

Attorney General Wayne Stenehjem

Event: **Minnesota REA Energy Issues Summit: Constitutionality of the NextGen Act**

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“Irish coffee is my favorite food,” a friend of mine said, “because it contains all of the four essential food groups: sugar, fat, caffeine and alcohol.”

But I’m omitting from today’s presentation all of those elements. So that only leaves me my remaining favorites: Law, history, politics and North Dakota.

So, Lock the doors.

I was asked to come here today so you could “Learn more about North Dakota’s possible lawsuit challenging Minnesota’s ban on fossil fuel generation through Minnesota’s Next Generation Energy Initiative.”

I hope you won’t feel intimidated just because I’m wearing my “Go To Court” suit today.

Things are going amazingly well for us in North Dakota.

We didn’t wind up where we are by accident, and we didn’t wind up here without a lot of turmoil.

We in North Dakota are, basically, at our very roots, farmers.

Our state was founded by farmers, and up until lately 90% of our economy has derived from agriculture.

We are an independent lot. And we have ingrained in our history a sense of having been taken advantage of by others. Our neighbors in particular. We have been

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characterized over our history, like the Indians our pioneers displaced, as dependent and exploited.

And while clearly we are friendly to our neighbors to the East, we hold within the very fiber of our common history, a full set of historical grudges and grievances against the State of Minnesota.

[When I went over my draft of these remarks with my wife, she said, “They may not like you for saying all these things. You’d better make it clear you’re not talking about THEM.”] And so, I will tell you, you are the good guys. And as things progress, I hope our partners.

We two states have a great deal in common. Our ancestors arrived from many of the same places in Norway and the rest of Scandinavia, from Germany and elsewhere in Europe. Pioneer life in both of our places was a constant struggle, because of the weather and our remoteness. But any of the struggles Minnesota endured was multiplied many times in our state. Pioneers came here 150 years ago, lured by the promise of the Homestead Act, of free land and abundant resources. Many of the promoters were the kind of operators that today our Consumer Protection people would get restraining orders against. They mentioned all the good things the Great Plains had to offer, but glossed over the hardships.

And the hardships were many.

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[Elwyn B. Robinson wrote the definitive history of our state in his History of North Dakota¹]:

During the boom years of the late 1800's, thousands of immigrants arrived. Pioneers often resorted to primitive ways to adapt to frontier conditions. "The semiarid climate intensified the feeling of having been uprooted from familiar surrounding and transplanted in a strange land. All of the settlers except the German Russians came from humid regions and were awed by the vast, open, almost barren prairie. It increased their sense of isolation and loneliness. And long winters added to their hardships."²

They came for cheap land.

"Summer brought dust storms; spring and fall prairie fires. Wind-blown flames could outrun a galloping horse, and sometimes leaped over streams and firebreaks, sweeping over large areas of open country and destroying grain, haystacks, buildings, and stock. Farmers plowed firebreaks and fought the flames with wet sacks and blankets. 'At night the whole western horizon would be lighted up for miles,' Usher Burdick remembered, 'and we knew some poor homesteaders would be wiped out.'"³

And the grasshoppers that came by the millions blackening the horizon like summer thunderstorm clouds, and could lay bare an entire summer of toil in a few hours.

"Winter brought isolation, numbing cold, and blizzards..."

"Spring might bring bad floods. The winter of 1896-97 saw a very heavy snowfall.... and when the snow melted in the spring, a great flood spread along the Missouri, James, Sheyenne, and Red rivers. It swept away property, drowned many dear, inundated towns, covered 25 blocks of paving in Grand Forks, damaged bridges, and made a lake

¹ Elwyn B. Robinson, History of North Dakota, University of Nebraska Press, Lincoln. © 1966. LOC 66-10877

² Id. p. 156

³ Id. p. 168

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thirty miles wide and a hundred and fifty miles long in the Red River Valley. Families and livestock huddled on the tops of haystacks.”

“All suffered from such hardships, but the women endured more than the men. They suffered not only from the spectacular hazards of fire, storm, and flood but also from the whole round of life on the prairie frontier – from living in drab, homely sod houses or log cabins with dirt floors and leaky roofs, from an endless round of pressing tasks in feeding hungry men and caring for ill children when a doctor was beyond reach, from bearing babies with only the aid of a neighbor woman, from listening to the ceaseless wind and the ceaseless talk of crops, and perhaps above all from sheer loneliness. Many times, especially in the first years, the wife and children would be left alone for days and even weeks at a time while the husband was away. He might be working on a railroad construction crew or on a bonanza farm; he might be cutting ties for a railroad or cordwood for a steamboat; or he might be making a trip to town. There were always long trips to be made with slow-moving oxen – to a river for wood, to town for lumber and supplies, to market with grain. It must have seemed to many a woman that she was always waiting for her husband to come home.”⁴

Many of the homesteaders soon gave up and left.

So why did those who remain, stay?

One pioneer divided the early settlers into two categories: “Workers and stickers,” or “shirkers and quitters.”

“Both immigrants and native Americans brought much to the new country. In turn, it helped shape their character. Pioneering in North Dakota, with its hardships, dangers, and isolations, as well as its opportunities, placed a premium on certain traits: courage, optimism, energy and ambition, aggressiveness and compassion. ... “

“... North Dakotans still retain some of the pioneer virtues: courage, optimism, self-reliance, aggressiveness, loyalty, and an independent cast of mind and spirit.”⁵

Why I’m I telling you all this?

⁴ Id. pp. 168-9

⁵ Id. pp. 172-73

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Because it soon became clear that not all the hardships were caused by nature. Much of it was man-made. That's where Minnesota comes in.

In North Dakota, wheat was king.

Farmers worried "about the market for wheat."⁶

"They, of course, had to sell their wheat in outside markets, where they could control neither its grading nor its price. They well realized that their lower income, their position of economic disadvantage, sprang from that situation. They were dependent and exploited, just as the Indians before them had been dependent and exploited. Moreover, their concentration on wheat -- the one dominant and universal crop -- united North Dakota farmers and intensified their sense of grievance by giving them a common interest and a common foe.

The wheat farmer, hauling his crop to town, might sell it to a line elevator, to an independent elevator, to a cooperative elevator, or to a track buyer who had no storage space. The line elevator would be one of a line of rural elevators owned by a Minneapolis grain firm or flour mill. Most of the rural or local elevators in North Dakota belonged to Minneapolis grain firms. ... The line elevators and the independents received a daily price card from Minneapolis. To avoid competition, the elevators frequently entered agreements to stay with the card. To keep such agreements firm, the elevator companies held weekly meetings at Minneapolis. In 1905 it was estimated that some 1,400 elevators in the Northwest were in a pooling agreement.

The rural, or country, elevators ... shipped their wheat to Minneapolis or Duluth, the terminal markets. In Minneapolis some of the grain went directly to the mills, but the larger part was sold by commission merchants in the Minneapolis Chamber of Commerce or the Duluth Board of Trade. The operations of these terminal markets were regulated by the laws of Minnesota; they were beyond the reach of the North Dakota Legislature. This irritating fact was the chief stumbling block to the thousands of North Dakotans who believed that they were being robbed in the terminal markets.

⁶ Id. p. 272

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More than their fellows in other states, North Dakota farmers -- an independent, courageous lot -- cried out against the crooked practices which reduced their income. Because virtually all of them received the principal part of their income from the same crop and were the victims of the same set of exploiters, they were moved by the same emotions and spoke with one voice. Wheat united the state. Again and again the wheat farmers of North Dakota read the reports of investigations which confirmed their ugly suspicions. Investigations by the legislatures of North Dakota and Minnesota, by the North Dakota Bankers Association, by the Interstate Commerce Commission ... and by the Federal Trade Commission -- all told essentially the same story of unfair grading, short weights, and excessive dockage.

In the fall, when the farmers were selling, the inspectors graded rigidly; later, when the grain dealers were selling, the inspectors graded easily. So wheat went into the terminals at low grades, came out at high. The grain buyers knocked off an increasing amount for dockage. The injury was twofold, for such screenings had a cash value of eight dollars a ton, for which the grower received nothing. The suction draft used to remove dust at the terminal elevator also removed grain, so the farmers were cheated in weighing. In ten years the elevators at the head of Lake Superior shipped out 26,868,000 bushels more than they had received. The terminal elevators regularly mixed lower grades with higher; consequently they sold more No. 1 hard than they bought. In 1906, Senator Porter J. McCumber charged that such irregularities were costing wheat farmers from three to five million dollars annually.⁷

"REFORMS FOR THE GRAIN TRADE

Aroused by such reports, thousands of North Dakotans were figuring their losses and demanding reforms; the need for them was never an issue in the state. In their dissatisfaction with Minnesota grades, they repeatedly asked for federal inspection and grading, the basic demand. For a time, Superior, Wisconsin, sought the cooperation of North Dakota in an effort to take part of the grain trade away from Duluth, Minnesota. ... A conspiracy between the railroads (the Great Northern owned elevators in Superior) and the Duluth Board of Trade and then a federal court injunction defeated its purpose.⁸

...

⁷ Id. pp 272-74

⁸ Id. p. 274

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In 1905 and again in 1907 the North Dakota Legislature asked the Minnesota Legislature to reform the trade. It got only an acrid refusal.”⁹

Likewise, the banking interests in the state were largely controlled by the banking interests in Minneapolis, charging our residents unreasonable interest rates for their money.

So, the farmers of North Dakota – did I mention we were independent and stubborn – as well as aggrieved? – hit on an idea. A sweeping and drastic set of measures:

In 1912 the State of North Dakota amended its Constitution to provide that the state itself would establish and operate its own bank.

And its own grain mill and elevator.

The controversy swirled. Farmers, at last, were going to take matters into their own hands, by God.

The state and all its political subdivision would be required to deposit all their money in the state owned bank, who in turn would lend the money to the farmers of the state for operating expenses and buying more land. They would sell their wheat to the state-owned mill and elevator, which would offer rates higher than

⁹ Id. p. 346

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was offered by the private mills, all without the illegal and despised docking, misweighing and cheating.

The history of these two institutions have fascinating stories of their own, with turmoil and intrigue that time does not permit me to cover. Suffice it to say, they were radical and highly controversial ideas, even among our own citizens.

So certain Minnesotans stepped in. Locating 42 disgruntled North Dakotans from 42 counties, they filed suit alleging the state bank and the mill and elevator were unconstitutional. They were represented by lawyers who also represented the Northern Pacific, the Great Northern Railroad, and the Red River Power Co., and were all backed by large banking and business interests from Minneapolis. But the citizens of North Dakota had elected judges who were committed to these industries.

For the lawyers in the audience seeking CLE hours, I am compelled to quote from the opinion, *Green v. Frazier*:¹⁰

"As North Dakota has become more thickly settled, and the means of intercourse have increased, and the evils of the existing marketing system have been better understood, no single factor has contributed as much to that result as the scientific investigation of the state's Agricultural College, and the Federal experts connected with the institution. That work has been going on for a generation, and has been carried to the homes of the state by extension workers, the press, and the political discussion of repeated political campaigns.

¹⁰ *Green v. Frazier*, 176 N.W. 11 (N.D. 1920)

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"The people have thus come to believe that the evils of the existing system consists not merely in the grading of grain, its weighing, its dockage, the price paid, and the disparity between the price of different grades, They believe that the evil goes deeper; that the whole system of shipping the raw materials of North Dakota to these foreign terminals is wasteful and hostile to the best interests of the state. They say in substance:

"(1) The raw materials of the state ought to be manufactured into commercial products within the state. In no other way can its industrial life be sufficiently diversified to attain a healthy, economic development.

"(2) The present system prevents diversified farming. The only way that it can be built up is to grind the grain in the state...

--keep the by-products of bran and shorts here, and feed them to live stock upon the farms of the state. In no other way can a prosperous live-stock, dairy, and poultry industry be built up. ...

"It has been estimated that the loss to the farmers of this state, by loss in grains and the values fixed thereby, instead of by the milling value, coupled with the loss by dockage, and the failure to pay for the dockage, together with many other elements of loss in the marketing of wheat, outside of the state, including the loss of the fertility to the soil, by the failure to feed any of the by-products thereof to stock within the state, thereby enriching and revitalizing it, represents an annual loss of perhaps \$ 55,000,000 to the wheat raisers of this state.

[This is an enormous sum, considering that In 1929 the average annual income for an American family was \$750, but for farm families it was only \$273.]

"These vast losses sustained by the farmer are reaped as rewards by the great elevators and milling interests, commission firms, chambers of commerce, located in Minneapolis, St. Paul, and Duluth, or other cities outside the state. Into their hands they have passed, as profits, never to return to the farmers or business interests of the state of North Dakota. To prevent these losses, to retain in the state of North Dakota ... these lost profits, to pay the farmer the full value of the product of the soil produced by him, and by thus so doing to secure the prosperity of every business and of every inhabitant of the state..., the Constitution has been amended, laws enacted, and bonds, by the

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legislature, authorized and issued, for the purpose of affording the producers of grain within this state a market where they will receive the full value of their products.”

These measures were upheld by the state supreme court, and ultimately by the US Supreme Court... expensive procedures all bank-rolled by the “monied interests” from Minnesota.

None of us North Dakotans are far removed from that history. My grandparents all came here from Norway and Scotland to this reality. My father-in-law living in NW North Dakota, spoke Norwegian, and never a word of English until he entered grade school, without the benefit of “English as a Second Language” instruction.

As the years went on,

We suffered enormously during the depression and drought of the 1930’s, with year after year of failed crops and an exodus of farmers and others from our state. We prospered during the war years, and slowly things improved....

The rural electrification work you have been so involved in was critical to all of us, making the endless toil of farming so much less back breaking...

“The great change, however, was rural electrification. In 1935 only 2.3 percent of North Dakota’s farm had electricity from central power stations, the lowest percentage in the nation. Rural electric cooperatives received their first loan in 1936 and put their first line into operation in 1937 at Cando. Expansion came after the war. Rural Electrification

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Administration loans reached their peak in 1949, and by 1954 some 90 per cent of North Dakota's farms had electricity. By 1960, North Dakota cooperatives had ...built 53,000 miles of power lines, and brought electricity to an estimated 52,000 farms.

In 1954 the R.E.A. began to make loans for rural telephone systems in North Dakota. By 1960 ... 36,000 farms had telephones. With electricity, the whole aspect of farm life changed; television sets, home freezers, electric milk coolers, and many other appliances lightened the work load and began to wipe out the differences between rural and town living."¹¹

Today, the Bank of North Dakota (BND) thrives, supported by its own competitors who rely on it for check clearing, and partnering in business, farm, and student loans.

BND and the State Mill and Elevator are managed, just as they were from the beginning, by the Industrial Commission, comprised of the Governor, Attorney General and Agriculture Commissioner.

We now have footings at BND in excess of \$3 Billion, and annual profits in excess of \$60 Million, all of which goes into the state general fund. Likewise, the Mill and Elevator realized record profits of \$13 million last year.

Over the years, though, North Dakotans learned that it was critical to diversify its economy. The state needed to develop other crops, and other industries.

¹¹ Robinson, p. 447

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And so we did.

Today, Agriculture is responsible for nearly one-fourth of North Dakota jobs – a lot, but not 90% as was once the case.

The state has 30,000 family farms and ranches and over 39 million acres. Farms and ranches cover nearly 90 percent of North Dakota's land mass.

North Dakota is the nation's **#1** producer of barley, spring wheat, durum wheat, sunflowers, dry edible beans, canola, flaxseed, dry edible peas, honey, lentils, barley and oats.

But we've done much more. We learned that we have enormous energy reserves in our state.

Lignite, oil, natural gas, biomass, wind.

In the 1970/s we discovered we could utilize those resources, and further diversify our agricultural economy with energy production using our vast lignite deposits. We dispelled the worry of environmentalists that strip mining would ruin our environment, enacting and then enforcing some of the best environmental regulations in the country. We've learned we can utilize this resource and put the land back into a condition that is as good as—or better than—it was before.

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Even the early opponents of lignite have come to recognize our efforts as a success, for we have grown to love our land, our air, and our environment.

We produce vast quantities of energy. Most of your electricity here in Minnesota comes from power plants in North Dakota, all at a very reasonable rate. I hope I don't have to tell you that you need that energy.

So, I bring you greetings from your neighboring state of North Dakota.

The safest state in the union. The state with the lowest unemployment rate in the country, the lowest mortgage foreclosure rate, the strongest economy in the nation. The state with the fastest rising rate of personal income.

The state with an \$800 million budget surplus.

With all of our history that I've outlined, can you now see why we take great exception to the next salvo we are asked to endure?

The energy needs of our nation, and Minnesota are ever increasing.

You have a struggling economy. As you seek to rebuild it, you know as well as I do that you are going to need more and more energy.

North Dakota has it.

Nor are we unmindful of the scientific and political issues that affect how energy will be produced in our nation.

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But we are doing a great deal in North Dakota about that, while Minnesota, it seems, merely enacts unrealistic and questionably useful legislation that ties our hands and also ties your own hands.

Let me outline what we're doing in ND:

North Dakota is poised to be a model for America in the development of innovative, long-term energy resources to meet our nation's growing demand for energy in a clean, environmentally friendly way.¹²

North Dakota's energy resources are more diverse than any other state in the nation.

North Dakota:

- Is home to the largest deposit of lignite coal in the world.
- Is the fourth largest oil-producing state in the nation.
- [Has been dubbed the "Saudi Arabia of Wind" due to our wind energy potential.]
- Boasts the nation's only National Center for Hydrogen Technology and National Energy Center of Excellence.
- Has a university system with world-class energy research and training programs.
- Has a talented workforce with a strong work ethic.

We are investing greatly in research and development to generate new ideas and technologies for the future.

Meeting our nation's long-term energy needs requires all players in the energy industry to be engaged and successful.

Examples abound of these partnerships at work in North Dakota.

¹² EmPower ND Commission Report 2010 (draft, July 2010)

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Blue Flint Ethanol joined forces with Great River Energy to use waste energy from a coal-fired power plant to produce ethanol.

North Dakota's broad-based energy policies have helped trigger more than \$12 billion in new energy-related investments since 2005.

- Last month oil production hit an all-time record high of over 300,000 barrels per day.
- At the same time there were about 5,000 producing wells, another all-time record.
- As of May 2010 North Dakota had five ethanol plants with a rated capacity of 350 million gallons of ethanol per year.
- Wind production capacity is greater than 1,200 megawatts, with another 6,000 megawatts on the way.
- Three major projects are under construction or being planned as a result of the state's Lignite Vision 21 program. Construction is underway on a combined-use energy plant in Spiritwood and planning is occurring for a coal-to-hydrogen plant near South Heart and a coal liquefaction facility in McLean County.

You like natural gas? Thirteen natural gas processing plants are operating in western North Dakota.

- From 2006 to 2010, natural gas processing companies have more than doubled their ability to turn North Dakota's valuable natural gas resources into a safe and clean energy source for America.
- More than 150 blender pumps have been or are being installed statewide.

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EMPOWER ND GOALS

Our EmPower ND Commission¹³ outlines 51 policy statements that reflect positions the state needs to take to achieve 20 energy goals.

Overall Goals

1. Double North Dakota's energy production from all sources by the year 2025 to drive economic growth and help the nation achieve greater energy independence.
2. Support the nation's initiative to derive at least 25 percent of all energy produced in America from renewable sources by 2025.

Transmission

5. Increase North Dakota's energy export capacity to 7,500 megawatts in coordination with other states to facilitate permitting, construction and upgrading transmission systems by in the next 10 years.

Lignite and Coal Conversion Facilities

6. Support the retrofit of existing electric generation units in an economically feasible manner to meet new environmental standards.
7. Build new clean-coal electric generation plants in North Dakota.
8. Build new lignite gasification and liquefaction facilities to produce synthetic natural gas, lignite-to-liquid fuels, hydrogen, and other byproducts.

Ethanol

9. Produce 450 million gallons of ethanol by 2015.

¹³ North Dakota Department of Commerce, www.commerce.nd.gov

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Biomass

11. Develop commercial biomass production and use in North Dakota and become a national leader in the development of economically viable, production-scale cellulosic ethanol.

Natural Gas Processing

15. We are working feverishly to expand oil and gas gathering, processing, and export capacity infrastructure to minimize flaring.

Solar, Geothermal, Hydrogen and Hydropower

17. Support commercial-scale research and development programs for solar, geothermal, hydrogen, hydropower, pumped storage and other alternative energy resources.

To do all of this, we need state and federal policies that ensure the state business climate is predictable and stable.

- Enact and preserve state laws and regulations that facilitate investment and avoid uncertainty.

Let me be more specific on just a few of our projects:

1) Great Plains Synfuels Plant – Operational since 1988 it is the largest coal-to-synfuels plant in the world and the **only** commercial-scale coal gasification plant in the US that manufactures natural gas. It sells about 50% of its CO₂ emissions to the largest carbon capture and storage project in the world --- the Weyburn oil fields located in Saskatchewan. About 3 million tons of CO₂ from the Synfuels plant are sequestered annually.

Using Lurgi gasifiers, the Synfuels plant gasifies lignite coal to produce numerous products, including natural gas (about 153 million cubic feet), ammonium sulfate and

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anhydrous ammonia (ag fertilizer), and krypton and xenon gases (high intensity lighting and lasers and thermopane window insulation)

2) Antelope Valley Station CO₂ Capture Demonstration Project

The State of North Dakota, through its partnership with the ND lignite industry, is helping to fund the Basin Electric Power Cooperative (BEPC) large-scale CO₂ capture and storage demonstration project at the Antelope Valley Station. The company is conducting a FEED study to evaluate the feasibility of adding CO₂ capture equipment to the Antelope Valley Station. The cost of the study is estimated at \$6.24 million, of which \$2.7 million is being funded by the NDIC. This project is one of a handful of potential CO₂ capture demonstration projects in the United States.

3) Carbon Sequestration – PCOR Phase II

The Energy and Environmental Research Center located at the University of North Dakota received an award of \$67 million from the DOE for at least two large-scale CO₂ capture and storage demonstration projects. One project could potentially be located in North Dakota and the other in British Columbia. The project in North Dakota would involve capturing CO₂ from an existing coal-fired power plant and injecting approximately 1 million tons of CO₂ into suitable geologic formations – that we are fortunate enough to have as well -- in western North Dakota for enhanced oil recovery and long-term storage. And we've led the nation in enacting legislation and rules to make that happen. The objective of the projects is to demonstrate the technical and economic feasibility of long term storage of CO₂ in geologic formations. The NDIC committed \$2.4 million toward the North Dakota project. Also, the Lignite Energy Council members (Allegheny, Basin Electric, BNI Coal, Great Northern Power Development, Great River Energy, Minnkota Power, MDU, North American Coal, Otter Tail and Westmoreland) collectively committed \$2.4 million toward the North Dakota project.

4) Dryfining Process – Great River Energy

Coal burns ... water does not. Softer coals, such as lignite, naturally have higher water content than other types of coal.

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Using the waste heat generated by the Great River's Coal Creek Station, the DryFining process is able to reduce the moisture of lignite from 37% down to 28%. With the \$31.5 million project complete, Great River expects to see increased BTU value of the lignite coal it burns (from 6,200 to 7,100 BTU/lb.) and a 14% reduction the amount of coal it needs to burn. Dryfining also increases the overall plant efficiency by 2 to 4%. As important, the process reduces stack emissions:

- Sulfur dioxide by more than 40 percent
- Mercury by more than 40 percent
- Nitrogen oxide by more than 20 percent
- Carbon dioxide by 4 percent.

5) Emission Control Investment

While CO₂ is the main topic of discussion in the national arena, ND power plants have made significant investments in emission control equipment to address the reduction of sulfur dioxide, nitrogen oxides and particulate matter. ND power plants have invested or plan to invest \$2.8 billion in pollution control equipment. A good example of the impact of this investment is at the Basin Electric Leland Olds Station. This plant station has two units that were constructed in the 60's and 70's before the Clean Air Act required environmental control equipment for SO₂ and NO_x ... through an investment of \$410 million more than 95% of the SO₂ will be removed by 2013. By 2012, 98% of the ND power plants will be equipped to scrub SO₂.

6) The Partnership for CO₂ Capture

The State of North Dakota is also involved in a second project with the EERC ... "The Partnership for CO₂ Capture." The overall goal of this project is to develop and demonstrate a range of CO₂ capture technologies and reductions in sulfur dioxide, nitrogen oxides, particulate, mercury, and other gas constituents.

7) EPRI CO₂ Capture Retrofit Study

One North Dakota power plants operated by Great River Energy has been designated as one of only five host sites for a study being conducted by the Electric Power Research

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Institute (EPRI). This international study will evaluate the impacts of retrofitting advanced CO₂ capture technology to existing coal-fired power plants.

10) CO₂ Capture Retrofit Technology Study

The State of North Dakota and its industry partners are co-funding a study to identify the most promising CO₂ capture systems for existing North Dakota lignite-fired electric generating stations. The study will examine technologies in light of current fleet configuration, the unique characteristics of lignite, and the potential of the systems to be field tested at certain units within five years. The study will cost \$462,000.

This is just a sampling. We're doing more. Much more.

And what are you doing in Minnesota? Well, you did pass a law.

By the way, one of the other things we've done in our state is that we have crafted a hunting, fishing and sportsmen's paradise that proved so successful that a previous AG, armed only with the Commerce Clause of the US Constitution, decided to sue us for having the temerity to expect that the thousands of Minnesotans who come to our state to enjoy these pursuits pay just a little extra for licenses to enjoy the sporting paradise we offer. He lost.

In doing so, however, we became experts in the Commerce Clause of the US Constitution, so thank you for that tutorial.

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We are well poised in North Dakota to – fairly and reasonably – help meet the energy needs of our nation. But we can only do so on a level playing field. Our energy equation cannot consist of a patchwork of individual state restrictions.

We cannot do so if each state decides to enact protective legislation that benefits its own state at the expense of its neighbors.

One of the chief reasons we have the Constitution we now have is because our founding fathers learned that the system existing, that allowed each state to enact protective and restrictive laws that benefit only itself, was a stumbling block to a unified and strong nation. The Commerce Clause was therefore adopted as one of the chief components of the Constitution. It prohibits one state from enacting laws or adopting policies that restrict the interstate transit of goods and services, and energy is one of those services.

James Madison quotes about Commerce:

“It is very certain that [the commerce clause] grew out of the abuse of the power by the importing States in taxing the non-importing, and was intended as a negative and preventive provision against injustice among the States themselves.”

Yet this restriction is exactly what Minnesota is doing.

As a state, North Dakota has expressed our objection to this time and time again. I have visited with your governor and key legislators. Our governor and I have

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invited legislators to come to North Dakota to actually learn about all we're doing, and waited a year for a response to our invitation.

We insist that Minnesota cannot use its authority to regulate the way we do things in North Dakota as you purport to do with your *NextGen Act*.

Nor do we feel we should have to come here to Minnesota, hat in hand, to seek permission from your regulators in order to provide the electricity you need.

I know there were efforts to repeal all or parts of the Minnesota Next Gen Act during the last session of your legislature and that it came close to passing, failing on a tie vote in the House. I know as well, that many of you and your member cooperatives were fully engaged in working for the repeal.

As Minnesota ties its own hands, what will happen?

Well, your energy costs will certainly rise.

Minnesota has placed itself in a challenging position. Already your baseload energy needs cannot be met exclusively by in-state production. More than 800,000 Minnesota customers are powered by increasingly clean and affordable ND lignite. Energy demand here is certain to rise in the next decade, but you've cut off access to its most readily available sources of baseload power through your moratoriums on new coal and nuclear power.

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There is no renewable source that can affordably meet that demand. I'm sure those of you responsible for supplying energy know all that.

But, I'm not here to protect Minnesota from itself. I'm here to protect the interests of North Dakota.

So, that leaves us with one question:

What is North Dakota to do?

We are doing so much more than you to address the concerns about CO2 emissions. We are investing heavily in doing so. We have made all the commitment and investments I've outlined.

But do you think, given all our history and the resolve of our people and the expression of their elected representatives, we are going simply sit back and take it?

In 2007, the Legislature of the State of North Dakota unanimously appropriated to my office, "to pay for fees associated with lignite litigation that may be brought by the state to protect and promote the continued development of lignite resources" the sum of \$500,000. And I can assure you, there's plenty more where that came from.

Please understand – I didn't accept your kind invitation just to come here to pick a fight. I know our two states are friends and neighbors, with a long history of

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cooperation. We are two great states that are part of a great nation. We interact and cooperate on many more things than these that divide us.

But we think we are following the wiser course in ND. The more prudent approach. Really, it's an impressive approach. It's the right approach.

So I urge you, you who are so well aware of the need for importation of energy, to continue to get involved in changing this legislation. This is an election year. I hope you will engage your candidates in answering questions about where they stand on repealing this legislation.

We have thoroughly researched the legal issues, and we feel we have a strong legal case, but still, we prefer to resolve these things amicably.

But sometimes we look across the border and we just wonder ...