

December 31, 2008

The Public Service Commission convened in the Commission Hearing Room, State Capitol, Bismarck, North Dakota, on December 31, 2008, 10:00 a.m. Present were Commissioners Wefald, Cramer and Clark.

Minutes

Mr. Cramer: I move the minutes of December 17, 2008 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:

Alltel	294.89
Ulteig	6,155.50
Kadrmass, Lee & Jackson, Inc.	8,221.58
Hanson's Excavating, Inc.	41,825.00
Tom Rafferty	1,000.00
AAWCO	200.00
ND Newspaper Association	725.24
Rick Fillbrandt	649.90
Phyllis G. Richter	520.82
Leo Praus	848.07
William T. Gunnerson	185.58
Hub International of North Dakota	50.00
OMB – training	316.00
OAH	27.99
OMB – 11/08 ups	15.24
OMB – 11/08 WC deductible	250.00
DOT – 11/08	12,910.38
GE Corporate Payment Services	3,492.63

Mr. Clark: 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

Mr. Cramer: I move the Commission issue a siting application fee interim refund to Tatanka Wind Power LLC in the amount of \$29,089.79, Case No. PU-06-443.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. AM-08-10
Williams County Rd 9
2008 Phase 9 Construction
Project

Mr. Cramer: I move the Commission close out Contract No. AM-561-08 with Material Testing Services, LLC, for completion of material testing and related services for the 2008 Williams County Road 9 Phase 3 AML project.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. AM-08-577
AML Emergency
2008 Ruud - Parshall
Project

Mr. Cramer: I move the Commission closeout Contract No. AM-571-08 with Ulteig Engineers, Inc. for conducting a structural survey of the Richard Ruud residence that was damaged during an AML emergency project.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-08-742
Otter Tail Corporation
Renewable Resource Cost
Recovery Rider 2009
Tariff

Mr. Cramer: I move the Commission permit attorney Richard J. Savelkoul to appear before the Commission under N.D. Admin. Code §69-02-01-06 and the North Dakota Supreme Court Rule 3 to represent Large Industrial Group in Otter Tail Corporation's Renewable Resource Cost Recovery Rider and Determination of Prudence Application, Case No. PU-08-742.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-08-862
Otter Tail Corporation
Electric Rate Increase
Application

Mr. Cramer: I move the Commission permit attorney Richard J. Savelkoul to appear before the Commission under N.D. Admin. Code §69-02-01-06 and the North Dakota Supreme Court Rule 3 to represent Large Industrial Group in Otter Tail Corporation's Electric Rate Increase Application, Case No. PU-08-862.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-08-742
Otter Tail Corporation
Renewable Resource Cost
Recovery Rider 2009
Tariff

Mr. Cramer: I move the Commission appoint Annette Bendish, Jerry Lein, and Mike Diller as advocacy staff in Otter Tail Corporation's Renewable Resource Cost Recovery Rider and Determination of Prudence Application, Case No. PU-08-742.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-08-862
Otter Tail Corporation
Electric Rate Increase
Application

Mr. Cramer: I move the commission approve the Amended Schedules for Approved Interim Rates Effective January 2, 2009 in Otter Tail Power Company's Electric Rate Increase Application, Case No. PU-08-862.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. AU-08-935
Herschel D. Pruitt
Auctioneer
License Application

Mr. Cramer: I move the Commission approve the auctioneer license application for Herschel D. Pruitt, Wheatland, Wyoming.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. AU-08-936
Patrick Simon
Auctioneer
License Application

Mr. Cramer: I move the Commission approve the auctioneer license application for Patrick Simon, Twin Valley, Minnesota.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. AU-08-937
Patrick Simon dba Simon Auction
Service
Auction Clerk
License Application

Mr. Cramer: I move the Commission approve the auction clerk license application for Patrick Simon dba Simon Auction Service, Twin Valley, Minnesota.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

AML Projects
Beulah Public Meeting

Mrs. Wefald: I move the Commission authorize the Abandoned Mine Lands Division to hold a public meeting in Beulah to discuss the 2009 and 2010 reclamation projects that are planned north of Beulah and to solicit input on other abandoned mines of concern.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-06-466
Otter Tail Corporation
Renewable Generation Rider
Application

Mrs. Wefald: I move the Commission adopt the Order Granting Trade Secret Protection to Otter Tail Corporation for cost information contained in the calculation of revenue requirements regarding Otter Tail's shares of the Langdon Wind Energy Center, Case No. PU-06-466.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-07-776
Northern States Power Company
Electric Rate Increase
Application

Mrs. Wefald: I move the Commission adopt the Order Adopting Settlement in Case Number PU-07-776, Northern States Power Company, Electric Rate Increase, Application.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. AM-08-753
2008 AML Coal Fire Suppression
Grant
Application

Mrs. Wefald: I move the Commission issue an intent to award a contract to Basaraba Excavating & Dirt Works LLC to extinguish coal outcrop fires at numerous locations in western North Dakota using funds from the 2008 AML Coal Fire Suppression Grant.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-08-862
Otter Tail Corporation
Electric Rate Increase
Application

Mrs. Wefald: I move the Commission issue a contract for consultant services to Snavelly King Marjoros O'Connor & Lee Inc. in Otter Tail Corporation's Electric Rate Increase Application, Case No. PU-08-862.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Case No. AM-08-888
2009 - 2012 ND Reclamation
Simplified Grant
Application

Mrs. Wefald: I move the Commission submit the 2009 - 2012 North Dakota Abandoned Mine Lands Reclamation Simplified Grant Application to the Office of Surface Mining requesting \$3,037,279 in federal funds for the Abandoned Mine Lands Program.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-08-931
Just Wind, LLC
Emmons County Wind Farm Project
Siting Application

Mrs. Wefald: 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 the filing of an application in Case No. PU-08-931, Just Wind, LLC's proposed 900 MW wind farm in Emmons County, North Dakota.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-08-932
Enxco Service Corporation
Merricourt Wind Power Project
Siting Application

Mrs. Wefald: 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 the filing of an application in Case No. PU-08-932, Enxco Service Corporation's proposed 150 MW wind farm in Dickey and McIntosh Counties of North Dakota.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-08-934
Montana-Dakota Utilities Co.,
a Division of MDU
January 2009
Fuel Cost Adjustment

Discussion Only

Case No. PU-08-831
Pecan Pipeline (North Dakota), Inc.
Natural Gas Pipeline Extension -
Mountrail County
Jurisdictional Determination

Commissioner Cramer's
Concurring Opinion in Part

Mr. Cramer: I move the Commission direct Staff to send a letter opinion to Pecan Pipeline (North Dakota) Inc, determining that the Pecan Pipeline 12-inch Gas Pipeline in Mountrail County, is non-jurisdictional in Case No. PU-08-831.

Mr. Clark: I second the motion.

Roll Call: Mrs. Wefald: "Nay"

Mr. Cramer: "Aye"

Mr. Clark: "Aye."

In October of this year, following a meeting between PSC staff and representatives of Pecan Pipeline ND Inc., PSC staff received a letter requesting a determination of non-jurisdiction relative to plans by the company to construct and install additional pipelines in Mountrail, Ward and McHenry Counties. Specifically Pecan, a wholly owned subsidiary of EOG Resources proposes a 75 mile extension of its current natural gas gathering operations performed in conjunction with oil and gas development in the Parshall-Bakken Pool. ND law clearly requires the PSC to issue a route permit and corridor certificate for intrastate natural gas **transmission lines**. It exempts natural gas **gathering lines** from our siting authority. So the question as to our authority in the Prairie Rose Pipeline which is the name given to this particular project, is does this 75 miles of 12 inch pipe constitute a transmission line or a gathering line.

The most compelling standard for me in answering the question relates to the quality of the gas being delivered. Although the gas collected at the well is raw gas and then processed to the degree necessary to move it down stream to the Alliance Interstate Pipeline, it is still largely raw gas. The processing facility currently operated at Palermo where this extension begins is being mothballed and replaced by a condensate recovery unit which I believe constitutes an "**associated facility**", and not a processing facility.

Although staff argument that the proposed condensate facility does process the gas beyond raw gas has merit, the removal of some impurities does not make the gas suitable for end use.

The question not answered in law is how much processing triggers the siting standard? Absent a clear definition of processing in law I believe we have to give consideration to the ordinary sense of the words used and the context in which they are used. The words "**processed gas**" used by industry refer to pipeline quality gas such as currently comes out of the Palermo

Commissioner Cramer's
Concurring Opinion in Part
Continued

facility. There is no statute language I could find that draws a distinction between different degrees of processing. If any processing creates "**processed gas**" then there is several hundred miles of jurisdictional pipelines that have not been sited by the PSC in western ND.

Had the ND legislature wanted all pipelines from the well to the market to be sited they would have said so. Instead they drew a distinction between gathering and transmission.

The ND Industrial Commission also weighed in on our decision. Although the letter from the pipeline authority urging us to find in favor of Pecan is irrelevant to our legal responsibility, it is worth noting that the attorney general of the state sits on the governing board which authorized the letter. I can't imagine he would encourage us to break the law.

I am pleased that EOG and other companies are investing in facilities to capture and transport the rich natural gas reserves coming out of western ND rather than flaring it off. The demand for gas is increasing in our nation while the supply is finite. Currently EOG flares off 21 mcf of gas every day which could be shipped to Chicago for processing via the Prairie Rose Pipeline and the Alliance Pipeline. This will preserve a precious natural resource while providing more wealth for our citizens and revenue for our state.

The urgency of production is not the primary concern of the PSC, rather orderly and safe development is. I believe the law supports a decision of non-jurisdiction in this case.

Case No. RC-08-846
Falkirk Mining Company
Notice of Violation 0803
Violation

Mr. Cramer: I move the Commission adopt a final order in Case No. RC-08-846, Notice of Violation No. 0803 issued to The Falkirk Mining Company at the Falkirk Mine, to affirm the violation and assess a civil penalty.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-08-923
Saddle Butte Pipeline LLC
Natural Gas / Crude Oil System -
McKenzie/Dunn Cty
Public Convenience & Necessity

Mr. Cramer: I move the Commission issue a Notice of Opportunity to Request Hearing in Case No. PU-08-923, Saddle Butte Pipeline LLC's application for a certificate of public convenience and necessity to construct and own a natural gas and crude oil pipeline system in McKenzie and Dunn Counties.

Mrs. Wefald: I second the motion.

Roll Call: All voting "Aye."

Reclassification Approval

Mrs. Wefald: I move the Commission approve Patrick Fahn's reclassification to Director of Compliance and Competitive Markets effective January 1, 2009.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Reclassification Approval

Mr. Wefald: I move the Commission approve Mike Diller's reclassification to Director of Economic Regulation effective January 1, 2009.

Mr. Cramer: I second the motion.

Roll Call: All voting "Aye."

Case No. GS-08-765
Northern States Power Company
Gas Safety – Fargo, ND
Inspection

Mr. Cramer: I move the Commission approve the contract to CRT Laboratories, Inc. to conduct tests on pipe samples in Northern States Power Company, Gas Safety Fargo, North Dakota Inspection, Case No. GS-08-765.

Mr. Clark: I second the motion.

Roll Call: All voting "Aye."

ATTEST

THE COMMISSION ADJOURNED AT 11:56 A.M.

Executive Secretary

COMMISSIONER