

MEMORANDUM

To: Commissioners Wefald, Cramer and Clark
Bill Binek
Public Utilities Division
Accounting Division
Terry Deason, *Radey, Thomas, Yon and Clark*

From: Illona A. Jeffcoat-Sacco
Executive Director and Public Utilities Director

Date: 20 March 2007

Re: **Registration Exception** - Contract for consulting services for the determination of advance prudence related to Big Stone II, Case No. PU-06-481 and No. PU-06-482; Radey, Thomas, Yon and Clark, contractor

One of the state requirements that must be met for this or any consultant to provide services to us is to register in ND as a vendor. One of the requirements for registering as a vendor is to register to do business with the Secretary of State, unless one of a very limited number of exceptions applies. The key advantage to being registered with the Secretary of State is to have on file in that office a registered agent for service of process, should that become necessary. If the contracting entity is not registered with the Secretary of State, then by submitting a vendor registration, the entity agrees that the Secretary of State is, by law, its agent for service of process.

While the consultant in this case is not an attorney and the services for which the commission contracted are not legal services, the contractor is a professional corporation providing legal services in Florida. In order for this corporation to register as a foreign professional corporation with the ND Secretary of State, certain ND laws apply that create obstacles to this firm completing that registration.

One of the limited exceptions to required registration with the Secretary of State is an exception for persons who perform the contracted work out of state. Another is for contractors who come into North Dakota for 30 days or less performing an isolated transaction. In the instant case, the contractor will be performing most of the work out of state and will come into North Dakota only to testify at the hearing (which will hopefully not run longer than 30 days ☺). If one of the exceptions applies, the agency is to document its willingness to contract with a vendor not registered with the Secretary of State and its acceptance of the consequence of not having a registered agent in ND for service of process.

As you know, this contract was procured under sole source procurement due to limited (actually no) competition, the importance of the cases and issues, a great need for assistance in analyzing the issues, and a limited time within which to complete the work. In addition, the firm retained here is not being asked to practice law and the consultant will do most, if not all, of his analysis outside North Dakota. The only work expected to be performed in North Dakota will be an appearance to testify at the hearing.

For all of the reasons noted in the paragraph above, it is staff's opinion that an exception to the Secretary of State registration is warranted and acceptable in this case. I have discussed this option with Bill Binek and Jo Zschomler of Risk Management and they both agree that this exception is applicable and appropriate in this case. ***Consequently, in our opinion the contractor can, in this instance, register as a vendor without registering with the Secretary of State.***