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## 2013 North Dakota Legislative Session in the Books

The 63rd Legislative Assembly of North Dakota wrapped up its longest session in history in the early hours of the morning on Saturday, May 4, 2013, just shortly before the clock ran past the constitutional limit of 80 legislative days.

With an impressive budget surplus and pressing infrastructure needs, no one was surprised by the legislature's full use of legislative days, especially when Day 80 opened with the House killing the only bill providing for funding of K-12 education. Twelve hours later, the chambers reached an agreement on the funding, avoiding a potential special session. By the time the sun rose the next morning, most legislators were miles away from Bismarck, en route to the homes most hadn't seen in a while.

USND had three main priorities for the 63rd legislative session: 1) revamp the existing one-call laws to ease the burden on utility locators while maintaining safety; 2) lower dividend income taxes; and 3) work towards reasonable tax relief. All three priorities were met.

### One-Call

One-call is the one-stop, call-before-you-dig system in ND. By calling 811 or logging on to [www.ndonecall.com](http://www.ndonecall.com), anyone digging in the ground can alert anyone with facilities buried under the ground that they need to locate them. Anytime a commercial entity moves dirt, they are required to notify One-Call. Private citizens must have underground facilities located if they are digging 12 inches or deeper. That is the law, but not everyone knows the law or abides by it. With the increased development in ND,

demands for locations have increased dramatically, and that has increased the burden on utilities and other facility owners.



Members of the One-Call coalition join the Public Service Commission and bill sponsors ND Representatives Nancy Johnson and Matt Klein as Governor Jack Dalrymple signs House Bill 1359 into law.

USND led a consortium of facility owners and excavators to craft practical and meaningful changes in the existing law. The highlights of the changes include an increase in the fine for violations, lengthening the time the location markings are valid, requiring the location requests to be tailored to the areas to be excavated, and requiring all new facilities placed in the ground to be made locatable. Specifically, the bill included the following provisions:

- Penalty caps were increased to \$25,000 from \$5,000. The fine is assessed by the PSC after they investigate and determine the appropriate level based on the damage caused and the demeanor of the offender. A new violation report form is being developed to make reporting easier.
- The time for which existing tickets remain valid was increased from 10 days to 21 days.

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# Greetings From Bismarck ...

*"The smart way to keep people passive and obedient is to strictly limit the spectrum of acceptable opinion, but allow very lively debate within that spectrum - even encourage the more critical and dissident views. That gives people the sense that there's free thinking going on, while all the time the presuppositions of the system are being reinforced by the limits put on the range of the debate."*

~ Noam Chomsky

"Why" and "why not" were likely some of my first words. I grew up believing that nothing was out of bounds to explore and discuss, much to the chagrin of many of my educators, friends and family. As a kid, I spent a lot of time "thinking about my actions" after hammering things that were "not open for discussion." I've never been able to pretend facts don't exist, even if they seem inconvenient. I can only support what I understand, so an authority that can't explain its rules and actions doesn't garner my allegiance. And it certainly doesn't garner my silence.

We define our world through discourse: by organizing our knowledge, ideas, experiences into words. The breadth of discourse is important—we can't affect what we don't understand, and we can't understand what we can't express. It follows, then, that our discourse is limited when we lack knowledge, ideas and experience or when we refuse to acknowledge and discuss things we know, think or have experienced. People often refuse to acknowledge things that are uncomfortable to admit or which don't support their personal agenda. We are all ignorant to some extent—no one is omniscient—and that's an unavoidable and usually forgivable problem. But when we refuse to acknowledge things we know are true or keep them from the conversation because they don't support our agenda, we embrace ignorance and become tools of malice and destruction.

When it was revealed that the current administration interpreted

its authority to allow its use of drone strikes on American citizens on American soil without due process of law, I made a comment to friends about the irony of a society that was livid about the government collection of library data post-9/11, but blindly accepted the extrajudicial killing of Americans in 2013 without batting an eye. I drew a parallel between the blind allegiance by supporters of the current administration to the blind allegiance of Germans to the Third Reich. I'll admit my comments could be viewed as antagonistic, but I felt that the issue was serious enough to warrant debate. After all, silence is complicity and slopes are slippery.

Immediately, a friend took me to task for calling our president Hitler (which I had not done) and demanding an apology (which I did not give). I tried to explain my comment; I did not call anyone Hitler, nor did I think the current president was evil or even capable of the sort of evil accomplished by Hitler. However, as a society we were allowing government authority to escalate dramatically. Other societies that allowed similar escalation later faced horrific consequences as a result. She refused to consider the merits of the debate, instead repeatedly telling me that any reference to Hitler was beyond the bounds of acceptable dialogue. So I asked this: why was a discussion about executive overreach using historical examples beyond the bounds of acceptable discourse? In a free society, we should be able to draw parallels and ask uncomfortable questions. She told me I was ridiculous, among other things, but



**Carlee McLeod**  
USND President

her gist was this: anything related to Hitler was unacceptable as a topic of conversation, and I was an ignorant jerk.

We face similar discourse limiters on a broader scale nationally. The easiest way to maintain power is to keep people from talking about what might not be going well. Currently on the federal front, there are investigations into a variety of executive actions that have limited citizen discourse by expanding the government's knowledge and/or limiting the knowledge and speech of American citizens. We're being kept in the dark, and we're being bullied into keeping our mouths shut.

Relating to Benghazi, the administration refuses to provide requested documents and answers to many questions that have been asked since September, 2012. Recent revelations show changing of talking points to provide what we now know is false information. Regarding the IRS, the decision to audit or harass groups and people flagged as conservative effectively curtailed free speech, the freedom of association, and the free practice of religion. Regarding the press, the Department of Justice has seized contact records and carried out secret surveillance of reporters, which curtails the freedom of the press. As we hear more and more

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## 2013 Legislative Session *(cont. from page 1)*

- Additional information is required to be submitted for tickets covering large, overly broad areas. Maps, GIS files, drawings, white-lining, survey stakes, etc., shall be provided in those instances to help narrow the area under which facilities must be located.
- Excavators must maintain location marks using reasonable means.
- All new facilities must be locatable.

These provisions will help utilities keep up with the increased demand for locations, and the increased fines for violations should encourage more companies to comply with the law requiring them to call the system before they dig.

### Dividend Income Tax

North Dakota includes dividend income as income taxed under individual income tax rates. However, to combat the patent unfairness of doubly taxing dividends which have already been taxed as corporate income tax prior to being declared as dividends, ND tax law provides that 30% of dividend and investment income is excluded from taxable income. USND worked to expand that exclusion, which was increased to 40% this session. The exclusion expansion provides approximately \$6-\$8 million in tax relief for individual investors.

### Overall Tax Relief

USND worked to support overall tax relief this session, which was reached in two areas: income and property tax relief.

#### • Income Tax

Income tax was lowered by approximately \$250 million this session. Individual income tax was lowered by approximately 20%, which amounts to \$200 million. Corporate income tax was lowered by approximately 12%, which amounts to \$50 million. These changes were made retroactive to cover anything occurring on January 1, 2013 and after.

#### • Property Tax

Property tax relief took two routes. First, the state funded education at a higher level (80% from its previous 70% level), which relieves the burden on tax payers to fund as much of their local school districts. Second, the state expanded its current mill levy buy down program. The amount of relief will vary by political subdivision, because property taxes are

assessed locally by political subdivisions taxing at different rates. Overall, the state will now be paying approximately 40% of individual property tax burdens. The expanded relief requires more transparency on property tax statements, so each county will show the amount of all taxes on each property and specify what portion the state is funding. With past relief, many taxpayers didn't see much relief, because local subdivisions increased spending at a rate equal to or more than the actual relief provided. With the new requirements for property tax statements, people will be able to see the relief along with how each political subdivision is taxing their property. USND encourages its members to review their property tax statements carefully and hold local taxing districts accountable for their spending.

### Additional USND Legislative Issues

USND tracked approximately 150 of the 950 bills filed this session. Other than the outlined priorities, we followed a variety of bills that would have affected any of the investor-owned utilities and the value of your investment. As a whole, the energy and utility related bills passed this session maintained a positive business environment in ND while maintaining our practical regulatory framework. If there are any specific issues you'd like to discuss, please contact the USND office at 701-258-8864 or email [usnd@usnd.org](mailto:usnd@usnd.org), and we'll be happy to answer any questions.



# Dakota Prairie Refinery celebrates start of construction with groundbreaking ceremony

Construction of the Dakota Prairie Refinery began March 26, 2013, with a groundbreaking ceremony held by the developers, MDU Resources Group, Inc. and Calumet Specialty Products Partners, L.P.

Construction of the diesel refinery, on a 318-acre site located west of Dickinson in Stark County, N.D., is expected to take approximately 20 months. The refinery will process 20,000 barrels per day of Bakken crude oil. It will employ 400 to 500 employees during peak construction and about 100 employees when it is operating.

North Dakota Governor Jack Dalrymple drove a bulldozer to lead the groundbreaking ceremony. Others participating in the event included the state's congressional delegation, Sen. John Hoeven, Sen. Heidi Heitkamp and Rep. Kevin Cramer, along with state, local and industry officials.

"Bringing this project from concept to construction took the effort of a great many people," said David L. Goodin, president and chief executive officer of MDU Resources. "We especially appreciate the support of Governor Dalrymple, other state officials and state agencies. Their permitting process was rigorous, but at the same time they helped us identify and solve problems that are involved in a complex project such as this."

"This facility will help supply North Dakota's growing diesel fuel market, and will be a good contributor to the state and local economy," said Jennifer G. Straumins, president and chief operating officer of Calumet's



general partner. "We look forward to working in a state where officials have demonstrated strong support for economic development."

The facility's engineering and plant design are in the final stages. Westcon has been selected as the general contractor and Ventech Engineering will be the primary equipment and technology provider. MDU Resources' construction businesses, Knife River Corporation and MDU Construction Services Group, are among potential subcontractors. Other MDU Resources' companies involved in the project include Fidelity Exploration and Production Company, which will supply some of the facility's crude oil; WBI Energy, which will supply natural gas service to operate the facility; and Montana-Dakota Utilities, which will supply the facility's electricity needs.



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# Xcel Energy proposes adding natural gas units to meet customers' future electricity needs

Xcel Energy has proposed adding up to three “peaking” units – one in Burnsville, Minn., and two near Hankinson, N.D. – as the best way to meet customers’ needs during times of high electricity demand.

The proposal to add up to three natural gas-fueled combustion turbines was submitted in response to proceedings before the Minnesota Public Utilities Commission on Xcel Energy’s Upper Midwest Resource Plan. Those proceedings concluded the company will need to add 150 megawatts of new power resources in 2017 and up to another 350 megawatts by 2019.

“Our proposal responds to our customers’ need for power that can be brought on line quickly and efficiently to meet demand when it’s highest,” said Judy Pofert, president and CEO of Northern States Power Co.-Minnesota, an Xcel Energy company. “Further, our proposal provides flexibility to allow us to add resources only if they’re needed.”

Regulators in Minnesota and North Dakota will review the company’s proposal and proposals from other parties also being submitted today to

determine which offering presents the best deal for customers.

“Through the resource planning process, we work with stakeholders and regulators to ensure we choose the most appropriate and cost-effective resources to meet our customers’ needs for reliable, clean electricity,” Pofert said. “While we continue to expect overall growth in customer electricity usage to remain flat, the recent resource planning process identified a need for some new resources to be available at peak usage times.”

Specifically, Xcel Energy proposes placing a 215-megawatt combustion turbine in service in 2017 at its Black Dog plant in Burnsville, substantially replacing the plant’s coal-fired generating capacity, which is scheduled to be retired in 2015.

“This would allow us to use existing buildings and transmission lines, and also would reinforce generation within the Twin Cities, which enhances reliability,” Pofert said.

The second and third 215-megawatt combustion turbines, if needed, would

be located at a yet-to-be selected site near Hankinson, N.D., which is about 70 miles south of Fargo, and placed in service in 2018 and 2019. The units would take advantage of nearby transmission and natural gas lines.

“Xcel Energy serves approximately 90,000 electricity customers in North Dakota, the majority of them in the greater Red River Valley, including the communities of Fargo and Grand Forks,” Pofert said. “Our proposal would enhance the geographic diversity of our fleet.”

Today’s filing in Minnesota includes a request for a Certificate of Need for the Burnsville unit. A filing also is being made with the North Dakota Public Service Commission seeking approval for the two units proposed in that state.

The resource acquisition process now under way is the first in many years for resources other than wind power. A separate request for proposals for new wind generation is pending and is not affected by the proposals submitted today in response to the Resource Plan proceeding.

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# Otter Tail Purchases 62.4 megawatts of wind energy from Ashtabula III

Otter Tail Power Company entered into a 25-year contract to purchase wind energy from the 62.4-megawatt Ashtabula III wind farm northeast of Valley City, North Dakota, that’s owned by a subsidiary of NextEra Energy Resources. The contract includes an option for Otter Tail Power Company to own the wind farm in ten years.

According to Harvey McMahon, Otter Tail Power Company’s manager of renewable energy construction and operations, this energy purchase was below the cost modeled in the company’s biennial resource plan. In addition, the purchase positions

Otter Tail Power Company to meet its renewable energy obligations in the three states it serves through 2025. Wind energy now will supply about 19 percent of Otter Tail Power Company’s retail sales.

“This is positive for our customers,” said McMahon. “This offer was low cost when compared with other resources, including other risk-adjusted wind proposals. The bill impact will be negligible, usually zero and sometimes less, because this low-cost wind purchase will replace other energy purchases that otherwise would be required to serve customers, particularly over the long term.”

Ashtabula III consists of 39 1.6 megawatt GE XLE turbines and is capable of producing enough electricity for 19,000 homes. The wind farm began commercial operation in 2010. A subsidiary of NextEra Energy Resources operates Ashtabula III and will continue to do so.

“Purchasing energy from an existing wind farm eliminates the permitting risk and construction risk associated with building a new farm, including the risk that Congress won’t continue to extend the production tax credit,” McMahon said.



# Companies announce first quarter earnings, declare dividends

## Otter Tail Corporation

Otter Tail Corporation announced financial results for the quarter ended March 31, 2013.

Consolidated net income and diluted earnings from continuing operations totaled \$15.2 million and \$0.41 per share, respectively, compared with \$10.2 million and \$0.28 per share for the first quarter of 2012.

Consolidated net income and diluted earnings from continuing and discontinued operations totaled \$15.4 million and \$0.41 per share, respectively, compared with \$7.2 million and \$0.20 per share for the first quarter of 2012. Consolidated revenues from continuing operations were \$218.0 million compared with \$219.9 million for the first quarter of 2012.

“We are pleased with our 2013 first quarter results,” said Otter Tail Corporation President and CEO Jim McIntyre. “We have continued the execution of our strategy to reduce the number of platforms and operating companies. Our initiatives to drive operational excellence and improved financial performance within this much tighter and stronger portfolio of companies are beginning to pay off.

The corporation’s Board of Directors declared a quarterly common stock dividend of \$0.2975 per share. This dividend is payable June 10, 2013 to shareholders of record on May 15, 2013.

## Xcel Energy

Xcel Energy Inc. reported 2013 first quarter earnings of \$237 million, or \$0.48 per share compared with 2012 earnings of \$184 million, or \$0.38 per share.

First quarter 2013 earnings were favorably impacted by increased electric and natural gas margins and lower interest expense. Winter weather in the first quarter of 2013 was not only colder than normal, but significantly different from the abnormally warm first quarter of 2012. This contrast in weather primarily drove the positive impact when comparing the two periods. The increase in electric and natural gas margins also reflects the implementation of rate increases in Colorado, South Dakota and Wisconsin, along with interim rate increases, subject to refund, in Minnesota and North Dakota. These positive drivers were partially offset by higher

operating and maintenance expenses, depreciation and property taxes.

“We had a good first quarter delivering solid earnings, while maintaining quality service and reliability,” said Ben Fowke, Chairman, President and Chief Executive Officer. “We are reaffirming our 2013 earnings guidance of \$1.85 to \$1.95 per share, which is dependent on several key assumptions, including constructive outcomes in all rate case and regulatory proceedings.”

The board of directors raised the quarterly dividend on the company’s common stock from 27 cents per share to 28 cents per share, which is equivalent to an annual rate of \$1.12 per share. The board declared the second quarter common stock dividend payable July 20, 2013, to shareholders of record on June 20, 2013.

## MDU Resources

MDU Resources Group, Inc. reported first quarter consolidated earnings of \$56.3 million, or 30 cents per common share, compared to \$35.6 million, or 19 cents per share for the first quarter of 2012.

“This is our strongest first quarter performance since 2008,” said David L. Goodin, president and chief executive officer of MDU Resources. “All of our businesses are performing well and are executing their growth plans.

Earnings at the utility business increased 28 percent over the first quarter of 2012. Cold weather contributed to a 16 percent increase in natural gas sales. Compared to last year, temperatures during the quarter were 28 percent colder in Montana-Dakota Utilities Co.’s service territory and 22 percent colder at Intermountain Gas Company. Earnings also reflect a one-time net gain of \$2.9 million from the sale of Montana-Dakota’s nonregulated appliance service and repair business. Electric retail sales increased 9 percent over the same quarter in 2012 as economic growth in North Dakota’s Bakken oil play continued to result in customer growth.

“We are very pleased with the strong start to the year. Just as important, we see plenty of good opportunities ahead of us to continue growing. We plan to invest \$860 million into our businesses this year, with a total capital budget of \$3.9 billion between 2013 and 2017.”

## Greetings (cont. from page 2)

about the NSA surveillance of web searches, emails, texts, phone calls, and spending records of millions of everyday Americans, we are all on edge about what the government is trying to learn and how they'll use that information. Anyone claiming that those actions don't affect discourse is lying. We are all a little more careful about how we say what we're thinking.

Still, the debate about those actions is under attack by people trying to discredit or limit the conversation. For example, nothing stops discourse in its tracks like allegations of racism. A recent allegation by a television commentator and political pundit is that "IRS" is the new code-word for the "N" word. "IRS" is the newest manifestation of the latent racism in everyone who doesn't agree that the administration should, for taxation purposes, target people who disagree with the president on any issue. Likewise, if we think Eric Holder perjured himself or overstepped his authority to mine citizen data, we're racist, too. If we've struggled to understand some of the testimony in the George Zimmerman trial, it's that we suffer from white privilege which clearly makes us racist. If we're racist, our opinions don't matter and aren't allowed into the debate.

Discourse is also limited when the framers of debate force people into two choices, neither of which fairly represents the problem—you're either with us or against us. I call this tool an absolute. After the last school shooting, it was common to hear an absolute framing the issue of gun ownership in a way that claimed a person who supported gun ownership supported kids being killed. "We stand with the families—we must force Congress to pass gun control now!" Under that absolute, it had to be assumed that the very act of owning a gun caused murders. Under that absolute, no other factors

could enter the dialogue—no mental illness issues, no acknowledgement that people who would murder people (which is already illegal) probably aren't the type who would adhere to other "stricter" laws, no acknowledgement about the nature of evil or the fact that the largest school killing involved explosives rather than guns. Those facts are inconvenient and make the issue harder to solve. As a general rule, the absolute doesn't care as much about finding a solution as it does about eliciting an emotionally based reaction within the acceptable realm of opinion. Reason doesn't belong in that conversation, so rational people stop talking.

We all know that words have power, but they also have limits. The world is not safe, kind or fair simply because we refuse to say otherwise. If we as a people are going to preserve our collective strength and individual freedom, we must discuss what is really happening. We can't just regurgitate acceptable talking points. We have to debate, and we have to push past the artificial boundaries placed on our discourse by any authority that wants to keep its power in the easiest way possible. I've addressed some controversial issues in this and my past editorials. You might not agree with me; in fact, you might agree with the friend who called me an ignorant jerk. But these examples, like those in past newsletters, aren't written to foster agreement as much as discussion. I don't have all the answers, and I welcome the thoughts of those who disagree with me as much as those who agree. Let's have the discussion. It is easy to stay quiet and avoid a conflict. But if we don't ask the tough questions, who will? Silence might be easy, but its results are difficult.

## Spring Member Meetings a Wrap

Another round of USND member meetings was held throughout the state in May. Over 600 USND members heard presentations by ND Tax Commissioner Cory Fong, Deputy ND Tax Commission Ryan Rauschenberger, Kathy Aas and Mark Nisbet of Xcel Energy, Dean Engebretson, Frank Morehouse and Geoff Simon of MDU, Loren Hanson, Brian Draxten and Bill Swanson of Otter Tail Corporation, and USND President Carlee McLeod.

Thank you to all who attended!  
We hope to see you all  
again in the fall.

## Words to Ponder...

*"If we don't believe in freedom of expression for people we despise, we don't believe in it at all."*

— Noam Chomsky

*"A very great part of the mischiefs that vex the world arises from words."*

— Edmund Burke

*"In the end, we will remember not the words of our enemies, but the silence of our friends."*

— Martin Luther King Jr.

## Utility Industry Terms

**Outage:** The period during which a generating unit, transmission line, or other facility is out of service.

**Forced Outage:** the removal from service availability of a generating unit, transmission line, or other facility for emergency reasons or a condition in which the equipment is unavailable due to anticipated failure.

**Maintenance Outage:** The removal of equipment from service availability to perform work on specific components that can be deferred beyond the end of the next weekend, but requires the equipment to be removed from service before the next planned outage.

**Planned (or Scheduled) Outage:** The shutdown of a generating unit, transmission line, or other facility, for inspection or maintenance, in accordance with an advance schedule.

## CONGRESSIONAL CONTACTS

**Senator John Hoeven**

120 Russell Senate Office Bldg.  
Washington DC, 20510  
Phone: 202-224-2551

**Senator Heidi Heitkamp**

G55 Dirksen Senate Office Bldg.  
Washington DC, 20510  
Phone: 202-224-2043

**Congressman Kevin Cramer**

1032 Longworth House Office Bldg.  
Washington DC, 20515-3401  
Phone: 202-225-2611