

March 21, 2007

The Public Service Commission convened in the Commission Hearing Room, State Capitol, Bismarck, North Dakota, on March 21, 2007, 10:00 a.m. Present were Commissioners Wefald, Cramer, and Clark.

Minutes

Mr. Cramer: I move the minutes of March 7, 9, and 16, 2007, 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:

NDSU	210.31
Alltel	290.66
UND – Interactive Video Network	309.00
William W. Binek	66.90
ITD – 2/07 DP	3,113.27
DOT – 2/07	8,972.07
GE Corporate Payment Services	5,156.90

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Blaster Recertification  
Approval

Mr. Cramer: I move the Commission approve blaster recertification for the following applicants:

No.	Applicant	Affiliation	Certificate No.
1.	Gerry Schatz	Beulah Mine	01-03-251 R2
2.	Delane Bauer	Beulah Mine	01-03-249 R2

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-05-131  
Otter Tail Corporation  
Cost of Energy Adjustment Clause  
Tariff

Mrs. Wefald: I move the Commission issue a Notice of Hearing in the application of Otter Tail Corporation d/b/a Otter Tail Power Company for fuel cost adjustment recovery of Midwest ISO Day-2 energy market costs, Case No. PU-05-131.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-06-443  
Tatanka Wind Power, LLC  
230 kV Transmission Line/Dickey -  
McIntosh Ctys.  
Siting Application

Held over until the Admin portion of the meeting

Case No. PU-06-491  
Montana-Dakota Utilities Co./  
Great Plains Natural Gas Co.  
Acquisition of Cascade Natural Gas  
Application

Mr. Cramer: I move the Commission adopt the Order approving the application of MDU Resources Group, Inc. to acquire the stock of Cascade Natural Gas Corporation, Case No. PU-06-491.

Mrs. Wefald: I second the motion.

Roll Call: All voting "Aye."

Case No. RC-06-229  
Dakota Westmoreland Corporation  
Revision No. 19, Permit KRSB-8603  
Approval

Mr. Cramer: I move the Commission conditionally approve Revision No. 19 to Surface Coal Mining Permit KRSB-8603 held by the Dakota Westmoreland Corporation to add 524.3 acres to this permit for the Beulah Mine and to update the appropriate sections of the permit to reflect mining in the added area.

Mrs. Wefald: I second the motion.

Roll Call: All voting "Aye."

Case No. RC-07-98  
Coteau Properties Company  
Self and Collateral Bond Changes  
Approval

Mr. Cramer: I move the Commission approve bond riders that increase the amount and acreage under Self-Bond No. SB-9501-1 and approve Collateral Bond No. CB-9501-4 that covers all permits held by the Coteau Properties Company for the Freedom Mine. I further move that Collateral Bond Number CB-9501-3 be canceled effective March 22, 2007.

Mrs. Wefald: I second the motion.

Roll Call: All voting "Aye."

2007 Excellence in Surface Coal  
Mining Reclamation Awards  
Office of Surface Mining

Mr. Cramer: I move the Commission forward a nomination from the Falkirk Mining Company to the federal Office of Surface Mining for consideration for the 2007 Excellence in Surface Coal Mining Reclamation Awards.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-07-108  
Enbridge Energy, Limited Partnership  
36-Inch LP Pipeline/Pembina County  
Siting Application

Mr. Cramer: I move the Commission acknowledge the letter of intent, shorten the one year waiting period between filing a letter of intent and a siting application to one day, and assess a filing fee of \$100,000 due upon filing of an application in Case No. PU-07-108, Enbridge Energy, Limited Partnership's proposed 36-inch liquid petroleum pipeline in Pembina County, North Dakota.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. GE-07-104  
MG Grain, LLC  
Roving Grain Buyer - Minot, ND  
License Application

Mr. Clark: I move the Commission approve the roving grain buyer license application for MG Grain, LLC, Minot, North Dakota, effective March 9, 2007.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Case No. GE-07-109  
Neché Elevator, LLC  
License No. 1137 - Neche, ND  
Discontinue Business

Mr. Clark: I move the Commission issue an order in Case No. GE-07-109 granting the request of Neche Elevator, LLC to discontinue business at Neche, North Dakota, effective March 20, 2007.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Salary Adjustment

Mrs. Wefald: I move that Position No. 4993 receive a salary increase effective March 13, upon the satisfactory completion of a six-month probationary period, in an amount consistent with the terms set forth in the Commission's August 30, 2006 offer of employment.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-06-443  
Tatanka Wind Power, LLC  
230 kV Transmission Line/Dickey -  
McIntosh Ctys.  
Siting Application

Mrs. Wefald: I move the Commission adopt the Findings of Fact, Conclusions of Law and Order issuing corridor certificates and route permits authorizing construction of Tatanka Wind Power, LLC's 230 kV Transmission Line in Dickey and McIntosh Counties of North Dakota, Case No. PU-06-443.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Mrs. Wefald intends to write a concurring opinion.

Commissioner Wefald's  
Concurring Opinion

Mrs. Wefald: I concur with this order, except that an important safety issue has not been addressed by the Commission in this order. This is the issue of Tatanka placing safety "markers" on transmission structure guy wires.

Markers are "plastic sleeves" which are placed on transmission structure guy wires to make them visible to the public. The plastic sleeves are about 6 feet long and are placed at ground level. These markers make it easier for pilots doing crop spraying to identify guide wires. Also, the markers make it easier for the ground traveling public, including snowmobile riders and farm equipment operators to spot the lines. The markers are **very** inexpensive to purchase and install, if they are put in place at the time of construction.

Commissioner Wefald's  
Concurring Opinion Continued

My fellow commissioners did not want to require Tatanka to put these markers in place, since the National Electric Safety Code only requires them in *areas exposed to pedestrian traffic and established parking areas*. I disagree with this decision. Other utilities in the state are putting them in place on transmission structures in rural as well as urban areas to enhance safety of the lines.

I encourage Tatanka, even though this issue is not addressed in the Commission Order, to voluntarily put markers on all guy wires as they construct this transmission line and supporting facilities. As the first independent power producer to be building a transmission line in this state, it would set good precedent for Tatanka to address this safety issue.

---

Susan E. Wefald, President

Commissioner Clark's  
Concurring Opinion

Mr. Clark: I had not intended to write this concurring opinion, so I did not state my intentions to do so in accordance with Public Service Commission Policy 1-23-98(0). If need be, I will move that the policy be waived in this instance so that my thoughts can be recorded.

The reason I only now feel compelled to write this is in response to Commissioner Wefald's significant misrepresentation of my rationale for deciding to not include the following language in the order:

"Tatanka shall mark all the guy wires on structures unless Tatanka receives a signed waiver from the owner of the property on which the structure will be placed."

Commissioner Wefald states in her concurring opinion filed after the commission meeting that, "My fellow commissioners did not want to require Tatanka to put these markers in place, since the National Electric Safety Code only requires them in *areas exposed to pedestrian traffic and established parking areas*."

This is an interesting, though incorrect, bit of mind-reading considering I have never said that in any setting. While written opinions attached to orders can provide insight into a commissioner's own decision making process, they are a wholly inappropriate vehicle for speaking on behalf of others. In the future I would hope all commissioners would refrain from speculatively assigning motives or rationale to his or her colleagues via any venue, but especially through formal concurrences or dissents.

Commissioner Clark's  
Concurring Opinion Continued

So I submit the following solely to correct the public record. I will confine my comments to my own thoughts in relation to the proposed language.

It should go without having to note, but perhaps it bears repeating in light of the discussion on this matter: The Public Service Commission must issue its decisions based on the record before it. In this case, the record contains a lack of reference to interveners, landowners, affected citizens, regulatory agencies, public interest groups or other entities demonstrating that guy lines for this transmission project should be marked in a manner inconsistent with existing safety regulations or existing siting orders.

Rather, the proposal to add a separate and new marking regulation to this order was presented to me less than an hour before our business meeting.

In the few minutes I had to consider the proposal, some substantial questions about the language struck me. As written, it contains no guidance to the applicant on what type of markers should be installed. Should they be ground markers? Should they be aerial markers? Maybe both? To what standards and specifications should they be built and installed?

Commission orders already require the applicant to meet all safety regulations (ordering clause no. 7), so how would this requirement differ? How many guy lines are there in total that would be affected by the proposed language?

One particularly vexing question for me is what impact this proposal could have on landowner liability. For example, let us suppose a landowner wishes to waive the marking of the line on his property for purely aesthetic reasons, as would be allowed under the proposal. Now let us suppose that a snowmobile operator chooses to trespass on that landowners' property without permission. The snowmobile operator proceeds to cause bodily injury to him or her self and property damage to a guy wire. Despite the fact the snowmobile operator was there without permission, I can imagine a plausible scenario wherein an attempt would be made to hold the landowner liable for injuries or damage due to the landowner exercising his or her option to waive the guy line marker requirement. Such could be an unintended consequence of this proposed regulation.

There can be no doubt that the reason these questions are left unanswered is because such information was not discussed in any detail in our public hearing or in other public meetings associated with this

Commissioner Clark's  
Concurring Opinion Continued

case. Proposing new, rather vaguely defined regulations literally minutes before a commission meeting without a thorough vetting of the issue is no way to handle regulatory policy. The Commission needs to gather testimony and hold discussions on such scenarios through a public, deliberative process. Parties need to be given an opportunity to respond. This has not been done in this instance, and absent such due process and deliberation I am unwilling to depart from past commission precedent or existing safety regulations regarding requirements for guy line marking.

---

Tony Clark, Commissioner

ATTEST:

THE COMMISSION ADJOURNED AT 11:15 A.M.

---

Executive Director

---

SUSAN E. WEFALD, PRESIDENT