

December 18, 2003

The Public Service Commission convened in the Commission Hearing Room, State Capitol, Bismarck, North Dakota, on December 18, 2003, 10:00 a.m. Present were Commissioners Clark, Wefald, and Cramer.

Minutes

Mr. Cramer: I move the minutes of December 3, 2003, be approved.

Mrs. Wefald: I second the motion.

Roll Call: All voting "Aye."

Bills

Mr. Cramer: I move the following bills, as reviewed by the Commission, be approved and paid:

Kern & Associates, Inc.	436.73
Bruce A. Johnson	210.00
Steven Kahl	422.96
William W. Binek	266.26
Susan Richter	512.55
Hanson's Excavating, Inc.	13,548.75
Weishaar Appraisal Services	21,700.00
Basaraba's Excavating & Dirt Works	6,787.14
ND Newspaper Association	1,256.61
ITD	1,846.13
Central Services – printing	236.71
Insurance Dept	65.76
Facilities Management – 10/03 postage	1,503.03
ITD – 10/03 phone charges	1,518.38
Facilities Management – 11/03 postage	1,110.84
Office of Administrative Hearing	1,673.27
ITD – 11/03 phone charges	1,466.43
Elan	3,174.41
Central Duplicating	172.58
Motor Pool	11,236.08
Human Resource Management Services	5.00
Central Services – supplies	169.72
ITD – November	1,853.56

Mrs. Wefald: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-439-03-295  
Local Competition  
Investigation

Mr. Cramer: I move that Greg Merz, a Minnesota attorney, be given permission to practice before the Commission on behalf of MCI in Case No. PU-439-03-295.

Mrs. Wefald: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-2968-03-670  
Cornerstone Companies, LLC  
Long Distance Reseller  
Application

Mr. Cramer: I move the Commission issue a Certificate of Registration to Cornerstone Companies, LLC to resell interexchange telecommunications services in North Dakota, Case No. PU-2968-03-670.

Mrs. Wefald: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-2970-03-676  
Touchtone Communications Inc.  
Long Distance Reseller  
Application

Mr. Cramer: I move the Commission issue a Certificate of Registration to Touchtone Communications Inc. to resell interexchange telecommunications services in North Dakota, Case No. PU-2970-03-676.

Mrs. Wefald: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-2972-03-690  
MG LLC  
Long Distance/Cellular Reseller  
Application

Mr. Cramer: I move the Commission issue Certificates of Registration to MG LLC to resell interexchange and cellular telecommunications services in North Dakota, Case No. PU-2972-03-690.

Mrs. Wefald: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-400-03-36  
Northern States Power Company  
Transfer of Functional Control to  
TRANSLink  
Application  
Withdrawal

Mr. Cramer: I move the Commission approve Northern States Power Company's withdrawal of its application to transfer functional control of electric transmission facilities and ownership of energy management software to TRANSLink Transmission Company, LLC, Case No. PU-400-03-36.

Mrs. Wefald: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-2805-03-638  
Otter Tail Corporation  
Performance Development, Cleveland, ND  
Public Convenience & Necessity

Mr. Cramer: I move the Commission adopt the Order issuing a Certificate of Public Convenience and Necessity authorizing Otter Tail Corporation to extend electric service to Performance Development for a cell tower site near Cleveland, North Dakota, Case No. PU-2805-03-638.

Mrs. Wefald: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-399-03-639  
Montana-Dakota Utilities Co., a  
Division of MDU Resources Group, Inc  
Jim Winters, Mandan, ND  
Public Convenience & Necessity

Mr. Cramer: I move the Commission adopt the Order issuing a Certificate of Public Convenience and Necessity authorizing Montana-Dakota Utilities Co. to extend electric service to Jim Winters for a residential site near Mandan, North Dakota, Case No. PU-399-03-639.

Mrs. Wefald: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-2805-03-644  
Otter Tail Corporation  
Gaye Swanson, Wheatland, ND  
Public Convenience & Necessity

Mr. Cramer: I move the Commission adopt the Order issuing a Certificate of Public Convenience and Necessity authorizing Otter Tail Corporation to extend electric service to Gaye Swanson for a residential site near Wheatland, North Dakota, Case No. PU-2805-03-644.

Mrs. Wefald: I second the motion.

Roll Call: All voting "Aye."

Case No. RC-2472-03-524  
Dakota Westmoreland Corporation  
Notice of Violation No. 0303  
Violation

Mr. Cramer: I move the Commission adopt a final order in Case No. RC-2472-03-524, Notice of Violation No. 0303 issued to the Dakota Westmoreland Corporation, that affirms the violation and a civil penalty of \$1500.

Mrs. Wefald: I second the motion.

Roll Call: All voting "Aye."

Case No. RC-822-03-678  
BNI Coal, Ltd  
Reclamation Extension 28, Permit 4  
Approval

Mr. Cramer: I move the Commission approve Reclamation Period Extension No. 28 for Surface Coal Mining Permit No. 4, held by BNI Coal, Ltd., to extend the reclamation period on 1.8 acres at the Center Mine until December 31, 2004.

Mrs. Wefald: I second the motion.

Roll Call: All voting "Aye."

Case No. RC-822-03-679  
BNI Coal, Ltd  
Reclamation Extension 25, Tracts 1 &  
2, Permit 24  
Approval

Mr. Cramer: I move the Commission approve Reclamation Period Extension No. 25 for Tracts 1 and 2 within Surface Coal Mining Permit No. 24, held by BNI Coal, Ltd., to extend the reclamation period on 30.2 acres at the Center Mine and 7.2 acres at the Larson Mine until December 31, 2004.

Mrs. Wefald: I second the motion.

Roll Call: All voting "Aye."

Case No. GE-587-03-675  
Martin Altendorf - Roving Grain Buyer  
Suspension/Revocation  
Reinstate

Mr. Clark: I move the Commission issue an order in Case No. GE-587-03-675 reinstating roving grain buyer license number 3042 of Martin Altendorf, Minto, North Dakota; bond requirements have now been met.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Case No. GE-1825-03-467  
Northern Organic, Inc.  
Langdon, ND  
Insolvency

Mr. Clark: I move the Commission acknowledge the recommendation to the Court that the assets available in this case be distributed among the five (5) claimants based upon their valid cash sale balance claims with interest, that payments be forwarded to these claimants as soon as possible, and that the Commission receive payment of its expenses incurred in this proceeding.

I further move that the Commission request that the Court require Tri-State Insurance Company of Minnesota, Bond Department, PO Box 80439, Lincoln, Nebraska 68501-0439, to deposit bond proceeds in this proceeding.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-399-03-296  
Montana-Dakota Utilities Co., a  
Division of MDU Resources Group, Inc  
Electric Rate Increase  
Application

Mrs. Wefald: I move the Commission adopt the Order Approving Settlement in Montana-Dakota Utilities Co.'s electric rate increase application, Case No. PU-399-03-296.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Commissioner Wefald's  
Concurring Opinion

Mrs. Wefald: At the December 1, 2003, Informal Hearing, MDU summarized its prefiled direct testimony describing four groups of mechanisms that are in place to assure that electric ratepayers are insulated from unregulated businesses within the MDU Resources group, Inc. corporate structure. First, Title 49 of the North Dakota Century Code contains regulatory restrictions including the Commission's authority to examine MDU's accounts, books, and records and prescribe the system of accounts and records that must be followed by MDU and the Commission approval required to dispose of, encumber, merge, or consolidate its works or system used to perform its public utility duties. Second, MDU stated that it incorporates non-regulatory financial restrictions to ensure that utility and non-utility funds are not co-mingled and uses separate debt instruments for its utility and non-utility companies. Third, MDU stated that it incorporates structural limitations including separate corporate structures for its regulated and non-regulated utility businesses. Fourth, MDU indicated that it incorporates operational restrictions with each company having separate boards of directors and management teams and maintaining separate corporate books, records, and documentation. The only shared expenses between the regulated and non-regulated businesses are at the upper levels of the corporate executives. There is also very little shared

## Concurring Opinion Continued

investment between the regulated and non-regulated businesses. Staff stated that there is such a large risk to MDU for not following the insulation mechanisms that the risk to MDU customers is minimal.

The Commission did not take any position, in this case, on whether the safeguards that MDU has in place are adequate to insulate ratepayers from unregulated businesses within the MDU Resources Group, Inc. This matter deserves further study and analysis by the Commission in the coming months. Since it affects Ottertail and XCEL as well as MDU customers, the Commission should start workshops leading to a rulemaking on this important issue.

Also, at the December 1, 2003, Informal Hearing, MDU summarized its prefiled direct testimony describing its policies and practices to assure that MDU electric ratepayers are guaranteed the benefits of energy from generation included in rate base.

The Commission is concerned that the native load customers have first access to rate base generation in the future wholesale electric energy market. MDU stated that all of its generation is dedicated first and foremost to its retail customers and MDU does not purchase power unless the cost is cheaper than its own generation. In addition, MDU is still required to have enough generation capacity to meet its native load plus reserve requirements. MDU stated that it uses an economic dispatch program that assigns the highest incremental generation cost to off-system sales. MDU also stated that, under the emerging market, it should be able to establish, as a business practice, the ability to serve native load using rate base generation. Energy offered to the wholesale market would consist of energy not consumed by native load customers.

The Commission did not take any position, in this case, on whether the policies and practices MDU has in place are adequate to assure that MDU electric ratepayers are guaranteed the benefits of energy from generation included in rate base. As wholesale markets in the Midwest undergo changes, it is important that the Commission perform further study and analysis on this issue in the coming months. Since this issue also affects Ottertail and XCEL as well as MDU customers, the Commission should start workshops leading to a rulemaking on this important issue.

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Commissioner Susan E. Wefald

Case No. PU-2805-03-648  
Otter Tail Corporation  
December 2003  
Fuel Cost Adjustment

Mrs. Wefald: I move the Commission approve Case No. PU-2805-03-648, Otter Tail Corporation's Electric Fuel Cost Adjustment for December 2003.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-399-03-654  
Montana-Dakota Utilities Co., a  
Division of MDU Resources Group, Inc  
December 2003  
Fuel Cost Adjustment

Mrs. Wefald: I move the Commission approve Montana-Dakota Utilities Co.'s fuel cost adjustment for December 2003, Case No. PU-399-03-654.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-400-03-665  
Northern States Power Company  
December 2003  
Fuel Cost Adjustment

Mrs. Wefald: I move the Commission approve Northern States Power Company's fuel cost adjustment for December 2003, Case No. PU-400-03-665.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Case No. RC-758-03-390  
Bellaire Corporation  
Bond Release 9, Permit NAIH-8103  
Approval

Mrs. Wefald: I move the Commission approve Bond Release No. 9 to Surface Coal Mining Permit No. NAIH-8103, held by the Bellaire Corporation for the Indian Head Mine. This will release all remaining reclamation liabilities on 70.576 acres of land located in portions of Sections 19 and 30, T144N, R88W, and Section 25, T144N, R89W, Mercer County. The amount of the bond release is \$34,381 and it will become effective January 20, 2004, unless a formal hearing is requested.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-400-03-668  
Northern States Power Company  
Rugby to Border Transmission Line  
Public Convenience & Necessity

Mrs. Wefald: I move the Commission issue a Notice of Opportunity for Hearing and Notice of Informal Hearing in the applications of Northern States Power Company and Otter Tail Corporation requesting certificates of public convenience and necessity for 230 kV electric transmission facilities between Harvey, North Dakota and the Canadian Border, Case Nos. PU-400-03-668 and PU-2805-03-677.

Not specified: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-2805-03-677  
Otter Tail Corporation  
Harvey to Rugby Transmission Line  
Public Convenience & Necessity  
Notice of Opportunity for Hearing

Case No. PU-400-03-673  
Northern States Power Company  
December 2003  
Purchased Gas Adjustment

Mr. Cramer: I move the Commission approve Northern States Power Company's cost of gas adjustment for December 2003, Case No. PU-400-03-673.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

AML Construction  
2003 Waiver of Liens  
Project

Mr. Cramer: I move the Commission waive liens on properties at Columbus, Garrison, and Lehigh Road because the cost of filing the liens, including indirect costs, exceeds the increase in the fair market value of the land as the result of reclamation activities on these properties.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. AM-439-03-540  
2004-2007 ND Reclamation Simplified  
Grant  
Application  
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Mr. Cramer: I move the Commission submit the 2004 - 2007 North Dakota Abandoned Mine Lands Reclamation Simplified Grant Application to the Office of Surface Mining requesting \$1,629,220 in federal funds to administer the abandoned mine lands program.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. AM-2933-03-541  
AML Maintenance  
2003-2006 AML Construction  
Project  
Close Contract

Mr. Cramer: I move the Commission close Contract No. AM-474-03 with Basaraba's Excavating & Dirt Works, LLC of Wilton for maintenance services on abandoned mine sites near Scranton, Washburn, Wilton and Beulah, North Dakota.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. AM-2919-03-510  
AML Coal Fire Suppression  
Grant  
Application

Mr. Cramer: I move the Commission authorize a change order to Contract No. AM-473-03 to increase the contract amount by \$8,086.25 for additional coal fire suppression work in McKenzie County, North Dakota.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-439-03-303  
Public Service Commission vs.  
S & S Communications  
Complaint

Mr. Wefald: I move the Commission turn this case over to a collection agency for recovery.

Motion died for lack of a second

ATTEST

THE COMMISSION ADJOURNED AT 11:35 A.M.

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Executive Secretary

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TONY T. CLARK, PRESIDENT