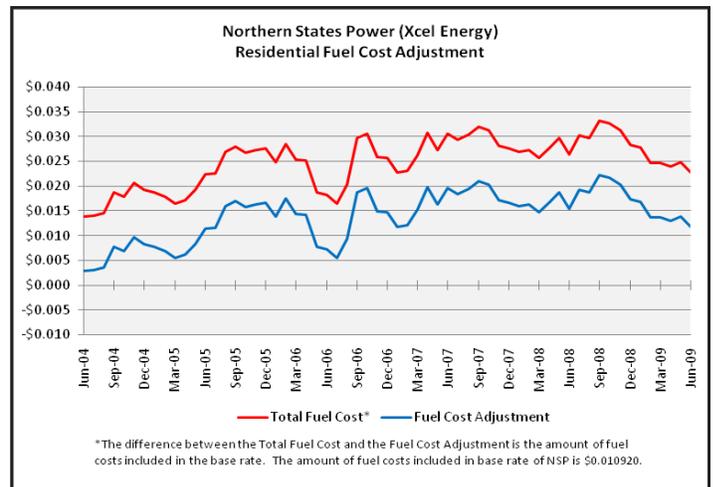
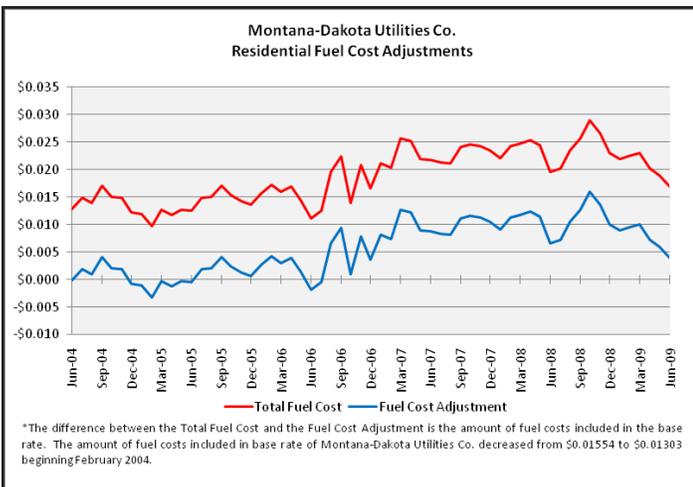
- In Case Nos. PU-08-862 and PU-08-742, Otter Tail Power Corporation filed applications requesting a rate increase of 5.14%; Advance Determination of Prudence for its Ashtabula Wind Energy Center, and a Rider to recover costs associated with its Ashtabula wind farm including updated costs associated with its Langdon Wind Energy Center. The parties to the case filed a Settlement Agreement including a 3.04% rate increase; that the Ashtabula wind farm investment is prudent, and a recovery mechanism for recovery of costs associated with Otter Tail's two wind farms. The Settlement Agreement is before the Commission for decision.
- The following charts show the cost of fuel and purchased energy for the regulated electric utilities:

## Cost of Fuel for Electricity

### Montana-Dakota Utilities Co., Northern States Power Co. and Otter Tail Power Co.

#### About the Fuel Cost Adjustment

- **The Total Fuel Cost** reflects the cost of fuel to produce electricity and the cost to purchase electricity on the market.
- **Utilities are allowed to pass the cost of fuel onto the consumer and they do not make a profit from it.**
- **The Fuel Cost Adjustment** appears on your bill each month and is applied to each kilowatt-hour of electricity consumed.



## **E. Major Challenges**

### **Telecommunications**

- At the national level, the Commission has presented the challenges unique to a rural state concerning the deployment of broadband and wireless services.
- The Commission has voiced state concerns as the Federal Communications Commission determines the appropriate monetary compensation to owners of telecommunications networks used by other companies originating or terminating communications on those networks.
- As the number of telecommunications consumers and competition in the state increases, and as types of telecommunications services provided to those consumers expands, the supply of telephone numbers for the 701 area code dwindles. The current projection is that the 701 area code will exhaust in the 3rd quarter of 2013. Based on that estimate, proceedings to determine a resolution are likely to begin the 3rd quarter of 2010.

### **Energy Conversion and Transmission Facility Siting**

- Robust activity in the energy industry continues to spur increased siting applications and requests to determine the application of siting laws and rules. During the biennium, the Commission received requests for jurisdictional determination from Whiting Oil and Gas Corporation, North American Coal Corporation, Pecan Pipeline (North Dakota), Inc., and Arrow Midstream Holdings, LLC.

### **Midwest ISO**

- The Midwest Independent System began operating a regional energy market in 2005 that continues to serve the loads of all Midwest ISO participants, including the three jurisdictional investor-owned electric utilities providing service in North Dakota. During this biennium, Midwest ISO services continued to expand with the addition of a new ancillary services market primarily for maintaining load balancing and generating reserve margins services.
- A centralized generating unit dispatch procedure that co-optimizes the energy and ancillary services markets was implemented to ensure that the lowest cost generators are always being used throughout the region regardless of utility control area boundaries.
- The Midwest ISO energy market establishes Locational Marginal Prices (LMP's) for electric energy that are updated every five minutes at local pricing nodes throughout the Midwest ISO footprint.
- All energy must be provided through the market. 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.

## **Testing & Safety Division**

### **A. Statutory and Constitutional Responsibilities**

- Supervise the installation and accurate operation of commercial weighing and measuring devices in the state through inspection and tolerance testing.
- Ensure the calibration of the state weights and measures standards that are traceable to the federal standards.
- Supervise the calibration of all working standards in the state.
- Enforce the state's minimum gas pipeline safety standards upon all of North Dakota's intrastate gas transmission and distribution system operators.
- Keep accurate records of all of the above responsibilities.

### **B. Mission Statement and Goals**

The Testing & Safety Division promotes fairness in the marketplace and enhanced public safety by enforcing state and federal laws governing gas pipeline safety and the installation and operation of commercial weighing and measuring devices. Tests and inspections are provided in an efficient, fair, and courteous manner taking into consideration an operator's cost to maintain compliance. Educational information is offered on a regular basis to promote understanding of and compliance with applicable laws and rules. Its goals are:

- To meet the needs of both the buyer and seller in the commercial marketplace through the annual inspection and testing of commercial weighing and measuring devices such as supermarket scales, grain elevator truck scales, livestock scales, and gas station pumps via the division's Weights and Measures Program.
- Supervise the testing, licensing and monitoring of Registered Service Persons and Registered Service Companies that install, inspect, and test commercial weighing and measuring devices in North Dakota.
- To ensure that disputes resulting from inaccurate weighing and measuring devices are kept to a minimum by offering both the vender and the consumer current information on the State's weights and measures laws and rules.
- To investigate written complaints filed with the Commission within 45 working days from the date they are reported.
- To ensure that state, industry, and registered service companies servicing commercial weighing or measuring devices in North Dakota maintain traceability of their working standards to the National Institute of Standards and Technology (NIST) by providing information on NIST-recognized metrology service providers within the central region.
- To enhance public safety through the enforcement of the State's minimum gas pipeline safety standards, as adopted by reference from the federal pipeline safety standards, upon all of North Dakota's intrastate gas transmission and distribution systems.

- To maintain liaison with, and be available for special inspection assistance to the federal pipeline safety regional office in Kansas City, Missouri.

### C. Key 2009 Legislation

- In House Bill 1008, the Commission's 2009-2011 Budget, the 2009 Legislature determined that the ND Metrology Laboratory should be closed. Neither the Commission's proposed budget nor the Governor's 2009-2011 recommended budget included any funding for the state metrology program. In his 2007-2009 budget, the Governor recommended that both state and private working standards be sent to the NIST-accredited metrology laboratory in St. Paul, Minnesota. The Commission agreed with that recommendation.

### D. Major Accomplishments and Activities

#### Weights and Measures

- For the 2007-2009 biennium, the Testing and Safety Division inspected and tested 22,209 weighing or measuring devices as illustrated by the following table:

TYPE OF DEVICE	NUMBER
GAS PUMP	12,980
COUNTER/PLATFORM SCALE	6,644
BULK DELIVERY METER	40
MOTOR TRUCK SCALE	1,124
LPG/NH3/AG METERS	0
HOPPER SCALE	536
DECK/DORMANT SCALE	545
AUXILIARY BEAM	40
LIVESTOCK SCALE	135
TRACK/HANGING SCALE	161
ONBOARD WEIGH SYSTEM	4
<b>TOTAL:</b>	<b>22,209</b>

- For the 2007-2009 biennium, the Testing and Safety Division monitored the documentation of 16,136 weighing or measuring devices installed or serviced by 167 registered service persons employed by 54 registered service companies that operate in North Dakota.
- For the 2007-2009 biennium, the Testing and Safety Division conducted 65 quality control inspections and tests on the state's registered service persons.

- For the 2007-2009 biennium, the Testing and Safety Division conducted 56 complaint investigations as illustrated by the following table:

TYPE OF DEVICE	NUMBER
LARGE SCALES	2
SMALL SCALES	0
LPG DEVICES	1
RETAIL FUEL DISPENSERS	16
DELINQUENT TEST FEES	37
<b>TOTAL:</b>	<b>56</b>

### Metrology

North Dakota's recognized metrology laboratory has remained traceable to the international standards by utilizing an unbroken chain of comparisons through the National Institute of Standards and Technology (NIST).

Numerous metrology laboratory deficiencies have been noted by NIST over the past ten years, but more specifically during the onsite audit which took place in July 2004. As a result of that audit, the laboratory's certification was reduced to probationary status.

The metrology program generates very little revenue to North Dakota's general fund. Continuing NIST non-compliances related to the building which houses the laboratory and the small amount of revenue generated by metrology fees versus the amount of time and subsidy required to continue the program threatened the laboratory's certification. This small but expensive program cannot sustain itself and would require a substantial amount of continual general fund support in order to operate in compliance with federal requirements. The Commission, the Governor's Executive Budget recommendation, and the 2009 Legislature concurred in this assessment. The Commission will cease its metrology program and close its metrology laboratory effective Wednesday, June 30, 2010 at 5:00 p.m.

- For the 2007-2009 biennium, the state Metrologist devoted 480 hours to certification of industry standards.

**Gas Pipeline Safety**

- For the 2007-2009 biennium, the Testing and Safety Division's gas pipeline safety inspectors conducted 120 pipeline safety inspections of 7 distribution or transmission operators with a total of 9 inspection units as illustrated in the following table:

PIPELINE INSPECTIONS BY TYPE	Number
STANDARD INSPECTION – RECORDS AUDITS	75
COMPLIANCE FOLLOW-UP	0
DESIGN/TESTING AND CONSTRUCTION	20
INVESTIGATING GAS EXPLOSION INCIDENTS	2
ONSITE OPERATOR TRAINING (seminars)	2
OPERATOR QUALIFICATIONS	23
INTERGRITY MANAGEMENT INSPECTIONS	0
DAMAGE PREVENTION ACTIVITIES	1

- As a result of the above pipeline safety inspections, 19 violations were found and were mitigated at the division level through the issuance of 7 compliance orders.

**E. Major Challenges**

- Due to the metrology laboratory closing, the Commission will need to schedule extra time and dollars to send its working standards to the NIST-accredited metrology laboratory in St. Paul, Minnesota once per year in order to maintain traceability as required by the State's Century Code.
- Since most of the work done by the division is in the field, a major challenge in the future, considering the high cost of fuel, is to keep travel expenses as low as possible while still fulfilling the Commission mandate.

**F. Major Cases**

- None

**G. Financial Data**

- For the 2007-2009 biennium, the Commission deposited a total of \$485,652 to the general fund generated from weights and measures inspection fees and metrology certification fees.

## *Licensing Division*

### **A. Statutory and Constitutional Responsibilities**

- Oversees the licensing and bonding of all grain elevators, facility-based grain buyers, roving grain buyers, and hay buyers. These entities serve as the initial market for much of the grain produced by North Dakota farmers. Regulation of these entities is intended to protect the people who sell grain to or store grain in the warehouses and is enforced within a framework that minimizes negative economic impacts on related industries and individual entities.
- Conduct grain elevator and grain buyer examinations to ensure licensees: are adhering to generally accepted business practices; are adequately bonded; and have sufficient grain inventories on hand to cover their cash and grain storage obligations.
- Processes all grain elevator, grain buyer, and hay buyer insolvency cases when a licensee is declared “insolvent.” A licensee is insolvent when the licensee is unable to make payment for grain or hay purchased or marketed by the licensee or is unable to make redelivery or payment for grain stored or purchased.
- Oversees the collection of credit-sale contract indemnity fund assessments and the disbursement of monies from the fund in the event of grain warehouse or grain buyer insolvency.
- Oversees the licensing and bonding of all auctioneers and auction clerks.

### **B. Mission Statement and Goals**

- The mission of the Licensing Division is to fulfill statutory mandates by protecting the public interests of North Dakota patrons while regulating grain warehouses, grain buyers, hay buyers, auctioneer and auction clerk licensees in a fair, efficient, responsive, cooperative, and timely manner. The goals of the division are:
- Enhance the grain warehouse examination program by providing co-examinations with bordering states, adjusting schedule to allow more joint examinations, sharing examination information with federal examiners, and expanding the examination program to provide an examination process for out of state roving grain buyers.
- Establish a compatible electronic data interchange (EDI) with licensees in an effort to streamline the inspection program.
- Stay apprised of issues on the federal level that will affect the state’s grain industry and provide assistance in reaching resolution.
- Provide education on license requirements to other agencies and commodity groups through the use of presentations to address issues facing industry in an effort toward a greater cohesion in the industry and work with industry and legislators on issues facing the industry.

### **C. Key Legislation**

- 2007 House Bill 1181 amended North Dakota Century Code Chapter 60-10 lowering the credit-sale contract indemnity fund cap from ten million dollars to six million dollars and lowering the minimum fund balance from five million dollars to three million dollars.
- 2007 House Bill 1360 amended North Dakota Century Code Chapter 60-10 providing the state treasurer with the authority to invest credit-sale contract indemnity fund monies and providing that all income earned through the investments would be deposited into the fund.
- 2009 Senate Bill 2321 removed the sunset clause amending North Dakota Century Code Chapter 60-02.1 which provides an exemption from licensing and bonding requirements for roving grain buyers provided they purchase, solicit, or merchandise grain which has been cleaned, processed and made ready for consumption from licensed public warehouses or licensed facility-based grain buyers only.

### **D. Major Accomplishments and Activities (and Trends)**

- The Licensing Division completed 232 grain warehouse inspections, 33 roving grain buyer inspections, and 76 capacity calculation visits for new construction and added storage sites.
- The Licensing Division approved 280 capacity increase requests and 152 capacity decrease requests. The Licensing Division also granted 44 requests to discontinue business and issued 43 new licenses. At the start of the biennium, there were 304 licensed grain warehouses and 93 licensed facility-based grain buyers. The trend towards fewer and larger grain warehouses continued during the biennium ending with 292 licensed grain warehouses and 102 licensed facility-based grain buyers.
- There were 69 roving grain buyers licensed at the start of the biennium and 70 roving grain buyers licensed at the end of the biennium.
- At the start of the biennium there were 410 licensed auctioneers and 233 license auction clerks and at the end of the biennium there were 384 licensed auctioneers and 221 licensed auction clerks.

### **E. Major Challenges**

- The Licensing Division continued its efforts to maintain state jurisdiction over merchandising activities despite attempts to preempt state protections at federally licensed grain warehouses.
- The Licensing Division continued its efforts to provide education and awareness on the importance of conducting business with only licensed and bonded grain buyers through the mailing of letters to unlicensed grain buyers to cease grain buying activities until they became licensed. These education efforts included a presentation on bond and credit-sale contract indemnity fund efforts at the North Dakota Corn Growers Association's annual meeting in February 2009.

### **F. Trends (included in D above)**

## **G. Major Cases - Five Insolvencies**

- The agency was involved in five grain warehouse or grain buyer insolvencies during the biennium. The first insolvency was initiated late in the 2005-2007 biennium and involved Minnesota Grain, Inc. The Commission received fourteen claims totaling \$930,366. Five valid claims totaling \$323,118 were for grain purchased for cash and four claims totaling \$137,894 were for grain purchased under credit-sale contracts by Minnesota Grain, Inc. through its Rhame, North Dakota facility. Five of the claims totaling \$467,921 were for grain purchased by Minnesota Grain, Inc. for delivery to East Grand Forks, Minnesota. Checks totaling \$110,315 for valid credit-sale contract claimants were mailed in September 2007, resulting in these claimants receiving 80% of the amounts owed. In January 2009, payments totaling 31% were mailed to the five cash claimants following a ruling by the North Dakota Supreme Court that grain deliveries to East Grand Forks, Minnesota were correctly classified as invalid cash claims.
- The second insolvency processed during the biennium involved Specialty Export Productions, Inc. of Hatton and East Fairview, North Dakota. Specialty Export Productions, Inc. dealt primarily in organic grain. The Commission received eight valid cash claims totaling \$190,486. There was grain inventory at the Hatton, North Dakota facility that was sold by the Commission as trustee as an asset of the estate in the amount of \$61,464. Checks were mailed to the eight valid claimants in April 2008, representing 100% payment of all eight valid cash claims, plus interest earned from the date of insolvency.
- The third insolvency was initiated in January 2009 and involved Northwood Mills, Inc. of Northwood, North Dakota. Northwood Mills, Inc. was operated as a processing plant to crush grain into oil. There were no grain assets or unencumbered proceeds available to pay claims. The \$50,000 bond proceeds on file with the Commission are the only proceeds available in this insolvency. Eleven cash claims totaling \$880,010 were filed with the Commission and each claimant will receive approximately 5.8% of its valid claim. This insolvency was pending at the end of the biennium and payments will not be made to claimants until the 2009-2011 biennium.
- The fourth insolvency was initiated in March 2009 and involved Sustainable Systems, LLC dba Montola. Sustainable Systems, LLC dba Montola was licensed as a roving grain buyer in North Dakota and receiving safflower from North Dakota producers for crushing into oil at their crushing facility in Culbertson, Montana. A total of 19 claims were filed with the Commission totaling \$617,663. The Montana Department of Agriculture liquidated the grain assets on hand at Sustainable System, LLC's grain warehouse in Culbertson, Montana and distributed the proceeds to all claimants with valid claims. Each valid North Dakota claimant received 77% of his or her valid claim from the Montana liquidation proceeds and will receive the remaining 23% plus a small portion of the accrued interest from the ND bond proceeds in this insolvency. This insolvency was pending at the end of the biennium and payments will not be made to claimants until the 2009-2011 biennium.

- The fifth insolvency was initiated in March 2009 and involved VeraSun Hankinson, LLC of Hankinson, North Dakota. VeraSun Hankinson, LLC operated its grain warehouse at Hankinson for the purpose of processing corn into ethanol. VeraSun Hankinson, LLC was a subsidiary or affiliate of VeraSun Energy Corporation who filed a Petition for Reorganization under Chapter 11 of the United States Bankruptcy for the District of Delaware. In March 2009, the Commission filed a motion for relief from the automatic stay with the U.S. Bankruptcy Court. At the end of the biennium, the request for relief from the automatic stay was still pending before the U.S. Bankruptcy Court and until relief is granted the Commission cannot commence with a proceeding in state district court for appointment as trustee.

## **H. Financial Data**

- In April 2008, the credit-sale contract indemnity fund reached the six million dollar cap and beginning July 1, 2008 credit-sale contract indemnity fund assessments were suspended. During this biennium, payments from the fund totaling \$110,315 were paid to valid credit-sale contract claimants in the Minnesota Grain, Inc. insolvency. As of the end of the biennium, the credit-sale contract indemnity fund balance was just over \$6.7 million.
- Revenues generated for the general fund for all grain warehouse, grain buyer, hay buyer, auctioneer, and auction clerk license fees received during this same period of time total \$427,085.

## **Reclamation Division**

### **A. Statutory and Constitutional Responsibilities**

- The Reclamation Division administers and enforces North Dakota's law and rules governing surface coal mining and reclamation operations under North Dakota Century Code Chapter 38-14.1.
- North Dakota's reclamation law is based on the federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) and the federal Office of Surface Mining Reclamation and Enforcement (OSM) provided approximately sixty-five percent of the funding needed to run this regulatory program during the 2007-09 biennium.
- Prior to issuing a mining permit, the commission also ensures the requirements of the Surface Owner's Protection Act, North Dakota Century Code Chapter 38-18, are met.

### **B. Mission Statement and Goals**

- The mission of the Reclamation Division is to administer the surface coal mining and reclamation program mandated by state and federal law to achieve optimum results in a cost effective and fair manner; and to ensure that mining operations subject to this program are conducted in such a way that they:
  - 1) Are environmentally sound and minimize adverse effects;
  - 2) Protect public interest and the rights of property owners;
  - 3) Return mined lands to beneficial uses; and,
  - 4) Restore the productivity of mined agricultural lands to premine levels.
- Related goals are to:
  - 1) Continually carry out the mine permitting, inspection and bond release activities in a manner that provides the required protection to the environment and property owners while being responsive to needs of the mining industry;
  - 2) Continually evaluate and adjust the regulatory program to achieve the optimum balance among environmental protection, least-cost industry operations and landowner pursuit of agricultural interests;
  - 3) Continue to explore the scientific, engineering and statistical underpinnings of the regulatory program and make every effort to see that improvements resulting from that exploration are made at both the state and federal level;
  - 4) Promote public awareness of the regulatory program through increased contact with relevant organizations and potentially affected landowners; and,
  - 5) Maintain maximum staff effectiveness by providing training and other opportunities for professional growth.

### **C. Key 2009 Legislation**

- One legislative bill was passed during the 2009 session that affected the coal regulatory program. This statutory amendment reduces the revegetation responsibility period on reclaimed lands from 10 years to 5 years for previously mined lands that are re-mined.

### **D. Major Accomplishments and Activities**

- Significant coal mine permitting activities during the 2007-09 biennium:
  - 1) Nine significant permit revisions were approved and three of those added another 5,438 acres to existing permit areas. Significant revisions are subject to the same public notice and comment period as new permit applications.
  - 2) Forty-four insignificant permit revisions were approved.
  - 3) Seven permit renewals were approved.
  - 4) One permit transfer was approved that transferred a permit from GeoResources, Inc. to Leonardite Products, LLC.
  - 5) As of June 30, 2009, there were 107,223 acres under permit for surface coal mining and reclamation operations.
  - 6) At the end of the biennium, permits were held by nine companies for eleven mine sites. Of the eleven mines, six are active and the other five were inactive and under reclamation. The active lignite mining companies are: BNI Coal, Ltd. which owns and operates the Center Mine, The Coteau Properties Company which owns and operates the Freedom Mine, Dakota Westmoreland Corporation which owns and operates the Beulah Mine, and The Falkirk Mining Company which owns and operates the Falkirk Mine. Two small mines that produce leonardite, an oxidized lignite, are also active. These are American Colloid Company's Page\Perkins Mine and the Leonardite Products, LLC, Stony Creek Mine.
- Routine mine inspections are conducted and reported based on inspectable units. Each permit is considered an inspectable unit and one mine may have more than one permit. The following inspections were conducted during the 2007-09 biennium:
  - 1) 1,434 inspections on 35 inspectable units were conducted.
  - 2) 288 complete inspections were conducted (complete inspections cover all aspects of the mining and reclamation operations being conducted).
  - 3) 1,146 were considered partial inspections.
- Eight Notices of Violation were issued to mining companies during the 2007-09 biennium and \$12,500 in civil penalties were assessed and collected for these violations. Final action on one of the NOV's was pending as the biennium ended and a penalty had not yet been assessed.
- Nine final bond release applications were approved during the 2007-09 biennium whereby the commission terminated its jurisdiction on 3,423 acres that had been under permit.
- Permit applications for two new surface coal mines were received during the 2007-09 biennium.

- 1) An application from South Heart Coal, LLC, to permit 275 acres southwest of South Heart was filed in October 2008 and staff conducted a completeness review of that application and determined additional information was needed before it could be considered complete. South Heart Coal withdrew that application in March 2009 before responding to the Reclamation Division's completeness deficiency letter. However, South Heart Coal is continuing to work on a larger permit application to permit nearly 5,000 acres near South Heart.
  - 2) The Otter Creek Mining Company, a subsidiary of the North American Coal Corporation, filed an application in December 2008 to permit 5,490 acres for a proposed mine northwest of Center. The Reclamation Division sent a completeness deficiency letter to Otter Creek in January 2009 and was awaiting a response to that letter when the biennium ended.
- Reclamation Division staff had worked with South Heart Coal, LLC, and the Otter Creek Mining Company and their consultants for many months prior to the submittal of those applications on the baseline environmental studies that are required by the reclamation law and rules.
  - Additional information was added to the Reclamation Division's Geographic Information System (GIS) during the 2007-09 biennium to store and manage much of the data received from mining companies. Much of this GIS based data is then downloaded onto tablet laptop computers equipped with GPS for use during mine inspections.
  - The Reclamation Division continued to receive excellent evaluation reports from OSM's Casper Field Office during the biennium.
  - Staff attended numerous OSM sponsored training classes, local training courses and technical conferences during the biennium.
  - Two new staff members were hired to fill positions that were vacant during part of the 2007-09 biennium. An Environmental Scientist position that was vacant at the beginning of the biennium was filled in October 2007 and an Environmental Engineer position that became vacant in the fall of 2008 was filled in February 2009.

## **E. Major Challenges**

- An application for one new mine, the Otter Creek Mine, has been filed and a detailed technical review will have to be conducted during the 2009-11 biennium. South Heart Coal, LLC, also plans to file another permit application covering nearly 5,000 acres during the next biennium. The Falkirk Mining Company has also been conducting the baseline environmental studies that are needed to permit another 18,000 acres at the Falkirk Mine. This application will be submitted in the spring of 2010. These applications will greatly increase the permit review workload and, once permits are issued and mining operations begin, the inspection workload will also increase.
- Another company, Formation Resources, is investigating the feasibility of mining coal seams that are enriched in uranium, molybdenum and germanium. If this project moves forward and depending on the degree that these coal seams and overburden materials are radioactive, additional rules may be needed to address concerns associated with handling these materials.
- Staff workload is likely to increase as more final bond release applications are filed for reclaimed lands at the four large active mines and for lands at the former Glenharold and Gascoyne Mines.

## **F. Trends**

- The Reclamation Division plans to continue to add more data to the GIS to manage data and carry out its permit review and inspections more efficiently.
- Final bond release activity is expected to increase as additional reclaimed lands become eligible for release, especially at the four large active mines.

## **G. Major Cases**

- The Dakota Resource Council and several landowners near South Heart filed a complaint on the staff determination that GTL Energy's coal beneficiation facility in that area does not have to be permitted as a surface coal mining operation. The complaint was amended following South Heart Coal's withdrawal of its 275 acre permit application and this matter was awaiting Commission action as the 2007-09 biennium ended.
- A public hearing was held on some rule changes, Case No. RC-07-163, that were proposed and adopted during the biennium. The most significant change allows the Commission to accept bond ratings from other national recognized rating organizations, in addition to Moody's Investors Service and Standards and Poor's ratings, for companies that guarantee self-bonds. Other changes updated some terminology and corrected a cross-reference error.
- No public hearings or informal conferences were held on any of the applications processed during the 2007-09 biennium, although an informal conference on a revision application received during the 2007-09 biennium was scheduled for July 2009. An informal conference was held on a Notice of Violation that was issued during the 2007-09 biennium.

## **H. Financial Data**

- The total expenditures for the Reclamation Division during the 2007-09 biennium were \$1,344,725.24. Of this total, the federal fund portion was \$886,731.62 and the remaining \$457,993.62 came from the General Fund.
- A further breakdown of the expenditures are the following:
  - Salaries and Fringe Benefits – \$1,181,155.40
  - Operating Expenses – \$154,461.59
  - IT Equipment – \$1,108.25
  - Grants to State Agencies – \$8,000.00

## **AML Division**

### **A. Statutory and Constitutional Responsibilities**

- The Abandoned Mine Lands Division is responsible for administering North Dakota's abandoned mine land reclamation law, North Dakota Century Code Chapter 38-14.2, for eliminating hazards associated with abandoned surface and underground coal mines.
- This program covers lands that were mined prior to the federal Surface Mining Control and Reclamation Act (P.L. 95-87) that was enacted in 1977.
- The program is totally funded by the federal Office of Surface Mining Reclamation and Enforcement (OSM) within the Department of the Interior.

### **B. Mission Statement and Goals**

- The Abandoned Mine Lands (AML) Division seeks to enhance the public's safety by using available funds in an efficient and effective manner to prioritize and reclaim abandoned coal mine sites that pose health, safety, and general welfare hazards. Projects are selected based on public input and an analytical review of all known abandoned mine sites and are completed using the most cost-effective manner possible to insure maximum returns for the monies expended.
- Related goals were:
  - 1) Reclaim abandoned mine land sites found on the North Dakota AML Inventory;
  - 2) Reclaim hazardous abandoned mine sites not on the AML Inventory but discovered through investigation, exploratory drilling, or reports from the public;
  - 3) Ensure rapid response to AML Emergencies and prompt reclamation of emergency sites to eliminate imminent mine-related hazards as the AML Division's highest work priority;
  - 4) Use AML funds as efficiently as possible, seek additional funding sources, engage in partnerships, increase public awareness, and maintain professional contacts through continued membership in organizations such as the National Association of Abandoned Mine Lands, Interstate Mining Compact Commission, and the Interstate Group on Abandoned Underground Mines.
  - 5) Maintain funds in our State reclamation set-aside account so that when the federal program is over, the State will have financial resources to address abandoned mine lands hazards.

### **C. Key 2009 Legislation**

- A legislative change enacted by North Dakota's 2009 Legislature modified the lien provisions in the abandoned mine land reclamation law. The bill removed language that required a person to own the land prior to May 2, 1977 to be exempt from the lien provisions. This change was based on a similar change to the federal Surface Mining Control and Reclamation Act that was enacted in December 2006.

## D. Major Accomplishments and Activities

- A federal law enacted by Congress in late 2006 included provisions to re-authorize the Abandoned Mine Lands Program and extend the federal reclamation fee that is used to fund the program until 2022. This legislation resulted in a significant increase in the amount of federal funding that North Dakota receives for its AML program starting in calendar year 2008. For calendar years 2008 and 2009, the commission received approximately 3 million dollars per year compared to the 1.6 million dollars per year that had been received for many years.
- During the 2007-09 biennium, major drilling and grouting projects were conducted to inject cementitious grout into underground mine voids beneath residential areas and public roads near Williston in order to stabilize them and prevent mine collapse that could endanger people and damage property.
- Major surface mine construction projects to backfill dangerous, nearly vertical, highwalls were conducted near Columbus and Hazen. At the Hazen-West Project a 70-foot highwall was backfilled that was located within 100 feet of North Dakota Highway 200.
- Maintenance Projects to fill more than 500 hazardous sinkholes caused by underground mine collapse were completed at numerous sites in western North Dakota.
- Emergency projects to fill extremely hazardous sinkholes caused by underground mine collapse near homes and public roads were carried out at sites near Beulah, Wilton, and Parshall. An emergency drilling and grouting project was conducted near Williston to stabilize near-surface mine voids beneath a metal crafting and landscaping business.
- Maintenance work, such as tree planting, was carried out at previously reclaimed sites.
- A project was completed in the spring of 2009 to extinguish more than 30 dangerous coal outcrop fires mainly on U.S. Forest Service properties in McKenzie, Billings and Slope Counties in western North Dakota.
- Funds are being held in a set-aside account that will be available for use when the State no longer receives any AML funding from OSM. The balance in this interest bearing account was \$2,596,787 on June 30, 2009. (It should be noted that states are no longer allowed to place additional federal grant funds into the set-aside account as the result of the federal legislation enacted in December 2006 that re-authorizes and extends the AML program.)
- Significant progress was made on the development of a Geographic Information System (GIS) containing spatial data for all known abandoned mine sites in North Dakota. Much of this information will be posted on the commission's website so it is readily available to the public.
- A second cooperative agreement was entered into with OSM which provided funds to cleanup scanned maps and compile other data for the AML Division's mine map database.
- The AML Division continued to receive excellent evaluation reports from OSM's Casper Field Office during the 2007-09 biennium.
- Staff attended several OSM sponsored training classes and technical conferences during the biennium.
- The GIS Specialist position in the AML Division was filled in the fall of 2008 after being vacant for several months.

## **E. Major Challenges**

- Staff will need to design and manage larger and additional construction projects each year since federal funding will increase to approximately 3.5 million dollars per year in 2010 and 2011 due to the federal legislation that re-authorized and extends the AML program. As work at the larger AML sites is completed, the number of projects will certainly increase and project managers will need to design and manage more smaller projects.
- The AML reclamation law and rules and other aspects of the North Dakota AML program will have to be amended for consistency with the December 2006 changes to the federal Surface Mining Control and Reclamation Act. The program updates will include details on the current statewide procurement procedures and financial accounting system.
- Work will continue on the development of a GIS containing abandoned mine information and to post detailed mine information on the commission's website.

## **F. Trends**

- With program re-authorization and the increased federal funding, many construction projects to eliminate mine hazards should be completed much sooner.
- As construction work is completed at the larger AML sites, staff will need to design and manage more reclamation projects each year to use the available funds.

## **G. Major Cases**

- None

## **H. Financial Data**

- The total expenditures for the Abandoned Mine Lands Division during the 2007-09 biennium were \$4,221,694.94, all federal funds.
- A further breakdown of the expenditures are the following:
  - Salaries and Fringe Benefits – \$698,161.36
  - Operating Expenses – \$208,031.49
  - IT Equipment – \$1,108.25
  - AML Contracting Services – \$3,314,393.84

## **Railroad**

### **A. Statutory and Constitutional Responsibilities**

- State law provides that the Public Service Commission is the state agency charged with representing North Dakota's rail interests before federal agencies and in direct negotiations with rail carriers. The Commission, to the extent consistent with federal law, may regulate railroads within the state in activities that constitute intrastate commerce. The Commission also has jurisdiction over some specific safety and landowner rights matters.

### **B. Key 2009 Legislation**

- House Bill 1342, effective after December 31, 2009, states that a warning device may not be sounded at a private railroad crossing. However, a party may petition the Commission to request that a horn be sounded at a private railroad crossing. The Commission shall review the request based on the safety concerns of the public.

### **C. Major Challenges**

- Abandonments continue to occur on branch lines throughout the state. However, during the 2007-09 biennium, there were three abandonments. Two were by Mohall Central Railroad, Inc. one from Munich to Lakota, a total of 44.4 miles and another from Voss to Forest River, a total of 7.06 miles. The other was by Soo Line Railroad Company from Kramer to Bisbee, a total of 61 miles. North Dakota's rail network declined to 3,436.54 miles during the biennium. Since the 1920s, the size of the state's rail network has declined from 5,370 miles to the current 3,436.54 miles; a decline of 36%. Much of the decline has occurred since 1980.

## *Former Commissioners*

1. Bartlett, David.....	1889-1890
2. Underhill, T.S.....	1889-1890
3. Walsh, Geo. H.....	1891-1892
4. Sletten, Andrew.....	1891-1892
5. Stevens, Ben.....	1893-1894
6. Cameron, Peter.....	1893-1894
7. Rasmussen, Nels P.....	1893-1894
8. Keyes, Geo. H.....	1895-1898
9. Wamberg, John.....	1895-1896
10. Currie, John W.....	1895-1896
11. Gibson, J.R.....	1897-1898
12. Erickson, Henry.....	1899-1900
13. Simons, John.....	1899-1900
14. Walton, L.L.....	1897-1900
15. Youngblood, J.....	1901-1902
16. Shea, J.F.....	1901-1904
17. Schatz, A.....	1903-1904
18. Lord, O.J.....	1901-1904
19. Christianson, John.....	1905-1906
20. Diesem, C.S.....	1905-1908
21. Stafne, Erick.....	1905-1908
22. Westby, Simon.....	1907-1908
23. Mann, William H.....	1909-1916
24. Anderson, O.P.N.....	1909-1916
25. Stutsman, W.H.....	1909-1916 & 1921-1922
26. Johnson, N.P.....	1917-1918
27. Bleick, Chas.....	1917-1918
28. Aandahl, S.J.....	1917-1920
29. Dupuis, C,F.....	1919-1920
30. Milhollan, Frank.....	1919-1932
31. Harding, Fay.....	1923-1934
32. McDonnell, G.W.....	1921-1936 & 1940-1950
33. McDonald, S.S.....	1937-1948
34. Larkin, Ben G.....	1928-1949
35. Cart, Elmer W.....	1935-1940 & 1949-1954
36. Brant, E.H.....	1951-1954
37. Anderson, Anson J.....	1955-1960
38. Nelson, Ernest D.....	1949-1961
39. Vaaler, Martin.....	1954-1962
40. Thompson, Richard J.....	1961-1966
41. Wolf, Ben J.....	1963-1980
42. Elkin, Richard.....	1967-1983
43. Sandstorm, Dale.....	1983-1992
44. Hagen, Bruce E.....	1961-2000
45. Reinbold, Leo M.....	1981-2003
46. Wefald, Susan E.....	1993-2008