June 4, 2004

The Public Service Commission convened in the Commission Hearing Room, State Capitol, Bismarck, North Dakota on June 4, 2004, at 2:00 p.m. Present were Commissioners Clark, Wefald, and Cramer.

Case No. PU-04-248
Paces Lodging Corporation, c/o Montgomery Goff & Bullis, P.C.
Master Meter Waiver Approval

Mrs. Wefald: I move to recess until 2:45 p.m.
Mr. Cramer: I second the motion.

Reconvened 2:45 p.m.

Mrs. Wefald: I move the Commission adopt the Order granting Paces Lodging Corporation's petition to master meter electric service, Case No. PU-04-248.
Mr. Cramer: I second the motion.
Roll Call: All voting "Aye."

Commissioner Clark's Concurring Opinion

Mr. Clark: Our action today is proper insofar that the applicant meets the requirement set forth in the exemption allowance under the rule. It is also an instructive case. It raises serious questions about the efficacy of NDAC 69-09-02-37

The rule prohibits master meters, with a few exceptions. The theory behind it is that if all customers in a multi-tenant environment are forced to have their own separate electric meters—whether they want one or not—they will individually, and thus collectively, commit to using less electricity.

Unfortunately, the rule appears to create a set of perverse consequences. That is where this case is so enlightening. Here are some of the outcomes fostered by the rule:

- The rule allows for inequities between utility companies. Cooperatives, which are in competition with investor-owned utilities in a number of growing cities, are under no obligation to obey this rule. This creates an incentive for prospective apartment builders to seek building locations based on an uneven regulatory playing field. This is hardly a desirable outcome.
- The rule encourages unwise choices about sources of fuel. Natural gas does not fall under the master metering rule (for that matter, neither do water utilities). Should we deny this exception, the applicant has stated it will likely use natural gas for central heating, which it sees as a less desirable outcome for future renters, but better than totally electric separate meters. Again, the regulation is falling prey to the law of unintended consequences.
- The rule ignores the fact that, to one degree or

Concurring Comments Cont.

another, apartment buildings "share" heat. One rationale proffered as justification for the rule is the notion that each renter should be forced to pay for only the heat he or she uses. Yet the laws of physics outsmart one of the intents of the rule. Warm air rises through buildings. Undoubtedly, even with separate meters, some apartment dwellers are "subsidizing" others. Again the core assumptions of the rule must be questioned.

- Commission staff indicated during our informal hearing that given the current MDU electric tariff, it is difficult to conceive of any similar situation where a builder would not meet the standard for exceptions to the rule (i.e. that incremental costs of purchasing and installing separate meters for heating load would almost always outweigh long run benefits). Clearly the Commission should consider reforming a rule that compels builders to repeatedly come before it given the exception will almost always be met. To not address the rule will encourage ongoing regulatory busybody work. In the end, these are regulatory expenses that are passed on to tenants.
- Finally, the rule has put the Commission firmly in the middle of a private company's decision making process without requiring sufficient and quantifiable public benefits. The applicant has indicated that it wishes to configure its apartment buildings to meet a market demand. Its potential renters desire that a portion of their utilities be rolled-in to their rent. At least some segment of the rental market strongly desires the peace of mind that comes with less volatile utility bills. This would be especially true of the elderly and other fixed-income renters. But this rule says, "government knows best." Instead of simply filling its niche in the market, the applicant is forced to hire legal counsel and rearrange construction plans awaiting the outcome of a regulatory proceeding.

The Commission needs to ask if the rule ever fit North Dakota particularly well. North Dakota is blessed to have an abundant supply of low-cost power. As a result, many of the more aggressive demand-side management techniques have not been viewed as cost effective here. Barring meaningful price incentives, the energy and money conservation measures that low-usage apartment renters can hope to recoup would

Concurring Comments Cont.

seem to be fairly negligible. Put bluntly, we need to ask if there is evidence that the rule accomplishes its purported goal—conserve, in the aggregate, an appreciable amount of energy.

Last year, the Commission looked at this rule in a proceeding to determine whether it should be repealed or reformed. Unfortunately, it declined to tackle the issue at that time. I dissented from that decision. With this case we now have an acute example of the shortcomings of the rule. I hope this illustrative case gives the Commission a second chance to meaningfully deal with legitimate concerns about NDAC 69-09-02-37.

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Tony Clark, President

ATTEST:

THE COMMISSION ADJOURNED AT 3:00 P.M.

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Executive Secretary

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TONY T. CLARK, PRESIDENT