

April 13, 2022

The Public Service Commission convened on April 13, 2022, 10:03 a.m. via teleconference due to the closure of the Capitol complex because of inclement weather. Present were Commissioners Fedorchak, Christmann and Haugen-Hoffart.

Minutes

Ms. Fedorchak: I move the minutes of March 30 and April 7, 2022, be approved.

Ms. Haugen-Hoffart: 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 license, which became effective during the month of March 2022.

AUCTIONEER LICENSE

Auctioneer Name	Location	Effective Date
Charles Brent Wellings	Stillwater, OK	3/10/2022

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-18-39
West River Telecommunications
Cooperative
2018 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in West River Telecommunications Cooperative, 2018 High-Cost Universal Service Support, Annual Report, Case No. PU-18-39.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-18-48
North Central RSA 2 of North Dakota
Limited Partne
2018 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in North Central RSA 2 of North Dakota Limited Partn, 2018 High-Cost Universal Service Support, Annual Report, Case No. PU-18-48.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-18-49
Northwest Dakota Cellular of North
Dakota Limited
2018 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in Northwest Dakota Cellular of North Dakota Limited, 2018 High-Cost Universal Service Support, Annual Report, Case No. PU-18-49.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-18-50
North Dakota RSA No. 3 Limited
Partnership
2018 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the
Order on Protection of Information in North Dakota RSA
No. 3 Limited Partnership, 2018 High-Cost Universal
Service Support, Annual Report, Case No. PU-18-50.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-18-51
Badlands Cellular of North Dakota
Limited Partners
2018 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the
Order on Protection of Information in Badlands Cellular
of North Dakota Limited Partner, 2018 High-Cost
Universal Service Support, Annual Report, Case No.
PU-18-51.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-18-52
North Dakota 5 - Kidder Limited
Partnership
2018 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the
Order on Protection of Information in North Dakota 5 –
Kidder Limited Partnership, 2018 High-Cost Universal
Service Support, Annual Report, Case No. PU-18-52.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-18-55
Midcontinent Communications
2018 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the
Order on Protection of Information in Midcontinent
Communications, 2018 High-Cost Universal Service
Support, Annual Report, Case No. PU-18-55.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-18-56
Red River Rural Telephone Association
2018 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the
Order on Protection of Information in Red River Rural
Telephone Association, 2018 High-Cost Universal
Service Support, Annual Report, Case No. PU-18-56.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-18-57
Dickey Rural Telephone Cooperative
2018 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the
Order on Protection of Information in Dickey Rural
Telephone Cooperative, 2018 High-Cost Universal
Service Support, Annual Report, Case No. PU-18-57.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-18-63
Qwest Corporation
2018 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in Qwest Corporation, 2018 High-Cost Universal Service Support, Annual Report, Case No. PU-18-63.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-18-275
Halstad Telephone Company
2018 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in Halstad Telephone Company, 2018 High-Cost Universal Service Support, Annual Report, Case No. PU-18-275.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-18-276
Griggs County Telephone Co.
2018 High-Cost Universal Services
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in Griggs County Telephone Co., 2018 High-Cost Universal Service Support, Annual Report, Case No. PU-18-276.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-18-301
Loretel Systems, Inc.
2018 High-Cost Universal Services
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in Loretel Systems, Inc., 2018 High-Cost Universal Service Support, Annual Report, Case No. PU-18-301.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-18-327
RC Technologies Corporation
2018 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in RC Technologies Corporation, 2018 High-Cost Universal Service Support, Annual Report, Case No. PU-18-327.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-19-49
Halstad Telephone Company
2019 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in Halstad Telephone Company, 2019 High-Cost Universal Service Support, Annual Report, Case No. PU-19-49.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-19-62
Red River Rural Telephone Association
2019 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in Red River Rural Telephone Association, 2019 High-Cost Universal Service Support, Annual Report, Case No. PU-19-62.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-19-70
Dickey Rural Telephone Cooperative
2019 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in Dickey Rural Telephone Cooperative, 2019 High-Cost Universal Service Support, Annual Report, Case No. PU-19-70.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-19-73
Qwest Corporation
2019 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in Qwest Corporation, 2019 High-Cost Universal Service Support, Annual Report, Case No. PU-19-73.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-19-76
Absaraka Cooperative Telephone
Company, Inc.
2019 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in Absaraka Cooperative Telephone Company, Inc., 2019 High-Cost Universal Service Support, Annual Report, Case No. PU-19-76.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-19-86
Midcontinent Communications
2019 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in Midcontinent Communications, 2019 High-Cost Universal Service Support, Annual Report, Case No. PU-19-86.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-19-199
Griggs County Telephone Co.
2019 High-Cost Universal Services
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in Griggs County Telephone Co., 2019 High-Cost Universal Service Support, Annual Report, Case No. PU-19-199.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-19-304
RC Technologies Corporation
2019 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in RC Technologies Corporation, 2019 High-Cost Universal Service Support, Annual Report, Case No. PU-19-304.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-19-315
Loretel Systems, Inc.
2019 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in Loretel Systems, Inc., 2019 High-Cost Universal Service Support, Annual Report, Case No. PU-19-315.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-20-28
Red River Rural Telephone Association
2020 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in Red River Rural Telephone Association, 2020 High-Cost Universal Service Support, Annual Report, Case No. PU-20-28.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-20-29
Qwest Corporation
2020 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in Qwest Corporation, 2020 High-Cost Universal Service Support, Annual Report, Case No. PU-20-29.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-20-57
Midcontinent Communications
2020 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in Midcontinent Communications, 2020 High-Cost Universal Service Support, Annual Report, Case No. PU-20-57.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-20-59
BEK Communications Cooperative
2020 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in BEK Communications Cooperative, 2020 High-Cost Universal Service Support, Annual Report, Case No. PU-20-59.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-20-69
Halstad Telephone Company
2020 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in Halstad Telephone Company, 2020 High-Cost Universal Service Support, Annual Report, Case No. PU-20-69.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-20-70
Griggs County Telephone Co.
2020 High-Cost Universal Services
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in Griggs County Telephone Co., 2020 High-Cost Universal Service Support, Annual Report, Case No. PU-20-70.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-20-73
Absaraka Cooperative Telephone
Company, Inc.
2020 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in Absaraka Cooperative Telephone Company, Inc., 2020 High-Cost Universal Service Support, Annual Report, Case No. PU-20-73.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-20-266
RC Technologies Corporation
2020 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in RC Technologies Corporation, 2020 High-Cost Universal Service Support, Annual Report, Case No. PU-20-266.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-20-267
Loretel Systems, Inc.
2020 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in Loretel Systems, Inc., 2020 High-Cost Universal Service Support, Annual Report, Case No. PU-20-267.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. AM-21-18
Public Service Commission
2021 Beulah/Zap Phase 16 AML
Project

Ms. Fedorchak: I move the Commission close the 2021 Beulah/Zap Phase 16 Abandoned Mine Lands Project, Case No. AM-21-18.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. GS-21-442
Public Service Commission
Pipeline Safety
Rulemaking

Ms. Fedorchak: I move the Commission adopt the Amended Order Submitting Rules to Attorney General for an opinion as to legality in Public Service Commission, Pipeline Safety, Rulemaking, Case No. GS-21-442 and Public Service Commission, Surface Coal Mining and Reclamation Operations, Rulemaking, Case No. RC-22-28.

Amend Section 69-09-03-02 Pipeline Safety

Amend Section 69-05.2-05-06

Amend Chapter 69-05.2-16 Index

Amend Section 69-05.2-16-03

Amend Section 69-05.2-16-20

Amend Section 69-05.2-20-01 Surface Coal
Mining and Reclamation Operations

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. RC-22-28
Public Service Commission
Surface Coal Mining and Reclamation
Operations
Rulemaking

Case No. PU-20-60
Inter-Community Telephone Company,
L.L.C.
2020 High-Cost Universal Service
Support
Annual Report

Ms. Fedorchak: I move the Commission adopt the Order on Protection of Information in Inter-Community Telephone Company, L.L.C., 2020 High-Cost Universal Service Support, Annual Report, Case No. PU-20-60.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-22-163
Public Service Commission
Resource Plans and Cyber Security
Rulemaking

Ms. Fedorchak: I move the Commission propose a new chapter of North Dakota Administrative Code as attached, issue a Notice of Intent to Amend Administrative Rules and Notice of Public Hearing, and issue an abbreviated Notice of Intent to Amend Administrative Rules and Notice of Public Hearing for publication in each official county newspaper throughout the state as required by law, in Public Service Commission, Resource Plans and Cyber Security, Rulemaking, PSC Case No. PU-22-163.

New Chapter 69-09-12 Resource Plans and
Cybersecurity

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. RC-21-221
Falkirk Mining Company
Bond Release 3, Permit NAFK-8405
Application

Mr. Christmann: I move the Commission approve Bond Release No. 3 to Surface Coal Mining Permit NAFK-8405, held by the Falkirk Mining Company for the Falkirk Mine, to release all reclamation liabilities on 92.3 acres of land located in portions of Sections 23 and 24, T146N, R82W, McLean County. No monetary release is being requested since the current bond amount is based on the worst-case reclamation condition for this permit and others at the Falkirk Mine. This release will become effective May 13, 2022, unless a formal hearing is requested, in Falkirk Mining Company, Bond Release No. 3, Permit NAFK-8405, Application, Case No. RC-21-221.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-22-158
Air Voice Wireless, LLC
Designated Eligible Carrier
Application

Mr. Christmann: I move the Commission issue a Notice of Opportunity for Hearing in Air Voice Wireless, LLC, Designated Eligible Carrier, Application, Case No. PU-22-158.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: All voting "Aye."

Case No. PU-21-373
Montana-Dakota Utilities Co.
Financial Incentive - Power Purchase
Agreement
Rates

Ms. Christmann: I move the Commission adopt the Findings of Fact, Conclusions of Law and Order in Montana-Dakota Utilities Co., Financial Incentive – Power Purchase Agreement, Rates, Case No. PU-21-373.

Motion Not Seconded; Motion Failed

Case No. PU-21-373 Continued
Montana-Dakota Utilities Co.
Financial Incentive - Power Purchase
Agreement
Rates

Ms. Fedorchak: I move the Commission adopt a substitute Findings of Fact, Conclusions of Law and Order in Montana-Dakota Utilities Co., Financial Incentive – Power Purchase Agreement, Rates, Case No. PU-21-373.

Ms. Haugen-Hoffart: I second the motion.

Roll Call: Ms. Fedorchak: "Aye."

Mr. Christmann: "Nay."

Ms. Haugen-Hoffart: "Aye."

Dissenting Opinion

Case No. PU-21-373
Montana-Dakota Utilities Co.
Financial Incentive - Power Purchase
Agreement
Rates

DISSENT
Commissioner Randy Christmann
April 13, 2022

The Order for Case # PU-21-373 grants Montana-Dakota a financial incentive of .79% for a 5-year power purchase agreement with Minnkota Power Cooperative. This Order should have been rejected in favor of the alternative Order on the agenda which would have granted a financial incentive of 3.50%.

A new law passed in 2021 (after this power purchase agreement was signed) requires the Commission to allow a public utility a financial incentive set at a reasonable rate for power purchase agreements of a dispatchable, on-demand generating unit deemed to protect grid reliability. Either of the Orders before the Commission acknowledge that this PPA meets the requirements of the law. The only question seems to be what amount constitutes a reasonable rate.

Montana-Dakota requested 6.939%, which is their weighted average cost of capital from their last electric rate case. There seems to be no disagreement that the amount requested by Montana-Dakota is too high because the power purchase agreement is only five years and comes with very minimal risk. It is also acknowledged that the agreement was consummated before the law's creation.

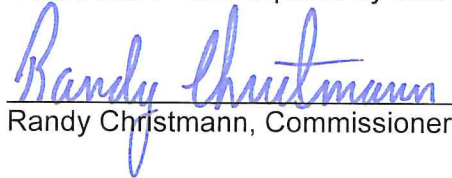
An incentive of 3.5% would have been low enough to acknowledge the difference between this very short and low-risk agreement and others that may have been imagined when the law was enacted. It would have also been a just and reasonable reward for the type of purchase being encouraged by this new law.

Dissenting Opinion Continued

Case No. PU-21-373
Montana-Dakota Utilities Co.
Financial Incentive - Power Purchase
Agreement
Rates

Policy 5-04-94 (1)
AML Contract Change Orders

An incentive of .79% does not, to me, reflect a "reasonable" rate required by law.


Randy Christmann, Commissioner

Ms. Fedorchak: I move the Commission, adopt Policy 5-04-94 (1), AML Contract Change Orders.

PUBLIC SERVICE COMMISSION

AML CONTRACT CHANGE ORDERS

POLICY 5-04-94 (1)

APRIL 13, 2022

A. PURPOSE

Project Managers of the Abandoned Mine Lands (AML) Division need authority to write change orders to contracts into which the Public Service Commission (Commission) has entered for construction and professional services. Change orders are needed whenever there is a change to scope, price, quantities, or schedule.

B. PROCEDURE

1. AML staff are authorized to write change orders to cumulatively increase ten (10) percent of the original contract amount if the Executive Director and the agency's lead procurement officer are notified and the change order is executed prior to beginning any work.
 - a. If it is not possible to execute a change order prior to beginning work, the Executive Director and agency's lead procurement officer must be informed as soon as it is determined a change order is necessary and the change order executed as soon as possible.
2. AML staff are authorized to write change orders to cumulatively increase ten (10) to twenty (20) percent of the original contract amount upon receipt of approval from the Executive Director, and notification to the agency's lead procurement officer and portfolio holder prior to beginning any work.

Policy 5-04-94 (1)
AML Contract Change Orders
Continued

3. For cumulative changes increasing twenty (20) percent or more of the original contract amount, the agency's lead procurement officer must be notified for advisement on alternative procurement procedure prior to beginning any work.
4. Notification and approval may be written or verbal. In the event the Executive Director is unavailable, the agency's lead procurement officer may provide approval.

C. BACKGROUND

Bid specifications are written based on anticipated site conditions and qualities of materials used. Particularly with underground mine reclamation, the estimates of material quantities needed and how those materials will react to site-specific conditions are difficult to anticipate. Quantities of material to be moved on surface mines are more accurately estimated, but the estimates are based on cut-and-fill calculations that can never perfectly reflect topography and, hence, material volume. This element of uncertainty may require that change orders be written. A policy that allows in-field AML staff to make immediate decisions consistent with their background and experience is needed. The alternative is either to halt construction or a service until formal commission action, resulting in contractor claims for down time, or rebidding the project. Both of these alternatives unnecessarily add to the cost of completing projects.

D. REFERENCES

- (0) PSC Minutes, August 24, 1994
- (1) PSC Minutes, April 13, 2022

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

ATTEST


Executive Secretary

THE COMMISSION ADJOURNED AT 11:08 A.M.


JULIE FEDORCHAK, CHAIR