

July 14, 2021

The Public Service Commission convened in the Commission Hearing Room, State Capitol, Bismarck, North Dakota, on July 14, 2021, 10:02 a.m. Present were Commissioners Fedorchak, Christmann and Kroshus.

Minutes

Ms. Fedorchak: I move the minutes of June 23 and 29, 2021, be approved.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-14-218  
ONEOK Rockies Midstream, L.L.C.  
Lonesome Creek Gas Plant -  
McKenzie County, ND  
Siting Application

Ms. Fedorchak: Since no trees or shrubs were removed during construction, I move the Commission issue a siting application fee final refund in the amount of \$12,500 in ONEOK Rockies Midstream, L.L.C., Lonesome Creek Gas Plant – McKenzie County, ND, Siting Application, Case No. PU-14-218

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-17-192  
Montana-Dakota Utilities Co.  
Thunder Spirit Wind Project  
Siting Application

Ms. Fedorchak: I move the Commission rescind the May 5, 2021 Motion issuing a siting application fee final refund and further move the Commission find that the tree and shrub mitigation is satisfactory and issue a siting application fee final refund in the amount of \$19,859.31 in Montana-Dakota Utilities Co., Thunder Spirit Wind Project, Siting Application, Case No. PU-17-192.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Compliance Division  
Auctioneer and Auction Clerk Update

Ms. Fedorchak: I move the Commission acknowledge the issuance of the following new auction licenses, all of which became effective during the month of June 2021.

AUCTION CLERK LICENSE

Auction Clerk Name	Location	Effective Date
Bryce McVicker	Sanborn, MN	6/20/2021

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-20-279  
Public Service Commission  
Magnum Electric, Inc.  
Damage Prevention Enforcement

Ms. Fedorchak: I move the Commission find the Formal Complaint filed by the North Dakota Public Service Commission Advocacy Staff on June 22, 2021, states a *prima facie* case, and serve the Complaint on the Respondent in Public Service Commission, Magnum Electric, Inc., Damage Prevention Enforcement, Case No. PU-20-279.

Mr. Christmann: I second the motion.  
Roll Call: All voting "Aye."

Case No. PU-20-340  
Public Service Commission  
Dean's Excavating  
Damage Prevention Enforcement

Ms. Fedorchak: I move the Commission find the Formal Complaint filed by the North Dakota Public Service Commission Advocacy Staff on June 16, 2021, states a *prima facie* case, and serve the Complaint on the Respondent in Public Service Commission, Dean's Excavating, Damage Prevention Enforcement, Case No. PU-20-340.

Mr. Christmann: I second the motion.  
Roll Call: All voting "Aye."

Case No. PU-20-371  
Montana-Dakota Utilities Co.  
Robert Ferebee - Dunn County  
Public Convenience & Necessity

Ms. Fedorchak: I move the Commission adopt the Order in Montana-Dakota Utilities Co., Robert Ferebee – Dunn County, Public Convenience & Necessity, Case No. PU-20-371.

Mr. Christmann: I second the motion.  
Roll Call: All voting "Aye."

Case No. PU-20-379  
Montana-Dakota Utilities Co.  
2020 Natural Gas Rate Increase  
Application

Ms. Fedorchak: I move the Commission issue an application fee refund in the amount of \$49,901.59 in Montana-Dakota Utilities Co., 2020 Natural Gas Rate Increase, Application, Case No. PU-20-379.

Mr. Christmann: I second the motion.  
Roll Call: All voting "Aye."

Case No. PU-20-414  
Montana-Dakota Utilities Co.  
Brett Zenker - Grant County  
Public Convenience & Necessity

Ms. Fedorchak: I move the Commission adopt the Order in Montana-Dakota Utilities Co., Brett Zenker – Grant County, Public Convenience & Necessity, Case No. PU-20-414.

Mr. Christmann: I second the motion.  
Roll Call: All voting "Aye."

Case No. PU-21-234  
Otter Tail Power Company  
Archer Daniels Midland Company -  
Stutsman County  
Public Convenience & Necessity

Ms. Fedorchak: I move the Commission issue a Notice of Opportunity for Hearing in Otter Tail Power Company, Archer Daniels Midland Company – Stutsman County, Public Convenience & Necessity, Case No. PU-21-234.

Mr. Christmann: I second the motion.  
Roll Call: All voting "Aye."

Case No. PU-20-98  
Public Service Commission  
Sun Electric, Inc.  
Damage Prevention Enforcement

Mr. Kroshus: I move the Commission adopt the Order on Consent Agreement in Public Service Commission, Sun Electric, Inc., Damage Prevention Enforcement, Case No. PU-20-98.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-20-368  
Public Service Commission  
Gladen Construction, Inc.  
Damage Prevention Enforcement

Mr. Kroshus: I move the Commission adopt the Order on Consent Agreement in Public Service Commission, Gladen Construction, Inc., Damage Prevention Enforcement, Case No. PU-20-368.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-20-389  
Public Service Commission  
Alturas Energy, LLC  
Damage Prevention Enforcement

Mr. Kroshus: I move the Commission close Public Service Commission, Alturas Energy, LLC, Damage Prevention Enforcement, Case No. PU-20-389.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-20-356  
Nodak Electric Cooperative, Inc.  
vs. Otter Tail Power Company  
Complaint

Mr. Kroshus: I move that the Commission adopt the Findings of Fact, Conclusions of Law and Order in Nodak Electric Cooperative Inc. vs. Otter Tail Power Company, Complaint, Case No. PU-20-356.

Mr. Christmann: I second the motion.

#### Motion to Substitute Order

Ms. Fedorchak: I move that the Commission adopt a substitute Findings of Fact, Conclusions of Law and Order in Nodak Electric Cooperative Inc. vs. Otter Tail Power Company, Complaint, Case No. PU-20-356.

Mr. Christmann: I second the motion.

After further discussion, the motion was subsequently amended by Ms. Fedorchak to further move:

I move the Commission amend the substitute order to remove Conclusions of Law paragraph 9; and I move the Commission approve the substitute order as amended.

Mr. Christmann: I second the motion.

Vote on Motion and Substitute Order as Amended:

Roll Call: Ms. Fedorchak: "Aye."

Mr. Christmann: "Aye."

Mr. Kroshus: "Nay."

Dissenting Opinion

Case No. PU-20-356  
Nodak Electric Cooperative, Inc.  
vs. Otter Tail Power Company  
Complaint

DISSENT  
Commissioner Brian Kroshus

Wasteful Duplication of Service

I dissent from today's order on case number PU-20-356, Nodak Electric Cooperative, Inc. vs. Otter Tail Power Company Complaint, because it results in unreasonable duplication of service.

The area of dispute is known as the "McFarland's Addition" located adjacent to the west corridor of Interstate 29 in Pembina County. The intended end-use customer to be served with electrical service is Love's Travel Stop, currently under construction within the area in dispute.

Love's Travel Stop initiated contact in February of 2019 with Nodak, seeking electric service from Nodak. The McFarland's Addition was subsequently annexed into the city of Drayton in August of 2019, after Nodak had already begun the process to extend service to Love's.

The Commissions responsibilities in matters like this, set forth in Section 49-03-06 of NDCC, include discouraging the wasteful duplication of services, and encouraging cooperative and harmonious interaction and operational efficiency among electric providers operating within the state.

Nodak Electric has an existing distribution facility within the McFarland's Addition, an underground single-phase distribution line. It also has in service a three-phase distribution line immediately adjacent to the west property line of the McFarland's Addition providing power to an existing customer. While Love's Travel Stop desires three-phase service, NDCC does not qualify what type of distribution line qualifies as existing infrastructure.

Nodak Electric testified that it has made previous investments in the area intended to create capacity to serve the vicinity of Drayton, based on the service area agreement between Nodak and Otter Tail, signed by both parties in 1968 and again reviewed in 1972.

## Dissenting Opinion Continued

Case No. PU-20-356  
Nodak Electric Cooperative, Inc.  
vs. Otter Tail Power Company  
Complaint

Nodak's distribution line in the McFarland's Addition was upgraded in 2009, demonstrating a continued commitment to reliably serving load in proximity to the city of Drayton.

Although Otter Tail has a transmission line running parallel and within the western edge of the McFarland's Addition, a transmission line is not an economical means of providing service to end-use customers without significant investment, which would include the construction and placement of a substation, necessary to "step down" electricity, before placement of a distribution line would even be possible.

The economics do not support service from Otter Tail Power. Cost to provide service from Nodak is \$19,000, significantly less than the \$52,000 necessary for Otter Tail to provide service to the same proposed customer, an unreasonable increase of 273.1 percent.

While it was argued that the \$33,000 additional increase for Otter Tail is not a relevant amount, I disagree. Century Code does not state what unit of measurement is deemed "material," including dollar amount. The amount is in fact material, given the significant percentage cost difference to provide service between the two electric providers involved in this case. The cost difference, when applied to the thousands of electric service extensions occurring throughout North Dakota each year, would be considerable and certainly not deemed economical by any existing standard.

Simply put, the economics clearly favor Nodak as the service provider for Love's Travel Stop.

Further, the dollar and percentage increase for Otter Tail to serve the customer must be kept in perspective. While the amount may not be material to a larger publicly traded company such as Otter Tail, the same standard cannot be applied to a smaller member-owned, non-profit utility such as Nodak with a substantially smaller revenue base.

#### Service Area Agreement

While not eligible for review by the Commission and therefore not a factor in my dissent, the existing service area agreement and associated map, representing the city of Drayton and area in proximity to Drayton,

Dissenting Opinion Continued

Case No. PU-20-356  
Nodak Electric Cooperative, Inc.  
vs. Otter Tail Power Company  
Complaint

executed by authorized representatives for both parties, defines agreed-upon service area territories for both Nodak and Otter Tail, respectively.

The terms of the agreement and map clearly demonstrates the McFarland's Addition is within the designated service territory of Nodak.

Again, though not eligible for review by the Commission, that factor does not nullify the legal standing of the executed service area agreement between Nodak and Otter Tail.

Legislative Intent

I find it difficult to believe that the North Dakota Legislature, when creating North Dakota Century Code, intended for annexation of an area into an existing city within the state, to be used as a mechanism to supersede the territorial rights of a rural electric cooperative.

While the basis of my dissent is unreasonable and wasteful duplication of service, as previously defined, I also recognize the troubling precedence set forth by today's decision.

Larger entities such as Otter Tail Power naturally become more economical with additional load growth while smaller, yet equally important rural electric utilities like Nodak, critical to serving North Dakota's rural community, become less economical and competitive over time, negatively impacting the homes and businesses they serve and creating an uneven playing field between the two utility types.

Legislative intent supports and promotes orderly development, fair competition and harmonious interaction between electrical providers for the benefit and welfare of the citizens of North Dakota. That threshold has not been met by today's order in Case Number PU-20-356.



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Brian Kroshus, Commissioner

Case No. PU-20-210  
Public Service Commission  
B & G Oilfield Services  
Damage Prevention Enforcement

Ms. Fedorchak: I move the Commission appoint Brian Johnson and Adam Renfandt as advocacy staff effective June 14, 2021, in Public Service Commission, B & G Oilfield Services, Damage Prevention Enforcement, Case No. PU-20-210.

Mr. Kroshus: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-20-279  
Public Service Commission  
Magnum Electric, Inc.  
Damage Prevention Enforcement

Ms. Fedorchak: I move the Commission appoint Brian Johnson and Victor Schock as advocacy staff effective June 22, 2021, in Public Service Commission, Magnum Electric, Inc., Damage Prevention Enforcement, Case No. PU-20-279.

Mr. Kroshus: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-20-343  
Public Service Commission  
BEK Consulting LLC  
Damage Prevention Enforcement

Ms. Fedorchak: I move the Commission appoint Brian Johnson and Adam Renfandt as advocacy staff effective June 15, 2021, in Public Service Commission, BEK Consulting LLC, Damage Prevention Enforcement, Case No. PU-20-343.

Mr. Kroshus: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-20-345  
Public Service Commission  
Tim W. Olson Construction Inc.  
Damage Prevention Enforcement

Ms. Fedorchak: I move the Commission appoint Brian Johnson and Adam Renfandt as advocacy staff effective June 16, 2021, in Public Service Commission, Tim W. Olson Construction Inc., Damage Prevention Enforcement, Case No. PU-20-345.

Mr. Kroshus: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-20-359  
Public Service Commission  
Ramos Plumbing Inc.  
Damage Prevention Enforcement

Ms. Fedorchak: I move the Commission appoint Brian Johnson and Adam Renfandt as advocacy staff effective June 18, 2021, in Public Service Commission, Ramos Plumbing Inc., Damage Prevention Enforcement, Case No. PU-20-359.

Mr. Kroshus: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-20-363  
Public Service Commission  
Northwest Excavating, LLC  
Damage Prevention Enforcement

Ms. Fedorchak: I move the Commission appoint Brian Johnson and Adam Renfandt as advocacy staff effective June 22, 2021, in Public Service Commission, Northwest Excavating, LLC, Damage Prevention Enforcement, Case No. PU-20-363.

Mr. Kroshus: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-20-377  
Public Service Commission  
Central Trenching Inc  
Damage Prevention Enforcement

Ms. Fedorchak: I move the Commission appoint Brian Johnson and Victor Schock as advocacy staff effective June 25, 2021, in Public Service Commission, Central Trenching Inc, Damage Prevention Enforcement, Case No. PU-20-377.

Mr. Kroshus: I second the motion.  
Roll Call: All voting "Aye."

Case No. PU-20-386  
Public Service Commission  
CenturyLink Communications, LLC  
Damage Prevention Enforcement

Ms. Fedorchak: I move the Commission appoint Brian Johnson and Victor Schock as advocacy staff effective June 23, 2021, in Public Service Commission, CenturyLink Communications LLC, Damage Prevention Enforcement, Case No. PU-20-386.

Mr. Kroshus: I second the motion.  
Roll Call: All voting "Aye."

Case No. PU-20-424  
Public Service Commission  
Central Trenching Inc  
Damage Prevention Enforcement

Ms. Fedorchak: I move the Commission appoint Brian Johnson and Victor Schock as advocacy staff effective June 25, 2021, in Public Service Commission, Central Trenching Inc, Damage Prevention Enforcement, Case No. PU-20-424.

Mr. Kroshus: I second the motion.  
Roll Call: All voting "Aye."

Case No. PU-20-449  
Public Service Commission  
Pennington Fencing  
Damage Prevention Enforcement

Ms. Fedorchak: I move the Commission appoint Brian Johnson and Victor Schock as advocacy staff effective June 4, 2021, in Public Service Commission, Pennington Fencing, Damage Prevention Enforcement, Case No. PU-20-449.

Mr. Kroshus: I second the motion.  
Roll Call: All voting "Aye."

Case No. PU-20-457  
Public Service Commission  
Xcel Energy Inc.  
Damage Prevention Enforcement

Ms. Fedorchak: I move the Commission appoint Brian Johnson and Victor Schock as advocacy staff effective June 25, 2021, in Public Service Commission, Xcel Energy Inc., Damage Prevention Enforcement, Case No. PU-20-457.

Mr. Kroshus: I second the motion.  
Roll Call: All voting "Aye."

ATTEST

THE COMMISSION ADJOURNED AT 12:09 P.M.

  
Executive Secretary

  
JULIE FEDORCHAK, CHAIR