

**LETTER OPINION  
2009-L-02**

February 2, 2009

The Honorable Kevin Cramer  
President  
Public Service Commission  
State Capitol  
Bismarck, ND 58505-0480

Dear Commissioner Cramer:

Public Service Commissioner Susan E. Wefald,<sup>1</sup> requested my opinion whether a particular intrastate natural gas pipeline would be considered a transmission line or a gathering line under N.D.C.C. § 49-22-03(12)(b). Commissioner Wefald also asked a number of related questions regarding the standards, definitions, and criteria the Public Service Commission (“PSC”) should apply to various facilities. The answers to these questions, however, would involve a determination of factual issues which fall under the authority of the PSC. Further, the substance of Commissioner Wefald’s questions were previously addressed by a decision of the PSC. Therefore, I must respectfully decline to address the questions presented by Commissioner Wefald.

**ANALYSIS**

Increased oil production in western North Dakota has resulted in a shortage of pipeline infrastructure in the Parshall-Bakken Pool and the Bakken formation generally, resulting in wasteful flaring of natural gas.<sup>2</sup> On October 14, 2008, Pecan Pipeline (North Dakota), Inc., (“Pecan”) submitted a petition for a jurisdictional determination with the PSC asking whether Pecan was required to obtain a “siting permit” under the Energy Conversion and Transmission Facility Siting Act (“Siting Act”) before building a 75-mile pipeline (an

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<sup>1</sup> Commissioner Wefald has since retired from the Public Service Commission.

<sup>2</sup> Letter from Justin J. Kringstad, Director, North Dakota Pipeline Authority, to PSC (Dec. 12, 2008).

extension of Pecan's existing gathering lines) from a point near Palermo, North Dakota, to an interconnection with Alliance Pipeline, LP, near Towner, North Dakota.<sup>3</sup>

The Siting Act<sup>4</sup> states that a "utility may not begin construction of an energy conversion facility or transmission facility in the state . . . without first having obtained a certificate of site compatibility or a route permit" from the PSC.<sup>5</sup> For purposes of gas conversion and transmission, an "energy conversion facility" means "any plant, addition, or combination . . . designed for or capable of . . . [m]anufacture or refinement of one hundred million cubic feet . . . or more of gas per day, regardless of the end use of the gas."<sup>6</sup> Further, a "transmission facility" for gas or liquids means

A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide. This subdivision does not apply to an oil or gas pipeline gathering system. For purposes of this chapter, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport, or pipelines and associated facilities used to collect gas from the well to the gas processing facility.<sup>7</sup>

In case No. PU-08-831, the PSC considered Pecan's filing, conducted a hearing on the matter, and determined that it does not have jurisdiction over this pipeline under the Siting Act.<sup>8</sup> There is no authority for me to review and rescind a decision made by the PSC which is within its statutory authority.<sup>9</sup>

This office may identify the appropriate legal standard to be applied with respect to the issues that were presented by Pecan's petition. But this office may not issue an opinion on factual issues where another state agency, such as the PSC, is vested with the responsibility to resolve those issues.<sup>10</sup> I cannot resolve an issue that involves questions of fact assigned by law to another agency and must defer to that agency's authority to

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<sup>3</sup> Letter Request for Jurisdictional Determination under N.D.C.C. ch. 49-22. (PU-08-831) (Filed: 10/15/2008). Letter from Lawrence Bender, Fredrickson & Byron, P.A., on behalf of Pecan Pipeline, to Patrick Fahn, PSC (Oct. 14, 2008).

<sup>4</sup> N.D.C.C. ch. 49-22.

<sup>5</sup> N.D.C.C. § 49-22-07.

<sup>6</sup> N.D.C.C. § 49-22-03(5)(b).

<sup>7</sup> N.D.C.C. § 49-22-03(12)(b) (emphasis added).

<sup>8</sup> See Letter from Special Assistant Attorney General Annette Bendish to Lawrence Bender (Dec. 31, 2008).

<sup>9</sup> See generally N.D.A.G. 96-L-117.

<sup>10</sup> N.D.A.G. 99-F-02, N.D.A.G. 99-L-68.

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resolve the question.<sup>11</sup> Questions of this nature can best be answered by the PSC with assistance of its staff.<sup>12</sup>

Therefore, because the issue has already been decided by the PSC, and because the questions presented involve a determination of factual matters subject to the PSC's jurisdiction, I must respectfully decline to answer the questions presented by Commissioner Wefald.

Sincerely,

Wayne Stenehjem  
Attorney General

eee/vkk  
cc: Susan Wefald

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.<sup>13</sup>

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<sup>11</sup> N.D.A.G. 2002-L-17.

<sup>12</sup> N.D.A.G. 97-L-71.

<sup>13</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).