

OPINION
75-137

February 6, 1975 (OPINION)

The Honorable Wayne G. Sanstead
Lieutenant Governor
State of North Dakota
State Capitol
Bismarck, ND 58505

Dear Lieutenant Governor Sanstead:

Pursuant to the request of Senator J. Garvin Jacobson, this reply to your letter of January 29, 1975, concerning amendments to Senate Bill 2095, proposed by representatives of the Michigan-Wisconsin Pipeline Company (copy attached) is directed at the proposed amendments to Senate Bill 2095, substituted for the original Michigan-Wisconsin Pipeline Company proposed amendments and presently before the Senate Natural Resources Committee. The proposed substitute amendments before the committee are:

On page 3, line 32, after the period, insert the words:

"Notwithstanding the provisions of this subsection, however, the commission may upon application grant permits for terms not to exceed the maturity of initial financing incurred to finance projects utilizing this state's coal resources."

On page 4, line 32, delete the word "the" and insert in lieu thereof the words "not less than"

On page 8, line 13, insert the following after the period:

- d. In addition, in an application for a permit for a term not to exceed the maturity of initial financing incurred to finance projects utilizing this state's coal resources, the operator shall file the following:
- (1) Any agreement between the operator and any industry for a project requiring initial financing:
 - (2) An initial financial plan for a project which has been approved by the energy conversion and transmission line siting authority;
 - (3) A showing of need that a permit with a permit term equal to the maturity of initial financing is needed in order to secure the actual financing. Submission of a financial plan for an approved project pursuant to paragraph 2 of this subdivision shall not be presumed to be a showing of need within the meaning of this paragraph.

The proposed amendment on page 3, line 32, (permit term amendment)

would authorize the Public Service Commission (the Commission) to grant a surface mining permit for a term equal to the term of the "initial financing" of a project utilizing the coal resources affected by the permitted mining operation.

The proposed amendment on page 4, line 32 (extending mining plan amendment) provides that an "extended mining plan" may cover "not less than" ten years succeeding the date of a plan or plan amendments. The period of time covered by a plan exceeding ten years would be a discretionary determination to be made by the Commission.

The proposed amendment on page 8, line 13 (permit application amendment) would require, in an application for an extended permit term, that the operator make available to the Commission certain agreement documents, financial plans and statements of need to assist the Commission in its consideration of the application.

In conclusion it is considered that the combined effect of the proposed amendments discussed above would be to authorize the Commission to coordinate the "permit term" of a permit and the term of an "extended mining plan" to cover a period equal to the debt retirement term of initial financing without limitation for a project utilizing the coal resources of the state.

Sincerely yours,

ALLEN I. OLSON

Attorney General