



ShareholderNEWS

Vol. 14 No. 3 • 3rd Qtr 2013

Utility Shareholders of North Dakota

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of North Dakota

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North Dakota joins multi-state suit to hold Environmental Protection Agency accountable for sue and settle practice

North Dakota Attorney General Wayne Stenehjem has joined eleven other states in a lawsuit against the EPA, claiming that the EPA's "sue and settle" practice with environmental groups violates the Freedom of Information Act (FOIA).

North Dakota joins Alabama, Arizona, Georgia, Kansas, Michigan, Nebraska, South Carolina, Texas, Utah, and Wyoming in the lawsuit led by Oklahoma Attorney General Scott Pruitt stemming from EPA action with interested parties in cases addressing regional haze state implementation plans (SIPs). Without involving the states, the EPA has worked with interested parties to enter into consent decrees regarding the EPA's regulatory approach to SIPs, which is inconsistent with the cooperative federalism structure of the Clean Air Act.

Prior to initiating this lawsuit, the states made a FOIA request for records regarding EPA involvement with interested parties regarding regional haze SIPs. The request specified the type, scope, location and records sought, as well as a list of the interested parties. A fee waiver was also requested based on the fact that the information was in the public interest. Through a series of denials, appeals and more denials, EPA's decision became final: they will not release the documents, and a request to waive fees is moot.

The lawsuit includes two claims: one) that the EPA has failed to produce lawfully requested public records; and two) that the EPA's refusal to waive fees for production of documents to the states violates FOIA.

In order to understand the basis of the suit, some background information on the EPA's authority and the FOIA is helpful.

Background on implementation of the Clean Air Act

As a result of various acts of Congress, the EPA has been given authority to promulgate rules relevant to the implementation of those acts. This lawsuit deals specifically with the Clean Air Act (CAA), in which the EPA is directed to set health based national ambient air quality standards (NAAQS) that states and local governments are responsible for achieving and maintaining through SIPs. NAAQS must be reviewed every five years, and pursuant to the CAA, the EPA must conduct notice-and-comment rulemaking. Once a new or revised standard is adopted, states are responsible for developing SIPs to achieve and maintain the new standard.

In addition to the NAAQS, the CAA contains the non-health based Visibility Protection Program, which sets goals for visibility standards. Because the VPP is not a health based program, Congress designated this goal as discretionary. It directs the states to develop regional haze SIPs to make reasonable progress toward visibility goes using best available retrofit technology (BART). The CAA gave states the dominant role in making determinations regarding BART, and the EPA may not second-guess state decisions regarding visibility as long as the decisions are consistent with the CAA and are reasonably and rationally supported by the state's administrative record.

(cont. on page 3)

Greetings From Bismarck ...

"Though this be madness, yet there is method in 't."

~ Shakespeare, *Hamlet*, Act II Scene II

There's a common literary plot device that places characters at different levels of knowing. For instance, character A knows X, but character B thinks A knows Y. Throw in character C who is hiding Z, and that plot can turn silly, sinister or anything in between. When that device moves from fiction to reality, the same results occur.

In my last editorial, I wrote about roadblocks to discourse. The biggest roadblock to discourse is lack of knowledge, and we spend our lives striving to break down that barrier by acquiring more knowledge. Sometimes, just possessing information makes us feel secure. But in this internet and 24 hour news era, we can find ourselves in information overload. We consume facts and figures by the boatload, but putting information into a useable context is more difficult.

Government is an area where we want to know everything we can. After all, we pay for it, we vote for it, and it exists to represent and serve us. Because of that, we hold our government to standards of transparency. We want public entities to hold open meetings and to maintain and provide open records. We want access to everything that can be shared when work is being done with public resources. We have the right to all of that information, even if there's so much information it's hard to process into knowledge.

When a governmental entity refuses to produce documents upon valid requests, it is cause for alarm.

Consider North Dakota's involvement to stop the EPA from violating the Freedom of Information Act with its Sue and Settle activity. Our attorney general knows the information he needs. He knows how to turn that information into meaningful knowledge. More importantly, he is entitled to the information. *We are entitled to the information.* But the EPA hides the ball with inconsistent procedural demands, refusing to give required information to the public it serves. While using stall tactics to avoid the release of public documents to state entities, the EPA communicates with its preferred special interest groups through private email accounts created with pseudonyms. That is not transparency—it's madness. It's a plot device which leads the players to an ending that is comic, tragic, or both.

I don't know how this plot ends. I commend our attorney general, and the attorney generals from the eleven other states who refuse to be kept in the dark by an arm of our own government. I am hopeful that the court will demand the release of the requested documents—after all, our judicial system has procedural and evidentiary standards which require a certain amount of disclosure. Whatever the result, we can be grateful for leaders who demand transparency, and we can support them by attaining enough knowledge to retire plot devices to the pages of fiction where they belong.



Carlee McLeod
USND President

Words to Ponder...

*No matter how big the lie;
repeat it often enough and
the masses will regard it as
the truth.*

— John F. Kennedy

*Our wretched species is
so made that those who
walk on the well-trodden
path always throw stones
at those who are showing a
new road.*

— Voltaire

*A great deal of intelligence
can be invested in
ignorance when the need for
illusion is deep.*

— Saul Bellow

*When you combine ignorance
and leverage, you get some
pretty interesting results.*

— Warren Buffett

North Dakota joins multi-state suit (cont. from page 1)

Background on the FOIA and the States' requests

Unless explicitly exempted by statute, federal agencies are required by FOIA to release requested documents to the public. Documents must be reasonably described, and agencies may charge for producing documents. However, FOIA provides for a fee waiver or reduction if the disclosure is in the public interest because it will aid public understanding of government activities. The act makes it clear that the fee waiver provision of the act should be "liberally construed". In other words, the benefit of the doubt should be given to the requester in a waiver request as to whether the disclosure is in the public interest.

History of EPA "Sue and Settle" practices

The EPA is subject to a variety of suits by interested parties, in which the parties allege the EPA is not achieving its non-discretionary duties. Rather than proceeding with litigation, the EPA often reaches settlements or "consent decrees" with the proponents of such lawsuits. The settlements hold the EPA to new, often stricter standards than those in practice prior to the lawsuits. While this isn't a practice new to this administration, the frequency of such lawsuits has increased dramatically. For instance, in President Clinton's second term of office, there were 15 settlements, a number that matches the amount of settlements during President G.W. Bushes two terms. In just the first term of President Obama's administration, 48 settlements were reached.

The increased practice is causing problems for states who must implement the stricter standards reached through settlement. States aren't given notice about pending lawsuits, and often when they do discover the pending litigation and settlement talks, they are not allowed to intervene. Through this practice, the EPA is able to achieve standards without using notice-and-comment rule promulgation. The states, which bear responsibility for achieving and maintaining these new standards, are left with standards that are unachievable or heavily burdensome.

North Dakota's Diligence in Protecting North Dakota Interests

Attorney General Wayne Stenehjem has been diligent in his watch to keep North Dakota at the table when negotiations threaten to infringe on North Dakota's authority. This lawsuit is another example of that diligence. In 2011, Stenehjem sought intervention in a California case regarding North Dakota's regional haze

SIP, *Wildearth Guardians v. Jackson*, but the California court denied intervention.

Currently, North Dakota is leading South Dakota, Texas and Nevada in a lawsuit against the EPA for failure to determine state compliance with sulfur dioxide emissions under the CAA. "North Dakota has met every deadline set by the EPA to submit data on sulfur dioxide emissions, which show that North Dakota is in compliance with the NAAQS. However, the EPA has failed to do its part to make the required designations for the states. It appears that the EPA is holding itself to a different standard than the states that are complying with the Clean Air Act," Stenehjem noted.

North Dakota is also leading a group of states seeking intervention in a recent potential sue-and-settle case, *Sierra Club v. McCarthy*, involving EPA's sulfur dioxide determinations.

At any given time, Stenehjem's office is tracking a variety of EPA actions threatening North Dakota's interests, a task which is made difficult by EPA's non-disclosure practices.

"I hope the EPA will begin to treat the states as partners in addressing air pollution, as Congress intended in the Clean Air Act," said Stenehjem.

Fall Member Meetings

- **October 21:**
Jamestown, Gladstone Inn, **5:30 p.m.**
- **October 23:**
Grand Forks, Hilton Garden Inn, **5:30 p.m.**
- **October 28:**
Wahpeton, Prantes (1605 N 11th St, main floor), **12:00 p.m.**
- **October 29:**
Dickinson, Ramada Grand Dakota Lodge, **5:30 p.m.**
- **October 30:**
Williston, The Williston (408 1st Ave East), **12:00 p.m.**
- **October 30:**
Minot, Grand International Inn, **5:30 p.m.**
- **November 4:**
Bismarck, Radisson, **5:30 p.m.**
- **November 6:**
Fargo, Kelly Inn on Main, **5:30 p.m.**

EPA Issues New Proposed Rule on Carbon Emissions

Following President Obama's pledge to address "global warming", the EPA released its first of four regulatory steps to advance the administration's climate change agenda. The draft rule requires new coal plants to limit emissions to less than 1,100 pounds per megawatt hour. This is an update from a 2012 proposed rule which put the target at 1,000 pounds per megawatt hour.

Reaction within the energy industry and ND's Congressional delegation shows strong opposition to the rule.

Here are excerpts from a variety of statements:

"The new rule the EPA released (Friday) will clearly have a negative impact on the energy industry and the American people. It will kill jobs, weaken our economy and deprive American families and businesses access to affordable energy. The rule goes too far, too fast. Also troubling is the fact that the administration appropriated the authority to make a major decision that rightfully belongs to Congress. This will affect virtually every American for many years to come."

—U.S. Senator John Hoeven

"The Administration's decision is a direct attack on coal-fired power plants and detrimental to the future for coal as an energy resource. This Administration has repeatedly stated its energy policy as 'all of the above,' but continues to issue regulations that make it impossible to find a viable path forward for coal. This rule would have lasting, harmful impacts on North Dakotans – not just the coal industry, but nearly all consumers as coal provides almost 90 percent of our state's electricity. Here are the facts: Coal is an abundant, affordable resource for generation of electricity. Sadly, the Administration won't say that and instead chooses to choke the coal industry with unattainable regulations."

—U.S. Senator Heidi Heitkamp

"Very few places on earth are cleaner and greener than the state of North Dakota. With these regulations, the Obama Administration is telling us the cleanest coal technology ever developed by the United States ought to be punished, not rewarded. The EPA is trying to

create nonexistent technology through regulation at the expense of the entire American economy, and is setting a terrible precedent for carbon regulation on everything from refineries to fertilizer plants. The standards set by President Obama today effectively block the construction of any new coal-fired power plant in the United States. It's unacceptable, and it's yet one more battle in this war on coal we have to be prepared to defend."

—U.S. Congressman Kevin Cramer

"Our preferred energy plan would be one that is developed by both parties in Congress and provides incentives for the development of clean coal technologies along with increased generation from other sources while protecting the consumers from price spikes and supply disruptions. If the United States wants to truly be an energy leader, we can't walk away from coal. It's too important an energy source, both here and abroad. The clean coal technologies that are adopted in the United States can be outsourced to developing countries that are relying more and more on coal to improve their standard of living. There are leaders in both parties who will work with the President to develop such a plan and it is our hope he will turn to them instead of the bureaucrats at the EPA."

—Jason Bohrer, President and CEO
Lignite Energy Council

"The new proposal sets a separate standard for coal-based units and requires the use of carbon capture and storage (CCS) technology, which is neither adequately demonstrated nor economically feasible. As proposed, this rule would hinder efforts to develop cost-effective CCS—a critical technology for mitigating greenhouse gas emissions going forward—because it effectively prevents the building of new clean coal plants. We cannot afford to take generation sources out of the mix, as fuel diversity guards against potential supply disruptions and is key to affordable and reliable electricity."

—Tom Kuhn, President
Edison Electric Institute

Companies announce second quarter results, declare dividends

Xcel Energy Inc.

Xcel Energy Inc. reported 2013 second quarter earnings of \$197 million, or \$0.40 per share, compared with 2012 earnings of \$183 million, or \$0.38 per share.

Second quarter 2013 earnings were favorably impacted by increased electric and natural gas margins. The increase in electric margin was mainly due to rate increases in Colorado, Wisconsin, South Dakota and Texas, along with interim rate increases, subject to refund, in Minnesota and North Dakota. Natural gas margins were positively impacted by cooler weather compared with the second quarter of last year. These positive drivers were partially offset by higher operating and maintenance expenses and depreciation and amortization, reflecting our continued infrastructure investment in our utility business.

"In addition to a solid quarter financially, we continued to demonstrate our strong operational capabilities," said Ben Fowke, Chairman, President and Chief Executive Officer. "In June, Minnesota experienced several severe thunderstorms which impacted more than 600,000 of our customers. We coordinated a workforce of 1,100 linemen from 14 states and several hundred support personnel to handle the state's record electrical outage. As a result, power was restored to 96 percent of our customers within three days. I'm proud of all the workers who labored tirelessly to complete this effort in an orderly, safe and timely fashion."

The Board of Directors declared a quarterly dividend on its common stock of 28 cents per share. The dividends are payable October 20, 2013, to shareholders of record on September 19, 2013.

Otter Tail Corporation

Otter Tail Corporation announced financial results for the quarter ended June 30, 2013.

Consolidated net income and diluted earnings per share from continuing operations totaled \$7.5 million and \$0.21, respectively, compared with \$6.9 million and \$0.19 for the second quarter of 2012. Consolidated net income and diluted earnings per share from continuing and discontinued operations totaled \$7.7 million and \$0.21, respectively, compared with a net loss of \$17.4 million and a diluted loss of \$0.48 per share for the second quarter of 2012.

Net income from discontinued operations was \$0.2 million compared with a net loss of \$24.3 million for the second quarter of 2012, which included a

\$27.5 million net-of-tax asset impairment charge at the corporation's former wind tower business. Consolidated revenues from continuing operations were \$212.4 million compared with \$211.4 million for the second quarter of 2012.

"Overall, our 2013 second quarter results met our expectation for improved earnings over 2012," said Otter Tail Corporation President and CEO Jim McIntyre. "The successful realignment of our portfolio has better positioned us for stronger execution within our remaining companies. The year-to-date results from continuing operations of \$22.7 million in net income and \$0.61 in diluted earnings per share compared to \$17.1 million and \$0.46 for 2012, a 33% improvement, further indicate progress toward a successful 2013.

"Based on second quarter and year-to-date results and our expectations for the rest of the year, we are narrowing our earnings guidance for 2013 diluted earnings per share from continuing operations to \$1.30 to \$1.50."

The Board of Directors declared a quarterly common stock dividend of \$0.2975 per share. This dividend is payable September 10, 2013 to shareholders of record on August 15, 2013.

MDU Resources Group, Inc.

MDU Resources Group, Inc. reported second quarter consolidated adjusted earnings of \$47.2 million, or 25 cents per share, compared to \$32.5 million, or 17 cents per share in the second quarter of 2012. Consolidated GAAP earnings were \$46.3 million, or 24 cents per common share, compared to \$53.9 million, or 29 cents per common share for the second quarter of 2012.

Adjusted earnings for the six months ended June 30 were \$107.3 million, or 57 cents per share, compared to \$70.8 million, or 37 cents per share a year ago. Consolidated year-to-date GAAP earnings were \$102.7 million, or 54 cents per share, compared to \$89.6 million, or 47 cents per share for the six months ended June 30, 2012.

The company reaffirmed its 2013 adjusted earnings guidance of \$1.30 to \$1.40 per share excluding discontinued operations, the unrealized commodity derivatives gain and the natural gas gathering asset impairment. Including these adjustments, 2013 GAAP earnings guidance is in the same range.

(Cont. on pg. 6)

Governor Appoints Outdoor Heritage Board, Special Interest Groups Already Circulating Petition for Larger Money Grab

During the 2013 legislative session, the ND legislature passed HB 1278 which established an Outdoor Heritage board and appropriated a portion of oil and gas revenue up to \$30 million a biennium into a fund to be used to provide grants for conservation projects. The law provides that grants shall be given to state agencies, tribal governments, political subdivisions, and nonprofit organizations in order to increase hunting access on private and public lands, create fish and wildlife habitat, improve, maintain and restore water and soil quality, and conserve natural areas for recreation.

The Governor appointed board members mid-September, and they have already met to begin establishing a framework for grant awards. Members are: Eric Aasmundstad, Devils Lake (North Dakota Farm Bureau); Robert Kuylen, South Heart (North Dakota Farmers Union); Wade Moser, Bismarck (North Dakota Stockmen's Association); Dan Wogsland, Bismarck (North Dakota Grain Growers Association); Blaine Hoffman, Gladstone (North Dakota Petroleum Council); Jim Melchior, Bismarck (Lignite Energy Council); Tom Hutchens, Bismarck (Ducks Unlimited); Patricia Stockdill, Garrison (Pheasants Forever); Jon Godfread, Bismarck (Greater North Dakota Chamber); Randy Bina, Bismarck (North Dakota Recreation and Parks Association); Carolyn Godfread, Bismarck (conservation at-large); Kent Reiersen, Williston (conservation at-large). Four non-voting members representing specific state agencies outlined in the law: Terry Steinwand, director of the North Dakota Department of Game and Fish; Mark Zimmerman, director of the

North Dakota Department of Parks and Recreation; Larry Kotchman, State Forester; and Ronda Vetsch, North Dakota Association of Soil Conservation Districts.

However, the proponents of last year's efforts are not happy with the new law, and they have filed a ballot petition that has been approved by the Secretary of State for circulation. If the petition drive is successful, the Constitutional measure will be on the November 2014 ballot.

The measure appropriates 5% of oil extraction revenues to a new fund for conservation projects, which estimates put anywhere from \$50-\$150 million a year (depending on extraction levels and oil prices). Ten percent of collected funds are put into a trust. The remaining 90% of collected funds must be spent down annually, at least 75% of which must be spent on conservation projects. The remaining funds can be used to fund the new agency this measure creates. Money can't be used on lobbying or litigation, but land purchase and transfer of funds to nonprofits and other governmental entities (local, state, federal) is acceptable.

As a matter of background: the state constitution designates that 20% of extraction revenue is put into the common schools trust fund and foundation aid trust fund and that 30% is put into the Legacy Fund. The remaining revenue is allocated by state law. Twenty percent is divided between water, renewable energy and energy conservation projects. The remaining 30% flows into the state general fund and a fund set up for infrastructure needs and tax relief. This measure will funnel extraction

revenue designated for those needs into conservation efforts rather than using that money for government services, infrastructure, and tax relief.

USND opposes this measure for a number of reasons. First, it is bad policy to develop a fund that must be spent down every year, regardless of the need. Second, the existing Outdoor Heritage board and fund deserves time to work. Third, we do not support the practice of treating oil and gas revenue as a piggy bank for special interests. Expect more information on this issue over the next year.

Companies declare dividends (cont. from pg 5.)

"I am encouraged by the growth that is occurring within all of our businesses," Goodin said. "Our year-to-date consolidated earnings per share is substantially higher compared to a year ago. We are in a good position to achieve our earnings target. More importantly, our \$850 million investment this year along with our planned future investments, has us well positioned for long-term growth."

The Board of Directors declared quarterly dividends for common stock of 17.25 cents per share, unchanged from the previous quarter. The dividends are payable October 1, 2013 to stockholders of record September 12, 2013.

"MDU Resources has paid dividends for 75 consecutive years. We are extremely proud of this long and consistent record of delivering shareholder value," said Harry J. Pearce, chairman of the board.

Xcel Energy proposes 33 percent increase in Midwest wind portfolio

Citing the ability to lower customer costs while cutting carbon emissions, Xcel Energy submitted to state regulators a proposal to add 600 megawatts of wind resources in its Upper Midwest service territory. Construction would begin in time to qualify for the extended federal Production Tax Credit.

“These projects will lower our customers’ bills, offer protection from rising fuel costs, and provide significant environmental benefits,” said Dave Sparby, president and CEO of Northern States Power Co.-Minnesota, an Xcel Energy company.

The additional 600 megawatts of wind power – enough to serve 180,000 homes – would lower customer costs by \$180 million over the lives of the projects. “Wind prices are extremely competitive right now, offering lower costs than other possible resources, like natural gas plants,” said Sparby. “These projects offer a great hedge against rising and often volatile fuel prices.”

At the same time, the projects will reduce carbon emissions by 1.2 million tons each year in Xcel Energy’s Upper Midwest service territory, where the company already is on track to reduce carbon emissions by 30 percent by 2020 from 2005 levels.

“With 1,800 megawatts of wind on our system in the Upper Midwest, we are already ahead of meeting state renewable energy targets,” Sparby continued. “These projects position us to continue to meet those targets while saving our customers money.”

Following a request for proposals in February, Xcel Energy selected three projects to submit to regulators for review:

- **Courtenay Wind Farm**, a 200 megawatt project near Jamestown, N.D., under a power purchase agreement with Geronimo Energy;
- **Odell Wind Farm**, a 200 megawatt project near Windom, Minn., also under a power purchase agreement with Geronimo Energy; and
- **Pleasant Valley**, a 200 megawatt project near Austin, Minn., submitted by RES America Developments Inc. RES would develop the project and then transfer ownership to Xcel Energy. The Pleasant Valley project is adjacent to the Grand Meadow wind project, which Xcel Energy owns.

Xcel Energy submitted the projects to the Minnesota Public Utilities Commission and the North Dakota Public Service Commission for consideration and notified regulators in South Dakota, Wisconsin and Michigan. The company indicated it would continue to evaluate projects and could make additional proposals if similar benefits can be achieved.

If approved by regulators, construction on the projects will begin immediately in order to qualify for the federal renewable energy tax credits. All three projects are scheduled to be in service by the beginning of 2016.

The announcement is the third wind acquisition proposal from the company in recent weeks. Xcel Energy’s operating companies in its Upper Midwest, Colorado and Texas-New Mexico service territories each requested wind project proposals earlier this year to determine if Congress’ extension of the federal renewable electricity Production Tax Credit had made available cost-effective projects that would benefit customers.

“We are committed to meeting our customers’ needs in clean and affordable ways,” said Ben Fowke, chairman, president and CEO of Xcel Energy. “Wind power is simply the cheapest resource available right now, and we are taking the opportunity afforded by the PTC extension to further shape our systems for the future.

“These announcements demonstrate that we can achieve both environmental and economic benefits for our customers.”

In January, Congress extended the PTC to projects that begin significant construction activities by the end of 2013. Xcel Energy supported the PTC extension and also supports the Consumer Renewable Credit, a proposed tax credit that would provide low-cost federal support of continued, cost-effective wind development such as the projects proposed in today’s filing.

Utility Industry Terms

Fuel Costs: Cost of fuel used to generate electricity.

Cents Per million BTU Consumed: Since fuel is purchased on the basis of its heat content, its cost is measured by computing the “cents per million Btu” of the fuel consumed. It is the total cost of fuel consumed divided by its total Btu content, multiplied by one million.

Coal: Average cost per (short) ton (\$/ton). It includes bituminous and anthracite coal, and relatively small amounts of coke, lignite, and wood.

Gas: Average cost per Mcf (cents per thousand cubic feet). It includes natural, manufactured, mixed, and waste gas. Frequently expressed as cost per therm (100,000 Btu).

Oil: Average cost per (42 gallon) bbl (\$ per barrel). It includes distillate and residual fuel oils, diesel oil, and small amounts of crude, tar and gasoline.

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