

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ECONOMIC IMPACT COMMITTEE

Thursday, March 17, 2016
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Connie Triplett, Chairman, called the meeting to order at 10:00 a.m.

Members present: Senators Connie Triplett, Randall A. Burckhard, Tom Campbell, Jonathan Casper, Terry M. Wanzek; Representatives Joshua A. Boschee, Matthew M. Klein, Ben Koppelman, Cynthia Schreiber Beck, Gary R. Sukut

Members absent: Senators Lonnie J. Laffen, Mac Schneider; Representatives Thomas Beadle, Rich S. Becker, Ron Guggisberg

Others present: Senator Jerry Klein, Fessenden, and Representative Marvin E. Nelson, Rolla, members of the Legislative Management

See [Appendix A](#) for additional persons present.

It was moved by Senator Burckhard, seconded by Representative Boschee, and carried on a voice vote that the minutes of the November 19, 2015, meeting be approved as distributed.

Chairman Triplett said a meeting is being held in Fargo today involving discussions of development of a civilian ground center. She said committee consideration of the civilian ground center study will be deferred until the next committee meeting because the resource people are attending the Fargo meeting. She said today's meeting will focus on the committee's studies of the one-call system and feasibility of extending natural gas services to unserved communities.

NATURAL GAS DISTRIBUTION STUDY

Chairman Triplett called on Ms. Connie Ova, President, Economic Development Association of North Dakota, and CEO, Jamestown/Stutsman Development Corporation, for testimony ([Appendix B](#)) on providing natural gas service to unserved communities.

Ms. Ova said Jamestown has companies using natural gas but they are required to have a backup source of fuel so Jamestown is in need of natural gas service expansion.

Ms. Ova distributed copies of a study by the American Gas Association of efforts among states to expand natural gas infrastructure.

Ms. Ova said the individuals listed on her testimony who serve on the Economic Development Association of North Dakota Natural Gas Committee represent communities impacted by the need for additional natural gas services or infrastructure.

Senator Burckhard asked why there is no member of the Natural Gas Committee from northwest North Dakota, which has areas requiring natural gas service. Ms. Ova said the individuals on the Natural Gas Committee were chosen from individuals on-hand at an Economic Development Association of North Dakota meeting. She said individuals to represent northwest North Dakota would be welcomed to serve on the committee.

Senator Wanzek inquired about the status of a proposed natural gas pipeline from Wishek to the Spiritwood area. Ms. Ova said that project is on hold. She said the easements for the project are in place but the pipeline needs to have a substantial user before completion of the project. She said they have 4 years to complete the project.

Senator Campbell asked if it is correct to summarize the position of Economic Development Association of North Dakota as being that the number of potential users in rural communities is not adequate to support the cost of pipeline expansion to obtain service. Ms. Ova said that is correct. She said the cost to establish service is a barrier.

Chairman Triplett inquired of Ms. Dana Bohn, Executive Director, Economic Development Association of North Dakota, what additional information is being gathered on this topic. Ms. Bohn said surveys have been sent to members and responses are being compiled.

Senator Klein said it appears the adage "if you build it, they will come," does not apply in these circumstances. He said it appears natural gas service providers are reluctant to invest until potential users are in place. He asked if providers are reluctant to extend service in hopes of attracting users. Ms. Bohn said a representative of Montana-Dakota Utilities Co., would be better able to address that question.

Chairman Triplett called on Ms. Julie Fedorchak, Public Service Commissioner, for a presentation on efforts in other states to provide state-level assistance to extending natural gas service areas. Ms. Fedorchak distributed a copy ([Appendix C](#)) of information compiled by the American Gas Association on state infrastructure expansion activity among states. She said North Dakota has many communities without natural gas service and 11 of those communities have a population of 1,500 or more.

Ms. Fedorchak said she recently spoke with representatives of the Bobcat plant in Gwinner. She said the plant does not have natural gas service and uses propane. She said the business is satisfied with propane service but propane costs about three times as much as natural gas service. She said any expansion planning for Bobcat would necessarily involve factoring in the higher cost of propane service in Gwinner when considering other locations for potential expansion which could have natural gas access.

Ms. Fedorchak said a significant benefit from expansion of the natural gas supply line infrastructure would be the potential to add redundancy to the system. She said there is no backup source of supply in many areas.

Ms. Fedorchak reviewed information on cost estimates to extend natural gas service into the Beulah-Hazen area and to the city of Hillsboro. She said the costs of extending service are very challenging.

Ms. Fedorchak reviewed the summary compiled by the American Gas Association on state infrastructure expansion activity among states. She said at least 33 states are engaged in some effort to expand natural gas service areas.

In response to a question from Chairman Triplett, Ms. Fedorchak said redundancy would not necessarily mean having parallel gas service lines, but having some way of providing two or more service supply lines so that in the event of a line break it is possible to route gas through alternative supply lines to continue serving the customers at the end of the line.

Ms. Fedorchak said the states seeking expanded service of natural gas have focused efforts primarily in the areas of funding, regulatory approaches, and enabling legislation. She said she would review the activity in a sampling of states, not as a suggested approach, but to provide examples of approaches being explored.

Ms. Fedorchak said Connecticut has authorized providers to bill for service at a higher rate for 10 years to finance the cost of extending service to 280,000 new customers. In 2015 she said Minnesota enacted a bill to allow a provider to petition for a rider in addition to general rates to allow recovery of costs of expansion to unserved areas. She said North Carolina enacted 1998 legislation authorizing bonds for uneconomic natural gas line extensions and has enacted authorizing legislation for surcharges on existing ratepayers in defined circumstances and alternative sources. She said Ohio enacted legislation to allow approval of an infrastructure development rider for costs of approved economic development projects. She said the Public Service Commission could explore the options other states have considered if the committee has suggestions on further information it would want to consider.

Ms. Fedorchak said another issue that may be worthy of consideration is use of liquified natural gas, now being produced by North Dakota LNG, LLC, a subcompany of Prairie Companies. She said use of this technology would allow gas transported by truck to be vaporized and used in a municipal system.

Senator Campbell said there is strong opposition from propane providers to the subsidies proposed for natural gas providers. He said propane providers do not appear opposed to competition, but strongly oppose subsidies to natural gas service providers.

Ms. Fedorchak said that is true and was the reason tax incentives did not seem to be the correct solution last session. She said each unserved area may require a different solution and the Public Service Commission will continue to work with communities, utilities, and industries to seek viable solutions.

Representative Sukut asked about a rate increase for communities as an option in other states and whether it includes any contribution from the utility provider. Ms. Fedorchak said the utility provides the funding for expansion and recovers costs over time. In that situation, she said, the utility is assuming the risk in the share of potential customers who do not convert to natural gas service.

Representative Boschee asked if there is an estimate of the total cost to extend service to the entire state. Ms. Fedorchak said there is no estimate. Representative Boschee asked if there is any emerging technology the committee should consider. Ms. Fedorchak said at this time pipeline or truck service would be the only options. Representative Boschee asked if other states are looking at this issue like North Dakota has with water, seeking to provide to every community. Ms. Fedorchak said that does not appear to be the case because, unlike water, natural gas faces competition from other options.

Representative Koppelman asked if there are any hurdles the committee must consider if municipalities would go to a municipal system using liquified natural gas. Ms. Fedorchak said there is no territorial integrity act as exists for electric service and there are municipalities providing liquified natural gas service under existing statutory authority.

Senator Wanzek asked if there is a recent cost-benefit comparison of the use of natural gas, liquified natural gas, and propane. Ms. Fedorchak said she is not aware of any comparison, but KLJ may be doing an examination of a similar issue for the city of Rugby.

Senator Klein asked if it would create more difficulty asking industry to raise rates to pay for system expansion and if Rugby would be regulated for rates. Ms. Fedorchak said Rugby, as a municipal utility, would be regulated for safety but not rates.

Senator Klein asked if Harvey would be a situation where expansion of the system would be different. Ms. Fedorchak said extending a gas line to Harvey, about eight miles, would also involve adding a facility and service extensions. She said the rates charged to the consumers would be regulated by the Public Service Commission, so the utility would have to make the case for the rates it seeks to impose.

Senator Burkhard asked if the service provider could seek to depreciate part of the cost of expansion and to spread part of the cost over its entire system. Ms. Fedorchak said the provider could seek approval to add the cost into its general rate over its system.

Chairman Triplett said small communities may take a long time to, and may possibly never, attract new business to use natural gas. Ms. Fedorchak said that is a concern and is the reason some states have required assurance of new industry before approving expansion projects.

Chairman Triplett asked if Ms. Fedorchak believes the Public Service Commission has adequate authority under existing law to use some of the approaches that look feasible from other states' efforts to allow expansion of natural gas service areas. Ms. Fedorchak said she believes the Public Service Commission has adequate authority in rate regulation to provide rate flexibility but she will look over existing authority with that in mind and let the committee know if statutory changes would be necessary. Chairman Triplett said it would be useful to have a review for the committee of the authority under existing law governing rates.

Chairman Triplett invited testimony from interested persons.

Mr. Mike Rud, Executive Director, North Dakota Propane Gas Association, said the information the committee reviewed on efforts across the country to expand natural gas service areas gives an equal view of potential problems the propane industry across the country is fighting, in its effort to preserve a free-market system and fair playing field. He said Minnesota enacted legislation last year to allow utilities to recover 30 percent of costs of expansion from the customer base, but legislation has been filed to repeal that provision. He said expansion of natural gas service should be a private business decision without state involvement in subsidizing projects.

Senator Wanzek asked if liquified natural gas would be an enterprise the North Dakota Propane Gas Association could be involved in. Mr. Rud said it is not a compatible venture that involves refrigerated trucks, vaporizing facilities, and a pipeline distribution system.

Mr. Rud said Mr. Jeff Petrash, Vice President and General Counsel, National Propane Gas Association, would be a good resource person if the committee wants a review from a national perspective. He said Mr. Petrash has worked in the natural gas industry and the propane industry.

Senator Klein said the committee might benefit from suggestions of experts on both sides of the issues.

Chairman Triplett asked the Legislative Council staff to request suggestions from natural gas and propane association representatives, Montana-Dakota Utilities Co., and suppliers of liquified natural gas. She asked that a representative from the Public Service Commission be invited to brief the committee on the current statutory provisions and how they are applied in regulating rates for natural gas service providers, with emphasis on the infrastructure development costs that can be passed through in rates to customers and any suggestions for statutory changes in that regard.

Senator Campbell said there are potentially huge costs associated with expansion of natural gas service areas. He said states with larger populations are better able to absorb costs. He said it will be necessary to proceed cautiously.

Representative Sukut said he struggles with seeing a solution that would support expansion of natural gas service areas, which would be equitable for all involved. He said more exploration of options may reveal what is a fair and feasible approach.

Senator Wanzek said he is not sure this is the time for state assistance to expand service areas. He said more information may help but at this point he sees no clear solution.

ONE-CALL STUDY

Chairman Triplett said she received a comment from a citizen criticizing the request that stakeholders on the one-call issues meet to discuss developing a consensus recommendation. She said she assured the individual that the committee retains authority to determine any recommendation that would move forward.

Chairman Triplett called on Ms. Carlee McLeod, President, Utility Shareholders of North Dakota, who distributed copies of a presentation (Appendices [D](#) and [E](#)) regarding discussions of a stakeholder group gathered to consider consensus on one-call issues. She said six meetings were held to discuss issues and [Appendix E](#) identifies the issues for which there was consensus to recommend changes, consensus to recommend no changes, and no consensus.

Ms. McLeod presented her testimony, describing the participants involved. She said meetings were open to any who expressed interest and ultimately a broad range of interests were represented.

Ms. McLeod said the group broke down concerns and issues for discussion. She said consensus was reached on 21 issues. Of those issues, she said, the consensus is that 9 should not be changed and 12 should be changed. The testimony reviews the consideration of each of the 21 issues and the recommended change for those for which changes are recommended.

Ms. McLeod said change in the culpability for reporting damage was requested by prosecutors because knowingly is a tougher standard to prove than willfully.

Representative Koppelman asked for explanation of the difference between the current use of a culpability standard of "knowingly" for damaging an underground facility and the recommended substitution of "willfully." Discussion followed which indicated need for more explanation.

Chairman Triplett called on Ms. Sarah Lovas, farmer near Hillsboro, certified agronomist and holder of a master's degree in soil science, currently also engaged as an independent crop consultant. Ms. Lovas provided written testimony ([Appendix F](#)) and PowerPoint images ([Appendix G](#)). Ms. Lovas said soil sampling as it relates to the one-call system should be understood because it differs from other regulated activities. She said the sampling mechanism she uses in her truck penetrates the soil and pulls up a plug 24 inches long. She said the soil is sent to a lab for testing for nutrient content. She said this testing is critically important to success of agricultural producers. She said the map shown has red dots marking each location in the field where she took a sample. She said a computer in her pickup is attached to a Global Positioning System (GPS) and she marks each sample location with this equipment. She said the map shows that she does not sample the edges of fields and it would be agronomically incorrect to do so. She said there is variability on edges of fields that makes sampling inaccurate.

Ms. Lovas reviewed the results she receives from testing labs. She said if the sample does not cover depth to 24 inches, results are not useful. She said correct fertilizer recommendations require 24-inch depth of samples.

Ms. Lovas provided a slide showing the number of locates that would have been required per day based on the soil samples submitted to AGVISE Laboratories. She said 800 to 1,000 fields per day would have to be located.

Ms. Lovas said most utility lines are in the outer edges of fields. She said a shape file could be provided identifying the outer boundary and, if it is determined no lines are in that field, it would be nice to be exempt from locate requirements. She said if a shape file could be provided identifying utility lines, she could lay it right over her GPS soil sampling map and very easily avoid utility lines without locate marking.

Representative Nelson said a key to resolving soil sampling issues is GPS technology. He said AgriData Incorporated has the information to make the two systems work. He said we can make the technology work, but it is very important that GPS marking is used. He said this would benefit utilities because they could record their GPS locations once and avoid marking locations again and again. He said in western North Dakota thousands of miles of gathering pipelines are not marked, so even if you call for a locate you may not know of a line's location.

Chairman Triplett recognized Mr. Brian Kalk, Public Service Commissioner, for comments on the one-call study. Mr. Kalk said it is important not to lose sight of the consensus group recommendations. He said gathering the parties achieved discussions of the issues by a representative group of stakeholders. He said it might be helpful if this forum could be a regular means of discussing issues of common interest. He said the soil-testing issue is complex, but he is encouraged to hear suggestions of potential technology solutions. He said safety is the prime concern of the Public Service Commission and eliminating the locate requirements for soil testing is undesirable for that reason and others, including pipeline safety federal funding availability.

Chairman Triplett asked who could serve as a regular forum for issues. Mr. Kalk said perhaps the one-call board would be a focal point because concerned parties are usually in attendance.

Chairman Triplett recognized Ms. Vawnita Best, Chairperson, Greater McKenzie County Stewardship Group, who provided testimony ([Appendix H](#)) on behalf of the group regarding two suggested improvements to the one-call excavation notice system.

Chairman Triplett recognized Ms. Danette Welsh, Manager, Governmental Affairs, ONEOK, who said she served as part of the group that made the recommendations to the committee on the one-call system. She said the gathering lines of ONEOK are in the system. She said those lines have been geographic information system located and uploaded into the Department of Mineral Resource's system and the one-call system.

Ms. Welsh said the North Dakota Common Ground Alliance will hold an excavation safety summit in Minot on Wednesday and Thursday, April 13-14, 2016, and invited committee members to attend.

Chairman Triplett said she recalls legislation requiring gathering lines installed after 2011 to be located. She asked if that requirement was extended to older lines. Ms. Welsh said it was not ONEOK's intent that all of its lines be located, regardless of the time of installation. Chairman Triplett said it may be useful to consider pushing back the date for which gathering line locations must be provided. Ms. Welsh said the Department of Mineral Resources is considering extensive revision of administrative rules that might address this issue.

Chairman Triplett turned the committee's attention to future meetings. She asked if there is committee support for preparation of a bill draft to implement recommendations 1-12, but excluding number 5, from the list of consensus to change of one-call issues. **It was moved by Representative Sukut, seconded by Senator Casper, and carried on a voice vote that those recommendations be prepared in bill draft form.**

Representative Koppelman said more discussion is needed to fully understand the use of "knowingly" or "willingly" as the culpability standard for reporting damage to infrastructure.

Chairman Triplett asked if any issues for which there was no recommendation for change should be considered. Representative Koppelman said the issue regarding ticket length should be considered. He said allowing a request to extend the 21-day period would perhaps lessen the burden on the utility and this option should be considered. Chairman Triplett asked that a bill draft be prepared for that purpose.

Representative Schreiber Beck said it would be useful to invite a representative of AgriData Incorporated to address the committee on the extent of information it has accumulated and the extent to which it may be useful in providing information that could be used in soil testing to identify locations of utility lines.

Chairman Triplett said the next meeting should be held in Fargo in April with a focus on the civilian ground center discussion. She said North Dakota State University's President, Dean Bresciani, requested an opportunity to address the committee on this study and many of the interested parties could be assembled in Fargo. She said Senator Casper offered to assist with arrangements for a meeting place. She said it appears the options for meeting dates would include Thursday, April 14, 2016; Thursday, April 21, 2016; and Tuesday, April 26, 2016; and possibly Tuesday, April 12, 2016. She asked if any member had conflicts.

Mr. Mark Dougherty, Membership Services Director, Association of General Contractors, said the One-call Summit has been scheduled for Wednesday and Thursday, April 13-14, 2016. Chairman Triplett said that date should be avoided.

Chairman Triplett said the following meeting should be held in May and on a date acceptable to the experts on propane and natural gas the committee would like to invite. Representative Boschee said he would appreciate avoiding the week of May 9, 2016, for that meeting. Chairman Triplett said it appears that meeting would probably have to be scheduled after the middle of May.

No further business appearing, Chairman Triplett adjourned the meeting at 2:50 p.m.

John Walstad
Legal Division Director

ATTACH:8