

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on May 1, 2014 beginning at 11:00 a.m.
Governor's Conference Room, State Capitol, Bismarck, ND

Present: Governor Jack Dalrymple, Chairman
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Also

Present: Margaret Olson, Attorney General's Office
Tyler Hamman, Lignite Energy Council
Jerod Tufte, Governor's Office
Members of the Press

Governor Dalrymple called the Industrial Commission meeting to order at 11:00 a.m. and the Commission took up Lignite Research, Development and Marketing Program business.

Ms. Margaret Olson, Assistant Attorney General, presented comments for submission to the Minnesota Department of Commerce and Pollution Control Agency regarding the Minnesota Public Utilities Commission's Investigation into Environmental and Socioeconomic Costs under Minn. Stat. § 216B.2422, Subd.3. Docket No. E-999/CI-00-1636.

Ms. Olson stated the proposed comments are in regards to the Minnesota Public Utilities Commission's (MPUC) reopening of the externalities action. The Industrial Commission has been commenting on two different MPUC actions--(1) the CO₂ cost estimate where MPUC establishes an annual estimate of the cost of regulation of CO₂ and (2) this externalities action where the MPUC looks at the environmental and socioeconomic costs of various pollutants including CO₂ and those values have to be applied by utilities when they are selecting resource options.

She reminded the Commission that the externalities action goes back to the 1990's when North Dakota participated in the first round of MPUC actions on this issue. At that time MPUC decided to only apply the values 200 miles from the Minnesota border and to not apply the CO₂ value at all to North Dakota.

Last fall various environmental groups calling themselves the Clean Energy Organizations filed a motion to reopen the externalities action and indicated the time had come to update those values. The Industrial Commission filed a reply to that motion and in that reply the Industrial Commission asked that the MPUC not reopen the action as far as North Dakota facilities go and that it not look at extending that boundary or adding additional pollutants or adding CO₂ as it related to North Dakota facilities. We believed the Clean Energy's motion didn't specify North Dakota so as far as North Dakota was concerned North Dakota was not involved. The Industrial Commission just wanted to clarify its position.

In December the MPUC had a hearing on the issue and they issued an order in February. They did grant the environmental groups' request to reopen the externality action. The order is not specific on whether North Dakota facilities are included in that scope and if they are going to look at extending that boundary or not. One thing they were clear on is that they were not going to reconsider their earlier decision to apply the CO₂ value in North Dakota at all so the CO₂ issue will not be reopened. That is good news for North Dakota. The environmental groups have said in some of their filings they are not looking to extend the 200 mile boundary but it is not clear from the Minnesota Public Utilities Commission's order if that is going to be included in the scope or not.

The MPUC has referred the matter to the Minnesota Department of Commerce and the Minnesota Pollution Control Agency and asked them to convene a stakeholder group to talk about what that scope should be. Those two agencies held a meeting in April (Tyler Hamman from the Lignite Energy Council attended that meeting. It was pretty short and there is no real consensus among the stakeholders and the North Dakota issue was not discussed in any detail.

This brings the matter to where we are right now. The Minnesota agencies are taking comments from their stakeholder group until May 9. These brief comments repeat some of the Industrial Commission's earlier positions and states that it is our understanding that this action does not apply to North Dakota facilities, emphasizing again that the Industrial Commission would oppose applying any additional regulations to North Dakota facilities and reminding them of the recent federal court decision that held Minnesota's Next Generation Act unconstitutional. It asks that if MPUC reopens the matter for North Dakota facilities and includes it in their scope that North Dakota is given an opportunity to comment on that.

Attorney General Stenehjem indicated that in the 1990's this case had been settled and Minnesota agreed that their regulations did not apply to any facility that is 200 miles or less from the Minnesota border. Since then Spiritwood has been built but that plant has been exempted. North Dakota's position would be that this is a breach of the agreed settlement back in the 1990's if they were to decide these regulations apply to North Dakota facilities. These comments are to remind them that North Dakota is paying attention. We do have the lawsuit that is pending and is proceeding through the appellate process.

There was discussion on the impact of these values. What Minnesota is proposing is that when a company presents a request to the Minnesota Public Utilities Commission to build a new energy generating facility whatever the value is must be assessed in the rate structure. Minnesota is saying that there is a cost that someone needs to assess for these emissions and that it must be worked into the determination of whether a facility is cost effective. The Attorney General stated that Minnesota can do what they want within their borders but they cannot do anything on what is done in North Dakota. In response to a question it was noted that currently the rate has been determined to be between \$9 and \$35.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approves the following comments in the Matter of the Investigation into Environmental and Socioeconomic Costs under Minn. Stat. § 216B.2422, Subd. 3., Docket No. E-999/CI-00-1636 and submit the comments, over the Governor's signature, to the Minnesota Pollution Control Agency and the Minnesota Department of Commerce, Division of Energy Resources by May 9, 2014:

Mr. Michael Rothman, Commissioner
Minnesota Department of Commerce
85 7th Place East, Ste. 500
St. Paul, MN 55101-2198

Mr. John Linc Stine, Commissioner
Minnesota Pollution Control Agency
520 Lafayette Road N.
St. Paul, MN 55155-4194

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April 21, 2014

Re: **In the Matter of the Investigation into Environmental and Socioeconomic Costs under Minn. Stat. § 216B.2422, Subd. 3.**
Docket No. E-999/CI-00-1636

Dear Messrs. Rothman and Stine:

Thank you for this opportunity to comment on the scope of the Minnesota Public Utilities Commission's investigation into environmental and socioeconomic costs under Minn. Stat. § 216B.2422(3).

It is our understanding that the Commission is not considering including any issues affecting North Dakota facilities in the scope of this proceeding. North Dakota would strongly oppose any attempt to impose additional regulations on North Dakota facilities by, for example, extending the 200 mile boundary established by the Commission in its July 2, 1997 order or raising the values currently applied within the boundary.

Such extraterritorial regulation is, among other things, unconstitutional. In the context of the Next Generation Energy Act, Minn. Stat. § 216H.03, a federal judge recently held that Minnesota's attempt to regulate North Dakota facilities violates the dormant Commerce Clause. *North Dakota v. Heydinger*, 11-CV-3232, 2014 WL 1612331 (D. Minn. Apr. 18, 2014)

Should the potential scope of the proceeding be expanded to include any issues that may affect North Dakota facilities, North Dakota requests that it be given the opportunity to provide additional comment.

Sincerely,
North Dakota Industrial Commission

Jack Dalrymple
Governor and Chairman

On a roll call vote, Governor Dalrymple, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Dalrymple congratulated the Attorney General on winning the case in Minnesota. Attorney General thanked the Governor for the work he had done in reaching out to the Governor of Minnesota when legislation had been passed to repeal the law. Everybody made an effort to get the matter resolved at the legislative level and except for the veto the law would have been repealed. He also thanked the companies that participated in the lawsuit.

Being no further Lignite Research, Development and Marketing Program business, Governor Dalrymple adjourned the meeting at 11:13 a.m.

INDUSTRIAL COMMISSION OF NORTH DAKOTA



Karlene Fine, Executive Director and Secretary