

November 20, 2014

The Public Service Commission convened in the Commission Hearing Room, State Capitol, Bismarck, North Dakota, on November 20, 2014, 10:00 a.m. Present were Commissioners Kalk, Christmann, and Fedorchak.

Minutes

Mr. Kalk: I move the minutes of November 6, 7, 2014 be approved.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. WM-13-162  
Environmental Materials Inc.  
Variance Permit  
Application

Mr. Kalk: I move the Commission issue an extension of the temporary variance permit, Environmental Materials Inc., Variance Permit, Application, Case No. WM-13-162.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. AU-14-816  
Stanton S. Howe  
Auctioneer  
License Application

Mr. Kalk: I move the Commission approve the auctioneer license application for Stanton S. Howe, Helena, Montana.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. AU-14-817  
Darren Getz  
Auctioneer License  
Cancellation

Mr. Kalk: I move the Commission issue an order in Case No. AU-14-817 cancelling auctioneer license number 1009 issued to Darren Getz, Delray Beach, Florida.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. AU-14-818  
Allen J. Henslin  
Auctioneer License  
Cancellation

Mr. Kalk: I move the Commission issue an order in Case No. AU-14-818 cancelling auctioneer license number 945 issued to Allen J. Henslin, Bird Island, Minnesota.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. AU-14-819  
LaDon Henslin  
Auctioneer License  
Cancellation

Mr. Kalk: I move the Commission issue an order in Case No. AU-14-819 cancelling auctioneer license number 946 issued to LaDon Henslin, Bird Island, Minnesota.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. AU-14-820  
Henslin Auctions, Inc.  
Auction Clerk License  
Cancellation

Mr. Kalk: I move the Commission issue an order in Case No. AU-14-820 cancelling auction clerk license number 643 issued to Henslin Auctions, Inc., Bird Island, Minnesota.

Mr. Christmann: I second the motion.  
Roll Call: All voting "Aye."

Case No. AU-14-821  
Tony Langdon  
Auctioneer License  
Revocation

Mr. Kalk: I move the Commission issue an order in Case No. AU-14-821 revoking auctioneer license number 943 issued to Tony Langdon of Aubrey, Texas effective November 11, 2014 for failing to maintain an adequate bond filing.

Mr. Christmann: I second the motion.  
Roll Call: All voting "Aye."

Case No. PU-14-626  
Northern States Power Company  
Natural Gas Interruptible Service  
Tariff

Mr. Kalk: I move the Commission approve Northern States Power Company's petition for modifications to its gas interruptible service tariffs, Case No. PU-14-626.

Mr. Christmann: I second the motion.  
Roll Call: All voting "Aye."

Case No. PU-14-699  
Montana-Dakota Utilities Co.,  
a Division of MDU  
Verizon - Williams County  
Public Convenience & Necessity

Mr. Kalk: I move the Commission adopt the Order and issue a Certificate of Public Convenience and Necessity in Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., Verizon – Williams County, Public Convenience & Necessity, Case No. PU-14-699.

Mr. Christmann: I second the motion.  
Roll Call: All voting "Aye."

Case No. PU-14-700  
Montana-Dakota Utilities Co.,  
a Division of MDU  
Chris Rystedt - Burke County  
Public Convenience & Necessity

Mr. Kalk: I move the Commission adopt the Order and issue a Certificate of Public Convenience and Necessity in Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., Chris Rystedt – Burke County, Public Convenience & Necessity, Case No. PU-14-700.

Mr. Christmann: I second the motion.  
Roll Call: All voting "Aye."

Case No. PU-14-765  
Otter Tail Power Company  
Canadian Pacific Railway Company  
Public Convenience & Necessity

Mr. Kalk: I move the Commission issue a Notice of Opportunity for Hearing in Otter Tail Power Company, Canadian Pacific Railway – Richland County, Public Convenience & Necessity, Case No. PU-14-765.

Mr. Christmann: I second the motion.  
Roll Call: All voting "Aye."

Case No. GS-13-712  
Tom's Backhoe Service, Inc.  
Damage Prevention Enforcement

Mr. Kalk: I move the Commission adopt the Findings of Fact, Conclusions of Law and Order in Public Service Commission, Tom's Backhoe Service, Inc., Damage Prevention Complaint, Case No. GS-13-712.

Ms. Fedorchak: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-14-703  
T & A Turf and Irrigation LLC  
Damage Prevention Enforcement

Mr. Kalk: I move the Commission adopt the Consent Order in the Public Service Commission's damage prevention enforcement action concerning T & A Turf and Irrigation LLC, Case No. PU-14-703.

Mr. Christmann: I second the motion.

Roll Call: Mr. Kalk "Aye."

Mr. Christmann "Nay"

Ms. Fedorchak "Aye"

Dissenting Opinion

Dissenting Opinion  
Commissioner Randy Christmann

November 20, 2014

I respectfully dissent from the approval of the T & A Turf and Irrigation LLC Consent Order. T & A Turf and Irrigation LLC is a Nebraska corporation with offices located at 104 N 2nd St., Elmwood, NE 68349-6010.

I have no disagreement with any of the five conclusions listed in the Investigation Summary of the Consent Order. Among these conclusions are that T & A Turf and Irrigation LLC violated the North Dakota Century Code by failing to provide an excavation notice as required, that damage was done to a 500mcm three phase feeder line, that the amount of the damage was approximately \$3064.71, and that the operator has been reimbursed for the damages.

While I fully agree that a fine is appropriate in this case, I do not support the imposition of a \$12,000 fine.

Public Service Commission staff have done excellent work in processing damage prevention cases and evolving the associated penalties to encourage safety and still avoid being unnecessarily punitive. They emphasize the extra danger associated with gas line cuts with higher fines than similar cuts of electric or telecommunications lines. They emphasize the extra impact on citizens that cuts to infrastructure serving large amounts of consumers can have. They also

Dissenting Opinion Continued

emphasize the extra impact that can occur when businesses lose service, especially clinics, assisted living facilities, nursing homes, and hospitals.

While these points of emphasis have merit, in this case we have escalated the penalty too high. Nothing on the record demonstrates that T & A Turf and Irrigation LLC has a record of previous violations, there were no injuries or loss of life, and there was no indication of extraordinary monetary losses by consumers who lost power. That being the case, this violation should not rise to nearly the midpoint of the range of penalties the last Legislature allowed this Commission to impose.

Randy Christmann, Commissioner

Case No. RC-14-97  
Coteau Properties Company  
Bond Release 3 for Permit No.  
NACT-8503  
Approval

Mr. Christmann: I move the Commission approve Bond Release No. 3 for Surface Coal Mining Permit No. NACT-8503, held by The Coteau Properties Company for the Freedom Mine, to release all reclamation liabilities on 11.182 acres of industrial land located in the SE $\frac{1}{4}$  of Section 24, T145N, R88W, Mercer County. No monetary bond reduction was requested and the release will become effective December 22, 2014, unless a formal hearing is requested.

Mr. Kalk: I second the motion.

Roll Call: All voting "Aye."

Case No. GE-14-733  
Southam Elevator Co.  
License No. 247 - Southam, ND  
Suspension

Mr. Christmann: I move the Commission adopt an order in Case No. GE-14-733 cancelling warehouse license number 247 issued to Southam Elevator Co. at Southam, North Dakota and ordering that business at Southam is discontinued effective October 30, 2014.

Mr. Kalk: I second the motion.

Roll Call: All voting "Aye."

Case No. GE-14-815  
Farmers Union Oil Company of Velva  
License No. 1233 - Drake, ND  
Discontinue Business

Mr. Christmann: I move the Commission adopt an order in Case No. GE-14-815 cancelling warehouse license number 1233 issued to Farmers Union Oil Company of Velva at Drake, North Dakota and ordering that business at Drake is discontinued effective immediately.

Mr. Kalk: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-14-223  
Meadowlark Midstream Company, LLC  
8-Inch Crude Oil Pipeline-  
Williams & Divide Counties  
Siting Application

WITHDRAWN

Case No. PU-13-136  
Hiland Crude, LLC  
Crude Oil Pipeline, McKenzie,  
Williams, Mountrail Counties  
Siting Application

Ms. Fedorchak: I move the Commission grant the October 29, 2014, Petition for Reconsideration of Findings of Fact, Conclusions of Law and Order and further move the Commission adopt the Amended Findings of Fact, Conclusions of Law and Order issuing First Amended Certificate of Corridor Compatibility No. 157 and First Amended Route Permit No. 169 in Hiland Crude, LLC, Crude Oil Pipeline, McKenzie, Williams, Mountrail, Siting Application, Case No. PU-13-136.

Mr. Kalk: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-14-109  
Montana-Dakota Utilities Co.,  
a Division of MDU Re  
Generation Resource Cost Recovery  
Rates

Ms. Fedorchak: I move the Commission suspend the tariff filing and issue a Notice of Opportunity for hearing in Montana-Dakota Utilities Co.'s Electric Generation Rider Rates, Case No. PU-14-109.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-14-813  
Basin Electric Power Cooperative  
North Killdeer Loop Phase I 345 kV  
Transmission  
Siting Application

Mr. Kalk: I move that the Commission retain Mitchell D. Armstrong and Brian Schmidt to assist the Commission in processing Basin Electric Power Cooperative, North Killdeer Loop Phase 1 345 kV Transmission, Siting Application.

Ms. Fedorchak: I second the motion.

Roll Call: All voting "Aye."

Case No. GE-13-193  
Earth Harvest Mills, Inc.  
dba Dakota Prairie Organ  
Grain Warehouse  
Insolvency

Mr. Kalk: I move the Commission retain Jack R. Fleming, effective November 17, 2014, to provide legal services to assist the Commission in processing Earth Harvest Mills, Inc., Grain Warehouse Insolvency, Case No. GE-13-193.

Ms. Fedorchak: I second the motion.

Roll Call: All voting "Aye."

ATTEST

THE COMMISSION ADJOURNED AT 11:44 A.M.

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Executive Secretary

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BRIAN P. KALK, CHAIRMAN