

January 29, 2014

The Public Service Commission convened in the Commission Hearing Room, State Capitol, Bismarck, North Dakota, on January 29, 2014, 10:00 a.m. Present were Commissioners Kalk, Christmann, and Fedorchak.

Minutes

Mr. Kalk: I move the minutes of January 15, 2014 be approved.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-13-822
Integra Telecom of North Dakota, Inc.
Fargo Rate Center
Numbering Resources

Mr. Kalk: I move the Commission acknowledge the withdrawal by Integra Telecom of North Dakota, Inc. of its October 2, 2013 request for additional telephone numbering resources, Case No. PU-13-822.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-12-398
Great River Energy
230 kV Transmission Line -
Grand Forks - Devils Lake
Siting Application

Mr. Kalk: I move the Commission approve Great River Energy's Tree Replacement Plan filed in Case No. PU-12-398, Great River Energy's siting application for the rerouting of two segments of 230 kV electric transmission line in Ramsey and Nelson Counties of North Dakota.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. AU-14-40
Payden Dronen
Auctioneer
License Application

Mr. Kalk: I move the Commission approve the auctioneer license application for Payden Dronen, Steele, North Dakota.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-13-199
Montana-Dakota Utilities Co.,
a Division of MDU
Crescent Point Energy U.S. Inc. -
Divide County
Public Convenience & Necessity

Mr. Kalk: I move the Commission adopt the Order and issue a Certificate of Public Convenience and Necessity authorizing Montana-Dakota Utilities Co., A division of MDU Resources Group, Inc. to extend electric service to Crescent Point Energy U.S. Inc. at a location in Divide County, North Dakota, Case No. PU-13-199.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-13-799
Dakota Prairie Refining, LLC /
Lario Shipping, LLC
Two Petroleum Product Pipelines -
Stark County
Siting Application

Mr. Kalk: I move the Commission execute a contract with Wenck Associates, Inc. for construction inspection services concerning Dakota Prairie Refining, LLC and Lario Shipping, LLC's construction of a 6-inch and an 8-inch refined petroleum products pipeline and associated facilities located in Stark County, North Dakota, Case No. PU-13-799.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-14-35
Otter Tail Power Company
Cogeneration –
Small Power Production
Rates

Mr. Kalk: I move the Commission approve Otter Tail Power Company's updated Cogeneration and Small Power Production Rates, Case No. PU-14-35.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-13-98
Nexus Communications, Inc.
Designated Eligible Carrier
Application

Mr. Kalk: I move the Commission adopt the Amended Order on Eligible Telecommunications Carrier Designation to designate Nexus Communications, Inc. as an eligible telecommunications carrier throughout all telephone exchanges in North Dakota including Tribal Lands for the purpose of receiving federal universal service support for low-income consumers, Case No. PU-13-98.

Ms. Fedorchak: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-14-34
Tempo Telecom, LLC
Designated Eligible Carrier
Application

Mr. Kalk: I move the Commission issue a Notice of Opportunity for Hearing concerning Tempo Telecom, LLC's application to be designated as an eligible carrier for the purpose of receiving federal universal service support for Lifeline service, Case No. PU-14-34.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. GE-13-843
TYR Wood Products, Inc.
Roving Grain Buyer - Portland, OR
License Application

Mr. Christmann: I move the Commission adopt an order in Case No. GE-13-843 granting the request of TYR Wood Products, Inc. of Portland, Oregon to operate as a roving grain buyer in North Dakota.

Ms. Fedorchak: I second the motion.

Roll Call: All voting "Aye."

Case No. GE-11-51
Mitchell Feeds, Inc.
Roving Grain Buyer
Insolvency

Mr. Christmann: I move the Commission file with Burleigh County District Court the Report and Recommendation of Trustee recommending that the Commission pay all valid claims, together with the corresponding Motion to Approve Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Payment, and Discharge Trustee, and related documents.

I further move that once the Report and Recommendation is approved by the District Court, the Licensing Director be authorized to pay all valid claims as soon as possible, in Mitchell Feeds, Inc., Roving Grain Buyer, Insolvency, Case No. GE-11-51.

Ms. Fedorchak: I second the motion.

Roll Call: All voting "Aye."

Case No. GE-11-51
Mitchell Feeds, Inc.
Roving Grain Buyer
Insolvency

Ms. Fedorchak: I move the substitute motion below in order to file a Report and Recommendation to pay only those claims arising within the effective period of the bond, in Mitchell Feeds, Inc., Roving Grain Buyer, Insolvency, Case No. GE-11-51:

I move the Commission file with Burleigh County District Court the Report and Recommendation of Trustee recommending that the Commission pay all valid claims arising during the period in which the bond was effective, together with the corresponding Motion to Approve Report and Recommendation of Trustee, Require Deposit of Bond Proceeds, Approve Payment, and Discharge Trustee, and related documents.

I further move that once the Report and Recommendation is approved by the District Court, the Licensing Director be authorized to pay the claims as soon as possible, in Mitchell Feeds, Inc., Roving Grain Buyer, Insolvency, Case No. GE-11-51.

Mr. Kalk: I second the motion.

Roll Call: Mr. Kalk – "Nay."

Mr. Christmann – "Nay."

Ms. Fedorchak – "Aye."

Case No. GE-11-51
Mitchell Feeds, Inc.
Roving Grain Buyer
Insolvency

Julie Fedorchak Concurring Statement
January 29, 2014

At the NDPSC Commission meeting on Jan. 29, 2014, Commissioners faced two possible options in resolving Case No. GE-11-51, the Mitchell Feeds Roving Grain Buyer insolvency case. This was a choice between two inadequate options. We could either pay all claims or pay only those claims arising during the effective period of the bond.

Commissioner Christmann proposed a motion to use the bond proceeds to pay all the claims.

I proposed a substitute motion and argued for the latter option, using the bond proceeds to pay only those claims arising during the effective period of the bond. My rationale for this approach is described below.

However, my substitute motion failed on a 2-1 vote.

Therefore, the only remaining option for resolving this case and paying farmers was to pay all the claims. While this course of action was not my preferred option, I voted in favor of it because to oppose it would have, in effect, been a vote against paying any farmers for their losses. That was never a reasonable or desirable option for me.

I proposed the commission use bond proceeds -- the sum total of trust assets in this case -- to pay only the claims covered by the time period of the bond because I believed this option was most consistent with the law, current PSC policies and the long-term direction of our licensing and bonding program.

The sad and very unfortunate reality in this case is that bond proceeds and therefore trust assets are woefully inadequate to cover the losses: \$70,000 to cover valid claims exceeding \$1 million. The law and commission policies and practice offer clear guidance for distributing the trust proceeds.

According to the law, liability on a bond stems from when the breach occurs. Each contract that farmers held with Mitchell in this case stated that title for the grain transferred on delivery and payment was due 10 days after delivery and grading. Staff used these dates as the default or breach dates to determine which claims arose within the bond period and are therefore entitled to coverage by the bond, and which claims arose outside the bond period.

In addition to this legal guidance, Commission policies and practice have been to urge, admonish, advise, encourage and instruct producers that they are

Concurring Statement Continued

not protected if they are doing business with an unlicensed, un-bonded company. These warnings are in our materials, on our website, emphasized by staff in individual conversations with producers and in public presentations.

For these reasons – because of the legal realities of bond liability and commission policy and practice – I believe the best course of action was to pay only those claims that arose during the time period of the bond.

That said, this case and the Anderson seed insolvency for which we recently provided a report to the judge – reveal several important things that demand attention.

First, farming is a dynamic, rapidly changing industry. I have serious concerns that our licensing and bonding program hasn't kept pace with the changed of this industry. Bond levels are often terribly inadequate to provide the kind of protection I think producers believe they are receiving. The three of us have talked about this. We have discussed some potential solutions, and this case increases my determination to address these issues with producers, commodity groups and grain dealers. We need to revisit our bonding levels that were established in law in 1999 and address some of the shortfalls that exist, especially in the areas of roving grain buyers, specialty crops, processors.

Second, the commission needs to evaluate and maximize all of the existing tools that are at our disposal, through law and rules, to help prevent these kinds of situations – whether it's through stricter review of licenses and license renewals, enhanced review of the required monthly reports or tougher enforcement of existing laws and rules such as conversion of scale tickets.

Third, we need to double down on awareness. This is a partnership – a partnership between the producers, the grain dealers and the PSC. Producers play a key role, and ultimately can provide their greatest protection, by scrutinizing those people with whom they are doing business.

We also have a role to play in licensing, setting appropriate bond levels, and making it easier for producers to do their research. We already provide copies of licenses for our grain dealers to hang in their business, carry in their truck. We provide a daily updated list of licensed dealers on our website. I've asked staff to take the next step of providing a wallet sized license for roving grain buyers to carry with them. This way a farmer can and should ask to verify that a buyer is licensed and

Concurring Statement Continued

bonded and at what level before entering into a business deal with them.

I know Commissioner Christmann spent many, many hours on this case and on these issues in general. I appreciate his work, and have great respect for his opinions on behalf of producers because he is one. I know he has other possible solutions in mind. I welcome and look forward to those discussions and to identifying ways that we can improve upon our bonding and licensing programs that, when combined with the farmers own good research and business judgement, can provide a meaningful level of protection in the future and hopefully reduce the likelihood of dramatic losses such as this.

Julie Fedorchak
Public Service Commissioner

Case No. PU-13-901
BakkenLink Pipeline, LLC
Crude Oil Pipeline –
Williams to Billings Counties
Public Convenience & Necessity

Ms. Fedorchak: I move the Commission issue a Notice of Opportunity for Hearing in the application for a Certificate of Public Convenience and Necessity concerning a 132-mile, bi-directional crude oil pipeline in Williams, McKenzie, Stark, and Billings Counties, North Dakota, Case No. PU-13-901.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-13-825
Bakken Oil Express, LLC
16-Inch Crude Oil Pipeline /
Dunn & Stark Counties
Siting Application

Ms. Fedorchak: I move the Commission issue a Notice of Opportunity for Hearing in the applications for an amended certificate of corridor compatibility, an amended route permit, and application for waivers of procedures and time schedules concerning the Bakken Oil Express, LLC, Pipeline, a 38-mile-long crude oil pipeline located in Dunn and Stark Counties, North Dakota, Case No. PU-13-825.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-13-862
American Civil Constructors, Inc.
Damage Prevention Enforcement

Case No. PU-13-877
Northern Excavating Co., Inc. (7-25-
2013)
Damage Prevention Enforcement

Case No. PU-13-878
Northern Excavating Co., Inc. (8-2-
2013)
Damage Prevention Enforcement

Case No. PU-13-879
Northern Excavating Co., Inc. (25 pair
copper)
Damage Prevention Enforcement

Case No. PU-13-880
Northern Excavating Co., Inc. (144
Fiber Optic)
Damage Prevention Enforcement

Case No. PU-13-881
Northern Excavating Co., Inc. (9-17-
2013)
Damage Prevention Enforcement

Case No. PU-13-882
Northern Excavating Co., Inc. (9-30-
2013)
Damage Prevention Enforcement

Case No. PU-13-883
Northern Excavating Co., Inc. (75 pair
2nd time)
Damage Prevention Enforcement

Mr. Kalk: I move the Commission appoint Ryan Norrell and Julie Prescott as advocacy staff effective November 18, 2013, in the Public Service Commission damage enforcement action concerning American Civil Constructors, Inc., Case No. PU-13-862, and effective December 2, 2013, in the Public Service Commission's damage enforcement actions concerning Northern Excavating Co., Inc., Case Nos. PU-13-877, PU-13-878, PU-13-879, PU-13-880, PU-13-881, PU-13-882, and PU-13-883.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

Case No. GS-13-353
Timber Ridge Plumbing & Heating, Inc.
Damage Prevention Enforcement

Case No. GS-13-383
Rodenbough Trucking & Excavating,
Inc.
Damage Prevention Enforcement

Case No. GS-13-611
Rodenbough Trucking & Excavating,
Inc.
Damage Prevention Enforcement

Case No. GS-13-613
Robert Gibb & Sons, Inc.
Damage Prevention Enforcement

Case No. GS-13-693
Kingdom Customs, LLC
Damage Prevention Enforcement

Case No. GS-13-712
Tom's Backhoe Service, Inc.
Damage Prevention Enforcement

Case No. GS-13-735
Heartland Grading
Damage Prevention Enforcement

Case No. GS-13-788
Buffalo Concrete, LLP
Damage Prevention Enforcement

Case No. GS-13-801
Blue Stone Construction, Inc.
Damage Prevention Enforcement

Case No. GS-13-802
Selland Construction, Inc.
Damage Prevention Enforcement

Case No. GS-13-884
Northern Excavating Co., Inc. (9-13-13
11:00 a.m.)

Mr. Kalk: I move the Commission appoint Ryan Norrell and Aaron Morman as advocacy staff in the Public Service Commission damage enforcement actions effective on the dates noted in the following table, Case Nos. GS-13-353, GS-13-383, GS-13-611, GS-13-613, GS-13-693, GS-13-712, GS-13-735, GS-13-788, GS-13-801, GS-13-802, GS-13-884, GS-13-885, and GS-13-886.

Mr. Christmann: I second the motion.

Roll Call: All voting "Aye."

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Damage Prevention Enforcement
Case No. GS-13-885
Northern Excavating Co., Inc. (10-1-13
11:40 a.m.)
Damage Prevention Enforcement

Motion Continued

Case No. GS-13-886
Northern Excavating Co., Inc. (10-9-13
17:15 p.m.)
Damage Prevention Enforcement

ATTEST

THE COMMISSION ADJOURNED AT 11:57 A.M.

Executive Secretary

BRIAN P. KALK, CHAIRMAN