Testimony
Energy Development and Transmission Committee
Tuesday, March 20, 2012
Roughrider Room, State Capitol
North Dakota Department of Health

Chairman Wardner and members of the Committee, my name is Terry O'Clair and I serve as the Director of the Division of Air Quality for the North Dakota Department of Health (Department). The Department is responsible for the implementation and oversight of many of the environmental protection programs in the state, including directing programs under the Clean Air Act (CAA).

Today I would like to provide you with an update on three topics relating to the Clean Air Act that involves a number of disagreements the State has had with Environmental Protection Agency (EPA) and the status on those issues.

- **Best Available Control Technology (BACT)**

The federal Department of Justice in cooperation with the Environmental Protection Agency challenged North Dakota's BACT determination made pursuant to a consent decree involving the Minnkota Power Cooperative (Minnkota). Following many attempts, the State was unable to reach an agreement with EPA and pursuant with the conditions of the consent decree the case was forwarded to a Federal District Judge.

  - On December 21, 2011, the federal district court in Bismarck in the case *USA et al v. Minnkota Power Cooperative Inc, et al,* "denied the United States motions, finding that North Dakota's determination that selective non-catalytic reduction is the best available control technology for the Milton R. Young Station is not unreasonable, arbitrary or capricious." EPA did not appeal the court's decision.

It should be noted that such a decision was not only important in this case, but also bolstered the State's position on the second topic of my presentation, that being the State's Implementation Plan for Regional Haze.

- **Regional Haze State Implementation Plan (SIP)**

  - Each state in the nation was required to submit a State Implementation Plan that outlines how the state proposes to comply with the Federal Regional Haze Rules.

- North Dakota submitted the state's plan in March 2010, and in September 2010 EPA issued a proposal to disapprove a portion of the State's plan and replace it with a Federal Implementation Plan. EPA's proposed plan would have required SCR NOx controls on both Minnkota and Basin's Leland Olds plant as opposed to the State plan that called for those facilities to install SNCR to control NOx. The State disagreed with EPA's proposal and submitted comments arguing against EPA's position. The State included an extensive analysis that indicated the costly controls proposed by EPA had never been used on cyclone boilers burning North Dakota lignite and that our research with the vendors indicated the vendors would not guarantee that such a technology could effectively operate using North Dakota lignite. In addition, our analysis concluded there would be no improvement in visibility at North Dakota's Class I areas including Theodore Roosevelt National Park or the Lostwood Wilderness area. EPA continued to disagree with the State until the federal judge's decision in December 2011 that I referenced earlier.
- On March 2, 2012, EPA announced in their final decision that the State's Regional Haze Plan would be approved with respect to all SO2 controls the State had identified and also would be approved for SNCR NOx controls called for in the State plan for the Minnkota and Basin Leland Olds facilities. EPA disapproved the NOx control technologies the State had recommended for Basin's AVS station and the Great River Energy (GRE) Coal Creek station.
- Currently we are working with both Basin and GRE in reviewing the controls selected by EPA. The installation of low-NOx burners at AVS appears to be a technology that Basin is willing to consider. As for GRE, the State had been working with the company prior to EPA's decision seeking further information on whether the addition of SNCR technology at Coal Creek might impact the company's ability to market the fly ash they are currently selling. The State plans to share the additional information we are seeking from GRE with EPA once that information is submitted, which we expect to receive by early April.
- I should also note that EPA's final decision was based upon modeling techniques that the State continues to disagree with. The Department, with legal counsel, is reviewing EPA's final determination for Regional Haze to determine if further action by the Department is warranted.

The Department is currently working with the Attorney General's Office and Moye White, LLP, of Denver to review our response regarding the Regional Haze issue. The Department and its legal team are also continuing to work on a third area of litigation involving the Federal 1 hour Sulfur Dioxide Standard.

- **Sulfur Dioxide (SO_2) 1 hour Standard**

The EPA has proposed to implement a 1 hour SO_2 ambient air quality standard that, based upon language in the rule preamble, would require states to utilize predictive air

quality models to determine compliance. North Dakota, along with four other states, has challenged the rule in its current form claiming the modeling requirement is not allowed under the CAA; is a departure from historical procedures used to determine compliance with air quality standards; and was not appropriately vetted in a public forum. Based upon documented air quality performance, the state is concerned that model use, without consideration of appropriate air quality monitoring data, can result in the over-prediction of actual air quality conditions. The over-prediction of air quality impacts can result in the installation of unnecessary and expensive pollution control equipment. Since our last report, the State continues to dialogue with the other intervening states on this issue. The State is preparing for oral arguments in this case scheduled for May 3, 2012, in the DC Circuit Court of Appeals.

This concludes my testimony. I will try to answer any questions you may have.