

# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

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21 April 2015

Robert L. Lindberg  
3420 82<sup>nd</sup> Ave SE  
End of 5<sup>th</sup> St. NW  
NW City Limits Box 1108  
Jamestown, ND 58402-1108

*also sent via electronic mail to  
[lindberg@daktel.com](mailto:lindberg@daktel.com)*

Re: Electronic Mail Message –Damage Prevention Cases:

PU-13-877, PU-13-878, PU-13-879, PU-13-880, PU-13-881,  
PU-13-882, PU-13-883, and PU-14-134

Dear Mr. Lindberg:

I received your electronic mail message sent 10 April 2015, and I forwarded it to advocacy staff counsel. I have also asked that the message be docketed in the case files for the eight relevant cases.

In your message you indicate that you “. . . do not agree with these decisions and at this time I am formally notifying you that we want to appeal this decision. Please forward this information along to the respective parties and please notify us on your procedures to follow.” It is not clear from your message if you are asking about a rehearing or reconsideration before the Commission, or about an appeal of the Commission’s decision to District Court. Please let me know if you are requesting that the Commission rehear or reconsider its decision on more or more of the cases, and I will forward your request to the Commission.

As a Special Assistant Attorney General, I cannot provide any private legal advice. If you are continuing to proceed *pro se*, then you take upon yourself the responsibility to research and comply with applicable statutes, regulations and court rules. We are prohibited from providing any legal services to members of the public. Accordingly, we cannot provide research assistance or other legal services to you. For legal advice and to ensure compliance with all state regulations and court processes, and to protect your rights, you should contact an attorney in private practice. If you need assistance finding an attorney, you can contact the State Bar Association of North Dakota at 701-255-1404.

I do urge you to contact a private attorney to discuss the procedures and time frames applicable to rehearing, reconsideration and appeal in administrative decisions. I have enclosed with this letter copies of one North Dakota statutory provision related to rehearing and reconsideration of agency orders, and one relating to the procedure for appeal of agency orders.

Mr. Robert Lindberg

21 April 2015

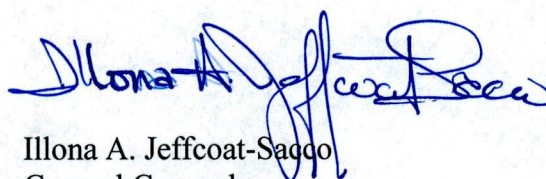
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I have not enclosed copies of all the other statutes related to an administrative case or appeals of administrative cases.

I have been trying to contact you to set up a time for a call with you and advocacy staff representatives to discuss your electronic message. Please let me know your availability and a number I can use to reach you for that call.

Thank you. Please contact me if you have questions.

Best regards,

A handwritten signature in blue ink, appearing to read "Illona A. Jeffcoat-Sacco". The signature is stylized and cursive.

Illona A. Jeffcoat-Sacco  
General Counsel

Enclosures

c:w/encl. Mitch Armstrong, Advocacy Staff Counsel

3. If the agency head, or another person authorized by the agency head or by law to issue a final order, is not presiding, then the person presiding shall issue recommended findings of fact and conclusions of law and a recommended order within thirty days after the evidence has been received, briefs filed, and arguments closed, or as soon thereafter as possible. The recommended findings of fact and conclusions of law and the recommended order become final unless specifically amended or rejected by the agency head. The agency head may adopt the recommended findings of fact and conclusions of law and the recommended order as final. The agency may allow petitions for review of a recommended order and may allow oral argument pending issuance of a final order. An administrative agency may adopt rules regarding the review of recommended orders and other procedures for issuance of a final order by the agency. If a recommended order is issued, the agency must serve a copy of any final order issued and the findings of fact and conclusions of law on which it is based upon all the parties to the proceeding within sixty days after the evidence has been received, briefs filed, and arguments closed, or as soon thereafter as possible, in the manner allowed for service under the North Dakota Rules of Civil Procedure.

**28-32-40. Petition for reconsideration.**

1. Any party before an administrative agency who is aggrieved by the final order of the agency, including the administrative agency when the hearing officer is not the agency head or one or more members of the agency head, within fifteen days after notice has been given as required by section 28-32-39, may file a petition for reconsideration with the agency. Filing of the petition is not a prerequisite for seeking judicial review. If the agency's hearing officer issues the agency's final order, the petition for reconsideration must be addressed to the hearing officer, who may grant or deny the petition under subsection 4.
2. Any party, including workforce safety and insurance, that appears before workforce safety and insurance may file a petition for reconsideration within thirty days after notice has been given as required by section 28-32-39.
3. The party must submit with the petition for reconsideration a statement of the specific grounds upon which relief is requested or a statement of any further showing to be made in the proceeding. The petition must also state whether a rehearing is requested. The petition and any statement shall be considered a part of the record in the proceeding.
4. The administrative agency may deny the petition for reconsideration or may grant the petition on such terms as it may prescribe. If a rehearing is granted, the agency may allow a new hearing or limit the hearing as appropriate. The agency may dissolve or amend the final order and set the matter for further hearing. The petition is deemed to have been denied if the agency does not dispose of it within thirty days after the filing of the petition. Any rehearing must be presided over by the same person or persons presiding previously at the hearing, if available. Any amended findings, conclusions, and orders must be issued by the same person or persons who issued the previous recommended or final orders, if available. Within thirty days after the close of proceedings upon reconsideration, or as soon thereafter as possible, the agency shall issue and give notice of its order upon reconsideration as required in subsection 3 of section 28-32-39.
5. This section does not limit the right of any agency to reopen any proceeding or rehear any matter under any continuing jurisdiction which is granted to the agency by statute.

**28-32-41. Effectiveness of orders.**

Unless a later date is stated in the order, a final order of an administrative agency is effective immediately, but a party may not be required to comply with a final order unless it has been served upon the party and notice is deemed given pursuant to section 28-32-39 or the party has actual knowledge of the final order. A nonparty may not be required to comply with a final order unless the agency has made the final order available for public inspection and copying or the nonparty has actual knowledge of the final order. This section does not preclude

an agency from taking emergency action to protect the public health, safety, or welfare as authorized by statute.

**28-32-42. Appeal from determination of agency - Time to appeal - How appeal taken.**

1. Any party to any proceeding heard by an administrative agency, except when the order of the administrative agency is declared final by any other statute, may appeal from the order within thirty days after notice of the order has been given as required by section 28-32-39. If a reconsideration has been requested as provided in section 28-32-40, the party may appeal within thirty days after notice of the final determination upon reconsideration has been given as required by sections 28-32-39 and 28-32-40. If an agency does not dispose of a petition for reconsideration within thirty days after the filing of the petition, the agency is deemed to have made a final determination upon which an appeal may be taken.
2. Any interested person who has participated in the rulemaking process of an administrative agency may appeal the agency's rulemaking action if the appeal is taken within ninety days after the date of publication in the North Dakota Administrative Code of the rule resulting from the agency rulemaking action.
3.
  - a. The appeal of an order may be taken to the district court designated by law, and if none is designated, then to the district court of the county in which the hearing or a part thereof was held. If the administrative proceeding was disposed of informally, or for some other reason no hearing was held, an appeal may be taken to the district court of Burleigh County. Only final orders are appealable. A procedural order made by an administrative agency while a proceeding is pending before it is not a final order.
  - b. The appeal of an agency's rulemaking action may be taken to the district court of Burleigh County.
4. An appeal shall be taken by serving a notice of appeal and specifications of error specifying the grounds on which the appeal is taken, upon the administrative agency concerned, upon the attorney general or an assistant attorney general, and upon all the parties to the proceeding before the administrative agency, and by filing the notice of appeal and specifications of error together with proof of service of the notice of appeal, and the undertaking required by this section, with the clerk of the district court to which the appeal is taken. In an appeal of an agency's rulemaking action, only the administrative agency concerned, the attorney general, or an assistant attorney general, as well as the legislative council, need to be notified.
5. The notice of appeal must specify the parties taking the appeal as appellants. The agency and all other parties of record who are not designated as appellants must be named as appellees. A notice of appeal of agency rulemaking actions need not name all persons participating in the rulemaking proceeding as appellees. The agency and all parties of record have the right to participate in the appeal. In the appeal of agency rulemaking action, any person who has participated in the rulemaking process has the right to participate in the appeal.
6. A bond or other undertaking for costs on appeal must be filed by the appellant as is required by appellants for costs on appeal in civil cases under the rules of appellate procedure. The bond or other undertaking must be filed with the clerk of the district court with the notice of appeal, must be made to the state of North Dakota, and may be enforced by the agency concerned for and on behalf of the state as obligee. A bond or other undertaking is not required when filing fees have been waived by a district court pursuant to section 27-01-07 or when the costs of preparation and filing of the record of administrative agency proceedings have been waived by a district court pursuant to subsection 3 of section 28-32-44.

**28-32-43. Docketing of appeals.**

Appeals taken in accordance with this chapter must be docketed as other cases pending in the district court are docketed and must be heard and determined by the court without a jury at such time as the court shall determine.