MINUTES
of the
FOURTH MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

October 22, 2012
Room 321, State Capitol
Santa Fe

The fourth meeting of the Radioactive and Hazardous Materials Committee was called to order by Representative Antonio Lujan, chair, on Monday, October 22, 2012, in Room 321 at the State Capitol.

Present
Rep. Antonio Lujan, Chair
Sen. Richard C. Martinez, Vice Chair
Rep. Thomas A. Anderson
Rep. Cathrynn N. Brown
Sen. Carroll H. Leavell
Sen. John Pinto
Rep. Jim R. Trujillo
Rep. Shirley A. Tyler
Sen. David Ulibarri

Absent
Sen. Vernon D. Asbill
Rep. Brian F. Egolf, Jr.
Sen. Stephen H. Fischmann

Advisory Members
Rep. Eliseo Lee Alcon
Rep. Donald E. Bratton
Rep. Jim W. Hall
Sen. Lynda M. Lovejoy
Sen. Nancy Rodriguez
Sen. Bernadette M. Sanchez
Sen. Rod Adair
Sen. William F. Burt
Sen. Eric G. Griego
Sen. Gay G. Kernan
Sen. William H. Payne
Rep. Nick L. Salazar

Staff
Gordon Meeks, Legislative Council Service (LCS)
Renée Gregorio, LCS

Guests
The guest list is in the meeting file.

Handouts
Handouts and other written testimony are in the meeting file.

Monday, October 22

New Mexico Oil and Gas Industry Summary

Kent Cravens, New Mexico Oil and Gas Association (NMOGA), introduced Ocean Munds-Dry, an attorney with Concho Resources, to committee members. Mr. Cravens spoke of the major producing areas for oil and gas in the state, such as the Permian Basin in southeast New Mexico, which produces primarily oil, and the San Juan Basin in northwest New Mexico, which produces primarily natural gas. He said that he and Ms. Munds-Dry would be speaking about the undeveloped, or frontier, areas in New Mexico and that their main interest is to facilitate dialogue between the counties and the state as related to oil and gas development. He mentioned that Paul Gutierrez, executive director of the New Mexico Association of Counties, facilitated a meeting of several counties in the frontier areas, including Quay, Colfax, Santa Fe, San Miguel and Guadalupe counties. He added that Santa Fe County has created an ordinance but has made it cost-prohibitive to drill, which is the county's prerogative.

Mr. Cravens stated that there are approximately 30,000 jobs in the oil and gas industry and that Colfax, Guadalupe and Quay counties all want to create ordinances that will work well for their residents and facilitate responsible development. He added that between 35% to 40% of the state's general fund revenues are derived from oil and gas production and that New Mexico has the fifth-largest number of oil and natural gas fields in the country. He emphasized that if this resource's development is properly executed and implemented, the state could see a greater impact to the general fund as well as the Severance Tax Permanent Fund, which would in turn impact funding for capital projects and local government operations. Mr. Cravens spoke of the existing "patchwork" of county and municipal ordinances and said that often this creates conflict in development among the counties. The NMOGA seeks to open up a dialogue between the state and the counties to facilitate this process, as the NMOGA has a lot of members who would like to produce in the frontier areas of New Mexico and who also have assets in other states and have other choices. He specified that the NMOGA is after stable and predictable regulation across the board and that, for example, in Colfax County, there are no regulations for oil and gas, which is just as limiting as having too many regulations, because companies cannot know which direction the county will take. He spoke of the Oil Conservation Division (OCD) of the Energy, Minerals and Natural Resources Department (EMNRD) as one of the better regulatory arms that manages the state's resources and protects the environment through its regulatory process. Mr. Cravens emphasized that the NMOGA does not want to preempt the counties at all, but seeks a dialogue. He advocated for the means of production on oil fields, which are far below any ground water and for which casings are designed in metal and concrete below the water level. He described this production as a closed loop system and stated that there has never been an instance of water contamination from hydraulic fracturing. He said that the OCD's job is to perform regular inspections and establish requirements for maintenance. He concluded by saying that if an understanding between county commissioners and the legislature is needed, the NMOGA would be willing to facilitate that dialogue.

Ms. Munds-Dry stated that Texas has an interesting approach in its regulation of the liquefied petroleum gas industry, with language that does allow the state to "preempt and

supersede" local regulation of oil and gas operations. In Texas law, it is not that counties cannot pass regulations, but counties must come before the railroad commission to ensure that the scheme is comprehensive and cohesive. Ms. Munds-Dry added that the NMOGA liked this approach.

Committee member questions and ensuing discussion included:

- clarification that the railroad commission in Texas makes the final decision as to whether a county adopts its rules and that the Texas statute is not specific to the oil and gas industry, but the idea could be carried over to other states;
- Lea County is working with other states' commissions and with oil- and gas-producing counties to help them understand how Lea County's oil and gas production is helping the state;
- the industry does make an effort to educate people as to how many jobs this could create in specific counties, including television commercials and building colleges of energy in the state's educational institutions, such as at San Juan College and New Mexico Junior College, where there are about 3,500 students focusing on oil and gas and energy production issues;
- more jobs would definitely be created with development of the oil and gas industry and there are vast untouched reserves in the state;
- technologies to drill have improved vastly to ensure that safe production and horizontal wells are possible now, which produce more from this one footprint than is possible in 30 to 40 vertical wells;
- in terms of horizontal drilling and land ownership and rights, it is often not individuals who own mineral rights and there are many "split estates" in New Mexico with one surface owner and a different mineral owner;
- Concho Resources ensures that developers have purchased or leased the mineral rights, and this structure is in place in the Permian Basin and the San Juan Basin. As it extends into the frontier areas, the practice of protecting the surface owner and the mineral owner will continue;
- there are 11,000 wells in Rio Arriba County, as much of the San Juan Basin is in that county, and there was a task force that put together an ordinance that the oil and gas companies could work with that protected its residents;
- specifics on the breakdown of the economic impact on counties that already have oil and gas production would be helpful to the counties that do not in making their decision. This information will be provided by the NMOGA;
- the main concerns regarding oil and gas production are land disturbance, ground water contamination and disposal of waste products, and the state needs to be clear, comprehensive and understandable in its regulatory process before asking counties for decisions and the New Mexico Association of Counties is the natural group to interact with counties;
- the necessity of developing the state's resources in a comprehensive, cohesive manner with provisions that are not restrictive; and the importance of the legislature working with the New Mexico Association of Counties to develop a model for county ordinances that can be used across the board;

- oil and gas industry development leads to a booming economy, such as in Lea County, and many areas of the state do not have well-paying jobs and the state needs to educate the county commissions as to how to develop this industry responsibly;
- county ordinances apply to private lands only, not federal or state lands;
- in New Mexico, there is a sense of commitment to the science behind the regulations, and the pit rule is very complicated scientifically, with the goal to be helpful to a lot of companies and individual producers in a way that will not negatively affect safety or the environment; and
- it is crucial to be sensitive to the state's diverse population and to include the local people's opinions toward the environment by expanding public relations to local areas.

The committee unanimously approved the minutes from the third meeting of the Radioactive and Hazardous Materials Committee on September 5-6 in Hobbs on a motion by Senator Leavell, seconded by Representative Alcon.

Electric Transmission for Renewable Resources

Varney Brandt, manager of government affairs, and Steve Fogel, assistant general counsel, Xcel Energy, spoke to the committee on energy transmission construction and networks as well as proposed legislation. Mr. Brandt reviewed Xcel Energy's nationwide reach, which includes association with plants in Wisconsin and Minnesota that cover the northern states and in Colorado, New Mexico and Texas that cover the southwestern states, and includes 3.4 million electric customers and 1.9 million gas customers. He highlighted generation resources and capacity, and he noted the existence of wind generation, coal power plants and numerous gas generating facilities, such as the Hobbs, Maddox and Carlsbad plants in New Mexico. Mr. Brandt said that the service territory is 50,000 square miles with 100,000 customers in New Mexico that comprise 14 communities in the southeastern part of the state and the industrial load, including the URENCO site, the Waste Isolation Pilot Plant (WIPP) site and the cheese factory, which are all served by Xcel Energy.

Mr. Brandt said that there are transmission lines that extend across state boundaries that Xcel Energy does not necessarily serve and there are 6,600 miles of high-voltage lines in Texas, New Mexico, Oklahoma and Kansas that equal about $1 billion in gross value. He described the evolution of transmission nationwide: initially, each community had its own system; then, investor-owned facilities were developed; then power companies worked regionally after World War II; and now, there is the national grid. Xcel Energy's transmission lines and infrastructure were built to serve existing customers; many utilities do not have the infrastructure to handle more customers, he added. In referring to the handout, Mr. Brandt indicated that the red lines of the transmission network connect New Mexico with El Paso Electric and also go through Kansas, Oklahoma and Texas. He said that the Xcel network is open to any power company's use. He described the power grids across the U.S., which are divided into eastern, western and Texas grids, and are further divided into regional grids in these areas, such as the Southwest Power Pool (SPP) transmission grid. Mr. Brandt said that the SPP's authority is one of the reasons that new legislation is being proposed. He went on to explain that the SPP has an internal process in which it identifies projects for generation and transmission, shows how it integrates renewables and how

it can balance the generation and loads in an area. He added that the SPP has a long-range plan that covers 10 and 20 years and that the SPP board is asked to approve projects that Xcel Energy identifies and, once approved, a notice to construct is issued. He said that states have the authority to allow the incumbent utility to exercise a right of first refusal (ROFR) and build the lines and that this ROFR is important to the state to maintain its reliability to its customers and to keep costs down.

Mr. Brandt described the large projects planned, permitted, constructed or in service in the Southwestern Public Service Company's (SPS) system. He said that the benefits of the SPP include cost, additional power in the peak season, improved reliability and new markets for wind power. He added that Xcel Energy is interested in the ROFR because of the cost benefit. Mr. Brandt then reviewed the SPS's capital spending over time in terms of production, transmission and distribution.

Mr. Fogel then spoke about the ROFR proposal. He said that historically, a utility could build transmission lines in its operating area, but last year, the federal government issued an order that takes away the utility's right to build transmission lines in its area unless the state has established policy. The proposal asks that the State of New Mexico give the local utility the right to have the first opportunity to build transmission lines in its area, he explained. In elucidating benefits to the state for doing so, Mr. Fogel noted the following: the state's regulatory oversight structure is maintained; the quality of transmission service to New Mexico customers is maintained; and it is less expensive for New Mexico customers if a New Mexico utility builds the lines. He said that the bill proposal would add a new section to the Public Utility Act that makes state policy clear in terms of a local utility having the first right to construct, own and maintain transmission facilities.

Committee member questions and ensuing discussion included:

- if New Mexico does not pass the ROFR, the main impediments are that the state could not maintain such a transmission line; the Public Regulation Commission would have no authority over the operator of that line to encourage its maintenance and avoid outages; and the cost would likely be higher;
- the neighboring states of Texas and Oklahoma and other Xcel Energy service areas have passed legislation that gives ROFR to local utilities;
- the bill as proposed does not affect location permitting or eminent domain;
- renewable generators often build their own fields and distribute to one of Xcel Energy's substations; although the line does not necessarily become part of the SPP, it is still possible for these lines to be built to connect with Xcel Energy;
- withdrawal of the ROFR affects public utilities and cooperatives identically;
- the cost for building new lines is absorbed regionally, not by individual customers; and
- the SPP takes into account new renewable generation proposals and orders lines accordingly, which should ensure New Mexico's place as renewable energy technology develops.

Senator Leavell motioned endorsement of the ROFR bill as a committee bill, and Senator Lovejoy seconded the motion, which the committee then unanimously approved.

New Mexico Renewable Energy Transmission Authority Status Report

Jeremy Turner, executive director, and Angela Gonzales-Rodarte, assistant director, New Mexico Renewable Energy Transmission Authority (RETA), gave a status report on the RETA. Mr. Turner began by saying that the RETA has eight state-level authorities, was statutorily created in 2007 and is governed by a seven-member board. He described the RETA's three grids that are interconnected and said that the Tres Amigas project proposes to add additional grids, which the RETA supports. He added that the RETA wants to create an export market similar to the oil and gas industry. He described the Regional Transmission Organization's (RTO) structure, how electricity is moved across large interstate areas and how costs can be spread out across a wider base. He spoke of how the Federal Energy Regulatory Commission Rule 1000 was set up to address cost allocation and to spread costs across state lines, which does not currently exist. In New Mexico's grid, he added, a lot of lines currently exist, and the RETA has ideas about increasing their reliability.

In speaking about New Mexico's providers, Mr. Turner indicated that each is set up to provide reliable, cost-effective distribution of power to its customers. (See the handout for a listing of these providers.) He added that New Mexico still enjoys some of the lowest rates in the nation and that the work of utilities and cooperatives is to provide reliable service to customers without making a profit. Mr. Turner added that New Mexico has significant opportunities in wind and solar, with better resources than originally thought and with power now more economical to produce. He said that nothing competes with natural gas at present, but that this will change.

Mr. Turner spoke of many regional projects, including a central New Mexico collector system, a Centennial West line from New Mexico to California, the Lucky Corridor line in northern New Mexico, the southline, the Tres Amigas superstation and the Sun Zia line, although he said there are no agreements in place yet. (Details on each of these projects are provided at the end of the handout.)

The RETA commissioned Los Alamos National Laboratory to do a study to evaluate how to better utilize the state's existing infrastructure rather than build new infrastructure, Mr. Turner said. He added that this study should be expanded if the RETA can get additional funding. He said that the RETA is taking a high-level look at exporting power to other parts of the western U.S. as well as how to send power east. The RETA also has the goal of several grid improvements across the state, he indicated.

Ms. Gonzales-Rodarte spoke about the types of support that the RETA can provide that include a letter of support, such as it did for the Blue Mesa Energy project in Quay County, as well as the RETA's staff providing memorandums of understanding as it did for the Centennial West and Lucky Corridor projects. She delineated the kinds of financial assistance available through the RETA, which include the issuance of bonds, such as for the High Lonesome Mesa

Wind Farm project, which brought in $14 million for Torrance County schools. The RETA can also enter into lease agreements, such as with Goldman Sachs Global Infrastructure Partners, which she said was the first public-private partnership in which the RETA engaged. Mr. Turner added that the RETA is looking at five more years to get this project up and running due to funding difficulties.

The RETA has received $2 million from the legislature, Mr. Turner said, the last of it appropriated in 2009. He assured the committee that the RETA has been diligent in conserving its funds and that the RETA has received 29% of its total operation costs from private resources. He believes that the long-term success of the RETA will come from public-private partnerships. Mr. Turner reviewed the RETA's budget for fiscal years 2012 and 2013 and said that the RETA would be asking the legislature for more funding in the upcoming session. He assured the committee that RETA has already let one staff person go and that the organization is being very careful with its spending.

He then spoke of the future of the RETA and said that there is an opportunity to create a complementary industry and market to the oil and gas industry. He said that the RETA wants to continue to bring substantial economic investment opportunities to the state. He ended by saying that the RETA would be requesting $395,000 from the legislature and that the RETA's goal is to become self-sufficient within five years.

Committee member questions and ensuing discussion included:

- the status of the Tres Amigas project is that the RETA encouraged it to submit an application, and, after deliberations, Tres Amigas did not think that there was enough value from the RETA's standpoint to enter into an agreement, but the transmission lines fit well into this project. Although the RETA does not have a formal arrangement with Tres Amigas, it is extremely supportive of the project, which now has secured funding and is working on an industrial revenue bond;
- tribal lands in central New Mexico include the Pueblos of San Felipe, Santa Ana and Zia, and the RETA has been engaged in long discussions with each and resolutions have been passed authorizing the pueblos to enter into negotiations and contracts with the RETA;
- the more storage the RETA has, the more costs are reduced;
- the RETA is the administrator of its own debt, not the state, and if the RETA can no longer exist because of a lack of funding, then the debt would have to be taken over by another entity; and
- the RETA will supply the committee with information on how many wind generators there are in New Mexico.

First Responder Training

John Standefer, state fire marshal, introduced the following staff members to the committee: Vernon Muller, deputy state fire marshal; Dolores Baca, WIPP coordinator; Reyes Romero, deputy state fire marshal, Firefighter Training Academy Bureau; and Brad Brunson, instructional staff supervisor. As Mr. Standefer described available training, he began by saying

that the ongoing training in Socorro is largely WIPP-specific. He described the training programs for the Firefighter Training Academy as divided into three areas of competency building: hazardous materials awareness, operations and technical. He added that with WIPP and radioactive issues, other requirements exist that are more specific. The training is funded through the EMNRD and is offered at no charge to fire departments statewide. He said that awareness and operations courses are given continuously, with one offered every month; one-half are offered in Socorro, the other one-half on the road. In 2011, 35 awareness and operations courses were offered, he added. The technician course is much more specific and involves equipment that is costly, and there are a limited amount of fire departments that operate at this level, so not as much training is offered in this area. He stated that 40% of all courses are accomplished in the field and that many of the courses can be offered on request if there are enough students. He said that on the WIPP route itself, there is training available. In addition, there is also pass-through funding from the EMNRD and assistance from homeland security to assist in providing seed money and local agreements with cities and counties on the WIPP route.

Committee member questions and ensuing discussion included:

- the state fire marshal has a relationship with Permian Basin, but does not use its facility for training; rather, the state fire marshal can provide training, and then those trained can come into the state system for testing and certification;
- volunteers are included in the certification process, which has to meet national standards, and the training academy does outreach to communities, uses teachers within the department and reports that the percentage of success between career and volunteer firefighters is comparable;
- under current International Organization for Standardization (ISO) ratings, District 7 in Bernalillo County has a rating of ISO 4, which is one of the best;
- firefighting response has improved over the past several years due to increased fire suppression efforts as well as an understanding between the work of municipal and rural firefighters and wildland firefighters that has led to increased communication and cross-training of firefighters;
- clarification was requested as to how the Fire Protection Fund could be spent, and what would go to wildland protection or for municipal and rural firefighting;
- with federal assistance, the state's radio frequency system was improved to include more than one radio frequency; and
- the state fire marshal can be in a mediating position between volunteers and career firefighters in terms of rights as well as in terms of expenditures at the county level.

Adjournment

There being no further business, the committee adjourned at 2:05 p.m.

- 8 -