

ENERGY

Officials lay out path forward for Clean Power Plan rule

By Mike Nowatzki
Forum News Service

BISMARCK — North Dakota will sue the federal government to block stricter pollution standards for coal-fired power plants as soon as they are published, Attorney General Wayne Stenehjem said Tuesday, publicly confirming the planned lawsuit for the first time.

Stenehjem was among several elected officials and industry leaders who lashed out at the EPA's new Clean Power Plan rule for coal-fired plants during the Great Plains and EmPower ND Energy Conference at Bismarck State College.

"We are very concerned with the drastic changes in the final rule that North Dakota was not given the opportunity to comment on," he told the crowd of about 200 energy industry leaders, regulators, state lawmakers and others, calling it "fundamentally unfair" and a violation of federal procedure.

The draft rule released in June 2014 under section 111(d) of the Clean Air Act called for cutting carbon dioxide emissions from existing power plants by 11 percent below 2012 levels by 2030. But the final rule released Aug. 3 mandates a 45 percent cut, which Gov. Jack Dalrymple called "really a shocker for us."

"We're trying to figure out how in the world we can possibly deal with this. It is a serious situation. We believe the rule was improperly developed," he said.

North Dakota officials warn the stricter standards will threaten power grid reliability, raise costs to consumers and eliminate some of the state's seven coal-fired plants and the jobs they support.

They also complain that the rule fails to give the state credit for renewable energy projects built before 2003, namely wind farms.

The state is taking a two-pronged approach to the rule, with Health Department officials working to develop a state implementation plan by a Sept. 6 deadline and Stenehjem preparing to ask a federal appeals court to grant a petition for review and a stay to block the rule from taking effect.

Courts have ruled that states can't challenge the rule until it's published in the Federal Register, even though states already must start developing plans to comply, Stenehjem said. He said he and fellow attorneys general have filed an open records request for communications between the EPA and Office of the Federal Register to see if there's been any effort to stall publication.

Because of its unique lignite coal industry, North Dakota will likely file a standalone lawsuit, Stenehjem said. The state will argue that the EPA overstepped its authority under the Clean Air Act and that the emissions limits are inconsistent with those passed by Congress.

Meanwhile, the Health Department will hold meetings in November in Williston, Beulah, Bismarck and Fargo to gather public input on developing the state implementation plan, which will go out for public comment next summer, said Dave Glatt, chief of the department's environmental health section.

"How do we move forward, acknowledging that we have to reduce CO2, but how can we do it in a common-sense way?" he said.

Members of the state's congressional delegation said that while they expect the rule to be stayed, they will continue to pursue efforts to deauthorize and defund it in Congress.

Tony Clark, a former North Dakota Public Service Commission member who now serves on the Federal Energy Regulatory Commission, said he hopes the courts step in to avoid a situation similar to the EPA's Mercury and Air Toxics Standards.



Photo by Jason Spiess

Federal Energy Regulatory Commissioner Tony Clark speaks Oct. 13 during the ninth annual Great Plains & EmPower ND Energy Conference in Bismarck.

Spiess/A1

so those types of technologies can take place so innovative companies in North Dakota, like Steffes Corp., can take advantage."

Increased technologies are aiding to smart grid integration and North Dakota is one of the leading states due to its hydraulic fracturing and regulatory responsibilities.

Clark said these movements in the energy world have changed the industry for the foreseeable future.

"The interesting thing now is you can't talk about electricity without talking about natural gas. And you can't talk about natural gas without talking about electricity," Clark said. "At this point, those markets are intertwined. In fact, for the first time in April of this year, natural gas produced more electric generation across the country than coal

did — first time in history over 35 percent now produced by gas."

With the emerging Unmanned Aerial Systems and its ever-growing software industry, North Dakota's future appears to be filled with integration and regulation of new technologies.

Clark said FERC isn't directly involved with some of those new technologies, but cross over does happen. For example, wind turbines can create radar issues with UAS and pipelines can encroach on Department of Defense projects.

Overall, Clark sees a nexus of industries.

"There is a real convergence between telecommunications and information technology and energy in a way there hasn't been before. It is very cutting-edge technology," Clark said. "In a lot of ways, we are responding to it at this point as opposed to driving it. Because the market rules have to accept it. ... But it's not FERC that's developing it, that's being done in the private sector."

Clark also shared his personal views on the Keystone XL pipeline project. Though FERC doesn't oversee the final approval, Clark believes the real loser is the rule of law.

"I would say this: to me, the real victim in the whole Keystone XL debacle is the rule of law," Clark said. "Certainly relations with Canada have been harmed, there are other victims in a sense that have fallen by the wayside in this, but I would say the greatest one is the sense that we have probably violated the rule of law in terms of this particular permitting process.

He continued saying this isn't a political or environmental issue at this point, it is an issue of time.

"Whether you are for Keystone or admittedly opposed to Keystone XL, it would seem like everyone could agree that the developer should be able to get an answer in less than seven years," Clark said. "It doesn't take that long to develop a particular record. At least make a decision."

Pit/A1

pipelines and facilities that were abandoned before Aug. 1, 1983, and in which the state has released the bond holding the company responsible. Cases where willful acts by the company degraded the land or water aren't eligible.

"This is a very good example of why this fund was created, because there are some lingering things out there that we need to make sure are taken care of," department spokeswoman Alison Ritter said.

Revenue from the state's 5 percent gross production tax on oil supports the fund, which also can be used to clean up illegally dumped oil-field waste.

Because Amerada Hess followed the required reclamation process in 1986 and the bond was released, the company has no legal responsibility to participate in the cleanup, Ritter said, adding the law's intent was to be able to quickly address legacy sites

where there is no continuing responsibility.

"The last thing we'd want to do is have this end up in court trying to get these companies to pay for those costs when this fund was set up to clean up these legacy issues where there isn't that responsibility anymore," she said.

The department has identified five additional legacy sites for reclamation, none of which pose an immediate threat to drinking water, VanderBusch said:

► A pit that apparently was used as a trash dump for oil production operations is eroding out of a butte and spreading debris across an area east of the South Unit of Theodore Roosevelt National Park and northwest of Fryburg.

► In Williams County, groundwater is flowing from a pair of shot holes — the result of underground detonations used in geologic surveying — that must be plugged.

► Contaminants from a buried reserve pit in north-eastern McKenzie County are rising to the surface and caus-

ing damage.

► What's believed to be an old flow line that would move oil, gas and water from an oil well to a central site for separation is leaking in northwestern Bottineau County, causing oil bubbles to show up in a field.

VanderBusch said he's not sure if the \$1.5 million will be enough to cover all six sites during the 2015-17 biennium.

"We'll just keep adding to the list and when we run out of money, we'll just have to stop until the next biennium," he said.

North Dakota phased out reserve pits in 2012, after spring flooding the year before caused some pits to overflow. Operators now must deposit dry rock cuttings in a drilling pit or special waste landfill and separate the muds and fluids right at the drilling rig so they can be stored in tanks or hauled away, Ritter said. A rule change in 1981 had made it standard practice to start lining reserve pits in the mid-1980s, she said.

She noted the state no lon-

ger allows oil development so close to waterways.

"It's clearly not a stable place to put a well," she said.

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