

July 21, 2004

The Public Service Commission convened in the Commission Hearing Room, State Capitol, Bismarck, North Dakota, on July 21, 2004, 10:00 a.m. Present were Commissioners Clark, Wefald, and Cramer.

Minutes

Mr. Cramer: I move the minutes of July 7, 2004, be approved.

Mr. Clark: 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:

NARUC	6,981.00
Odney Advertising	10,479.56
Dell Marketing L.P.	7,892.82
NDSU – Restricted Fund Accounting	10,146.07
Ben Johnson Associates, Inc.	1,906.00
Spherion	790.56
North Dakota Safety Council	115.00
Presort Plus	3.75
Cellular One	111.70
Brown & Saegner	588.50
Bain Agency Inc.	898.00
Snavelly King Majoros O'Connor & Lee, Inc.	6,435.76
Leo Praus	520.00
Geoserv, Inc.	4,996.00
Thiem Drilling, Inc.	95,719.05
Cellular One	258.53
Facilities Management	9.50
Facilities Management – 6/04 postage	688.12
Secretary of State	25.00
Office of Administrative Hearing	1,645.99
Human Resource Management Services	10.00
Elan	6,565.95

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-04-325  
Telecom Management, Inc.  
Long Distance Reseller  
Application

Mr. Cramer: I move the Commission issue a Certificate of Registration to Telecom Management, Inc. to resell interexchange telecommunications services in North Dakota, Case No. PU-04-325.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-04-276  
Otter Tail Corporation  
North Dakota State Highway  
Department, Medina, 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 the North Dakota State Highway Department for a shop site near Medina, North Dakota, Case No. PU-04-276.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. AU-04-338  
Tammy M. Erickson - Auctioneer  
License Application

Mr. Cramer: I move the Commission approve the auction clerk license application for Tammy M. Erickson, Guthrie, Minnesota, effective July 12, 2004.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. AU-04-339  
Tammy M. Erickson - Auction Clerk  
License Application

Mr. Cramer: I move the Commission approve the auctioneer license application for Tammy M. Erickson, Guthrie, Minnesota, effective July 12, 2004.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. AU-04-340  
Jason Bender - Auctioneer  
License Application

Mr. Cramer: I move the Commission approve the auctioneer license application for Jason Bender, Britton, South Dakota.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

State Reclamation Award Program

Mr. Cramer: I move the Commission approve changes to the guidelines for the State Reclamation Award Program.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-04-160  
Qwest Communications Corporation  
Local Exchange  
Public Convenience & Necessity

Mr. Clark: I move the Commission adopt the Order and issue a certificate of public convenience and necessity to Qwest Communications Corporation to provide facilities based competitive local exchange telecommunication services in North Dakota, Case No. PU-04-160.

Substitute Motion:

Mrs. Wefald: I move that Qwest Communication Corporation application for a certificate for a Local Exchange PC&N be approved only for service territories outside of the areas currently being served by its affiliate, Qwest Corporation.

Died for lack of a second.

Original Motion:

Mr. Cramer: I second the motion.

Commissioner Susan Wefald's  
Dissenting Opinion

Roll Call Mr. Cramer "Aye"  
Mrs. Wefald "Nay"  
Mr. Clark "Aye"

Mrs. Wefald: Qwest, the parent holding company, is now proposing to have not just one Qwest company offering local service in North Dakota, but now proposes to have two Qwest companies offering local service to customers. Qwest Communications Corporation (Qwest Junior) has been offering long distance services to customers in North Dakota in conjunction with Qwest Corporation (Qwest Senior). Qwest Senior is the local telephone company that used to be Northwestern Bell.

Now, Qwest Junior wants to also provide local services as a Competitive Local Exchange Carrier (CLEC). They want to compete for local exchange customers throughout the state of North Dakota. This means that they plan to compete not only with other companies in the state, but also with Qwest Senior, the Incumbent Local Exchange Carrier (ILEC), their sister company, for customers.

I understand that this may be very confusing to telephone customers in North Dakota, and that is one reason why I have serious concerns about this application. But there are other reasons to be even more concerned.

I am voting no on Qwest Junior's application for a certificate of public convenience and necessity (PC&N), because of concerns regarding adequacy of proposed service within the Qwest Senior service area. **By approving this Local Exchange PC&N, the Commission is effectively paving the way for customers to lose important protections under North Dakota law, and for the Commission to lose important jurisdiction.**

At the informal hearing held by the Commission on June 23, Qwest Junior stated that it plans to have only one phone contact number for customers to call Qwest, and that number will connect customers to both Qwest Senior and Qwest Junior. When Qwest Junior chooses to offer local exchange service in North Dakota to residential customers, it will be very difficult for customers to be able to distinguish between the two companies. At a minimum, the Commission should require Qwest Junior to have a separate phone number from Qwest Senior so that customers may have some idea that they are dealing with a different company for services. The Commission should also put some requirements on marketing, when marketing to Qwest Senior customers. These are adequacy of proposed

Commissioner Susan Wefald's  
Dissenting Opinion Continued

service issues, which it is appropriate for the Commission to address at this time. Since it has not been addressed, the Commission should have only approved the Qwest Junior certificate for a Local Exchange PC&N in service territories outside of the areas currently being served by its sister, Qwest Senior.

Using only one marketing phone number for both companies and joint marketing efforts, Qwest has the ability to move customers easily from Qwest Senior to Qwest Junior without customers ever knowing that they are changing companies. This is a concern, because certain protections are in place now for Qwest Senior customers, which may not be in place for Qwest Junior customers. Also, the Commission has important jurisdiction over Qwest Senior that it may not have over Qwest Junior. As a CLEC, Qwest Junior may not be subject to important sections of North Dakota telecommunications law. One example is the price cap law 49-21-01.3, which caps the price of basic local service. At the present time, under the price cap law, Qwest Senior is required to offer basic local services for \$18.17 in Bismarck. Qwest Junior has to offer basic local services separately from other services, but it could price them at whatever price it wants (for example, \$30.00), to make basic service less attractive than "service packages."

**In effect, with its planned confusing marketing of Qwest Senior and Qwest Junior products, Qwest Senior can move customers to Qwest Junior and achieve deregulation without ever going to the legislature.**

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Susan E. Wefald, Commissioner

Case No. GE-04-341  
CHS, Inc.  
Facility-Based Grain Buyer - Bathgate, ND  
Discontinue Business

Mr. Clark: I move the Commission issue an order in Case No. GE-04-341 granting the request of CHS, Inc., St. Paul, Minnesota, to discontinue business as a facility-based grain buyer at Bathgate, North Dakota.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Case No. GE-04-342  
Demson Elevator Cooperative  
License No. 632 - Fairmount, ND  
Discontinue Business

Mr. Clark: I move the Commission issue an order in Case No. GE-04-342 granting the request of Demson Elevator Cooperative to discontinue business at Fairmount, North Dakota.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Case No. GE-04-343  
Demson Grain Company, Inc.  
Grain Warehouse - Fairmount, ND  
License Application

Mr. Clark: I move the Commission issue an order in Case No. GE-04-343 granting the request of Demson Grain Company, Inc. to operate a 2,471,000-bushel grain warehouse at Fairmount, North Dakota.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Case No. RC-04-129  
BNI Coal, Ltd  
Renewal No. 4, Permit BNCR-8202  
Approval

Mrs. Wefald: I move the Commission approve Renewal No. 4 to Surface Coal Mining Permit No. BNCR-8202, held by BNI Coal, Ltd. for the Center Mine, to extend the permit term another five years until July 31, 2009.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-04-326  
Northern States Power Company  
July 2004  
Cost of Gas Adjustment

Mr. Cramer: I move the Commission approve Northern States Power Company's cost of gas adjustment for July 2004, Case No. PU-04-326.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-04-333  
Montana-Dakota Utilities Co., a  
Division of MDU  
August 2004  
Cost of Gas Adj./Natural Gas

Mr. Cramer: I move the Commission approve Montana-Dakota Utilities Co.'s Natural Gas Cost of Gas Adjustment for August 2004, Case No. PU-04-333.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-04-336  
Great Plains Natural Gas Co.  
July 2004  
Cost of Gas Adjustment

Mr. Cramer: I move the Commission approve Great Plains Natural Gas Co.'s Cost of Gas adjustment for July 2004, Case No. PU-04-336.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Noonan AML Site  
Tree & Shrub Planting Services  
Close of Contract

Mr. Cramer: I move the Commission close out Contract No. AM-478-04 with the Divide County Soil Conservation District for tree and shrub planting services at the Noonan abandoned mine land (AML) site in Divide County.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-04-160  
Qwest Communications Corporation  
Local Exchange  
Public Convenience & Necessity  
Valuation Billing

Mr. Cramer: I move the Commission bill Qwest Corporation for costs incurred to date in Case No. PU-04-160, Qwest Corporation, Local Exchange, Public Convenience & Necessity.

Mrs. Wefald: I second the motion.

Roll Call: All voting "Aye."

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Case No. PU-04-97  
Montana-Dakota Utilities Co., a  
Division of MDU Resources  
Natural Gas Rate Increase  
Application  
Valuation Billing

Mr. Cramer: I move the Commission bill Montana-Dakota Utilities Co. for costs incurred to date in Case No. PU-04-97, Montana-Dakota Utilities Co., Natural Gas Rate Increase, Application.

Mrs. Wefald: I second the motion.

Roll Call: All voting "Aye."

Salary Adjustments

Mr. Cramer: I move that the Commission grant equity salary increases to the following employees effective July 1, 2004:

Lori Anderson	Tim Erdmann	Rick Fillbrandt
Gloria Geiger	Kevin Hanson	Jerry Lein
John P. Robbins	Guy Welch	

Mrs. Wefald: I second the motion.

Roll Call: All voting "Aye."

ATTEST

THE COMMISSION ADJOURNED AT 12:00 NOON.

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Executive Secretary

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TONY T. CLARK, PRESIDENT