

**REGULAR STATE CREDIT UNION BOARD MEETING
HELD BY CONFERENCE CALL
OFFICE OF THE COMMISSIONER
DEPARTMENT OF FINANCIAL INSTITUTIONS
2000 SCHAFFER STREET, SUITE G
BISMARCK, NORTH DAKOTA**

September 5, 2013

The regular meeting of the State Credit Union Board was called to order by Chairman Entringer in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota, at 9:30 a.m., Friday, June 14, 2013, by conference call.

MEMBERS PRESENT: Robert J. Entringer, Chairman (*Office*)
Paul Brucker, Member (*Office*)
Don Clark, Member (*Fargo*)
Steve Tonneson, Member (*Minot*)

MEMBER ABSENT: Melanie Stillwell, Member

ALSO PRESENT: Aaron Webb, Secretary (*Office*)
Suzette Richardson, Administrative Staff Officer (*Office*)
Jan Murtha, Assistant Attorney General (*Office*)
Corey Krebs, Chief Examiner – Credit Unions (*Office*)
Taylor Lee, Financial Institutions Examiner (*Office*)
Sara Sauter, Financial Institutions Examiner (*Office*)
Greg Tschider, Bismarck (*Office*)
Les Bossert, Genie-Watt CU, Bismarck (*Office*)
Leslie Heisler, Genie-Watt CU, Bismarck (*Office*)
Doug Erhart, Railway CU, Mandan (*Office*)

APPROVAL OF MINUTES

Chairman Entringer indicated the Board received copies of the minutes of the regular meeting held on June 14, 2013.

It was moved by Member Brucker, seconded by Member Clark, and unanimously carried to approve the minutes of June 14, 2013, as presented.

MERGER APPLICATION – GENIE-WATT CREDIT UNION, BISMARCK, INTO RAILWAY CREDIT UNION, MANDAN

Assistant Commissioner Webb reviewed his Memorandum dated August 30, 2013, which indicates the Department received the application by Railway Credit Union, Mandan (“Railway”), to merge Genie-Watt Credit Union, Bismarck (“Genie-Watt”), into Railway on July 18, 2013.

Assistant Commissioner Webb noted that Section 6-06-36 of the North Dakota Century Code refers to the right of credit unions to merge. Assistant Commissioner Webb also reviewed the procedures of Section 13-03-05-01 and 13-03-05-04 of the North Dakota Administrative Code, and indicated all the requirements have been met.

Assistant Commissioner Webb indicated the Board of Directors of Railway approved the merger with Genie-Watt on May 14, 2013; and the Board of Directors of Genie-Watt approved a Resolution on May 7, 2013, to merge into Railway.

Assistant Commissioner Webb indicated Railway’s membership approved the merger on July 15, 2013, by a vote of 35-0; and Genie-Watt’s membership approved the merger with Railway on July 16, 2013, by a vote of 42-0.

Assistant Commissioner Webb indicated notice was mailed to all credit unions within a fifty-mile radius of Railway on July 18, 2013; notice was published in the eight major newspapers between July 27th and July 30th; and the notice was also included in the Department’s July 2013 Bulletin.

Assistant Commissioner Webb indicated Railway sent a Notice of Special Meeting to the membership on July 1st and the meeting was held July 15th, resulting in a 15 day notice to members. Assistant Commissioner Webb indicated Genie-Watt sent a Notice of Special Meeting to the membership on June 18th and the meeting was held on July 16th, resulting in a 28 day notice to members.

Assistant Commissioner Webb indicated a summation of June 30, 2013, financial statements of both credit unions indicates a combined net worth of \$9.87

million for an estimated net worth ratio of 12.22%. Assistant Commissioner Webb indicated an estimated return on average assets ratio for the combined credit union would be 0.90%; adding that these estimates do not factor in the impact of fair value accounting rules as the institutions' due diligence indicates that these rules will not have a material impact on the merged financial statements. Assistant Commissioner Webb indicated these estimates also do not factor in growth or improved efficiencies which could impact overall performance.

Assistant Commissioner Webb indicated the merged credit union expects the resulting branch will be profitable within one year; adding even if the profitability issues are not resolved at the branch office, the overall entity is expected to remain profitable and financially sound. Assistant Commissioner Webb stated there are no immediate safety and soundness concerns related to this potential merger.

Assistant Commissioner Webb indicated per North Dakota Century Code Section 6-06-36 if a merger application is approved, the former main office and any branches of the credit union merged will become branches of the continuing credit union.

Assistant Commissioner Webb indicated Railway has indicated its intention to continue operations in the former main office of Genie-Watt, located at 314 E. Thayer Ave, Suite 101, Bismarck, North Dakota.

Member Brucker (President of Railway) indicated Railway has worked with Genie-Watt for many years in different events and is familiar with Genie-Watt's Board of Directors. Member Brucker indicated both credit unions have very many similarities, as they are two of the few closed charter credit unions in existence. Member Brucker indicated Genie-Watt has a select employee group that will fit well with Railway, and that Railway will absorb a credit card program currently used by Genie-Watt.

Member Brucker indicated the memberships and Boards of both credit unions voted unanimously in support of the proposed merger.

Mr. Bossert indicated Genie-Watt is a small credit union that has struggled with NCUA assessments for several years, and has had decreased revenues from lower yield rates and negative earnings for the past several months. Mr. Bossert concluded the best plan for Genie-Watt is the proposed merger with Railway.

Chief Examiner Krebs indicated he does not foresee any financial concerns with the merged entity.

Member Tonneson questioned Member Brucker as to the projection that the merged credit union would be profitable within one year, and Member Brucker indicated it is a matter of consolidating expenses and activating economy of scale, and repricing Genie-Watt products in a more efficient manner.

Assistant Commissioner Webb indicated the Department recommends approval of the application by Railway to merge Genie-Watt into Railway, as well as the proposed Order to be signed by Chairman Entringer on behalf of the Board.

Assistant Commissioner Webb reviewed Section 13-03-15-05 of the North Dakota Administrative Code which explains that members of the State Credit Union Board which are also directors, committee members, or staff of one of the proposed merging credit unions should declare a conflict of interest and must abstain from voting on the merger application.

It was moved by Member Clark, seconded by Member Tonneson, and carried by a vote of 3 to 0, with Member Stillwell absent, and Member Brucker abstaining, to approve the application by Railway Credit Union, Mandan, to merge Genie-Watt Credit Union, Bismarck, into Railway Credit Union, Mandan; to establish a branch at the former location of Genie-Watt Credit Union in Bismarck; and authorizing Chairman Entringer to sign the Order on behalf of the State Credit Union Board.

Assistant Commissioner Webb continued reviewing his Memorandum, referencing Railway's application to expand its field of membership to include Genie-Watt's current field of membership. Assistant Commissioner Webb reviewed the requirements of Section 13-03-05-01(6) of the North Dakota Administrative Code, and Chapter 13-03-14 of the North Dakota Administrative Code. Assistant Commissioner Webb indicated both Railway and Genie-Watt are closed chartered credit unions.

Assistant Commissioner Webb indicated notice of this application was published in all eight major North Dakota newspapers in accordance with Section 13-03-14-03(4) of the North Dakota Administrative Code.

Assistant Commissioner Webb indicated Railway's application to expand its field of membership proposes the addition of the following language to its current

field of membership: employees of MDU Resources Group, Inc. and its Subsidiaries and Ottertail Power-Coyote Station, Montana-Dakota Utilities Co., Knife River Corporation and WBI Holdings, Employees of the credit union, and family members and retirees of the above organizations.

Assistant Commissioner Webb stated that as part of the application to expand its field of membership, Railway included a letter dated July 1, 2013, ... indicated there is a strong union representation within the Genie-Watt family, and provided "... employment similarities are one of the primary reasons the merger of GWCU & RCU made logical and philosophical sense."

Assistant Commissioner Webb indicated the Department received a letter in opposition to Railway's merger application and application for expansion of its field of membership on August 13, 2013, from Marylyn Foss of the North Dakota Bankers Association. Assistant Commissioner Webb indicated the letter references two main objections: that the proposed Railway and Genie-Watt members do not share the statutorily mandated common bond of occupation or association; and questioning whether the application "should be regarded as meeting substantive requirements for financial information and whether other terms of the proposed merger are appropriate."

Assistant Commissioner Webb reviewed documentation the Department received from Railway supplementing its application for expansion of its field of membership; (1) an August 27, 2013, letter from Darrell Lingle of Eide Bailly concluding that the fair value of the net assets of Genie-Watt approximated its book value; (2) an August 22, 2013, letter from Tom Ricker, President of the ND AFL-CIO, confirming that the IBEW, Operating Engineers and other major Unions representing the various other crafts within the MDU Resource entity are affiliated with the North Dakota AFL-CIO; and (3) an August 25, 2013, letter from Perry Stieg, Business Manager at the IBEW, indicating that approximately 475 employees of WBI Energy, Inc. and Montana Dakota Utilities Company, both subsidiaries of MDU Resources, are covered by IBEW contracts.

Member Brucker clarified Railway's application to expand its field of membership is for approval to accept the existing field of membership of Genie-Watt.

Member Brucker noted Railway received approval from the State Credit Union Board for two previous merger applications and in both instances the

subsequent requests to expand its field of membership to acquire existing fields of membership were the exact same as this request.

Member Brucker pointed out it is very common for an open charter credit union to receive State Credit Union Board approval to acquire the existing field of membership of the merged credit union.

Member Brucker referred to the letter Railway received from the IBEW President wherein it is stated there are 475 members working for MDU. Member Brucker noted that 475 union members is more employees than most North Dakota credit unions have, and these 475 union members would be a strong addition to Railway's existing field of membership. Member Brucker concluded he feels there is a strong common bond through occupation and union membership.

Mr. Tschider indicated Section 6-06-07(2) of the North Dakota Century Code requires a common bond of occupation or association, and indicated Railway is submitting to the State Credit Union Board the common bond is union membership. Mr. Tschider indicated Railway's existing membership does refer to specific employers which are all based on affiliation through the unions. Mr. Tschider concluded Railway's request to expand its field of membership fits within the common bond of occupation or association, and also historically with actions the State Credit Union Board has taken in the past.

Assistant Attorney General Murtha indicated she researched the statement made by Ms. Foss that the field of memberships between Railway and Genie-Watt do not result in a common bond.

Assistant Attorney General Murtha reviewed background law which forms the basis of how the Board should evaluate the objection made by Ms. Foss as to whether there is a common bond in the field of memberships of Railway and Genie-Watt.

Assistant Attorney General Murtha began her discussion by addressing the fields of membership provided for under statute, and the law relating to expansion of a continuing credit union's field of membership after a merger. Assistant Attorney General Murtha explained that while the law provides a presumption for approval of a field of membership expansion relating to credit unions which operate under open chartered fields of membership, the same presumption does not exist for a merger between credit unions with closed charters. Therefore, Assistant Attorney General Murtha explained that the Board would have to evaluate whether

the merger would result in a common bond of occupation or association. Assistant Attorney General Murtha reviewed two Attorney General Opinions with the Board, explaining the opinions provided that the Board is not required to approve a field of membership expansion resulting from a merger and that membership restrictions continue to apply to a continuing credit union's assumption of field of membership. Assistant Attorney General Murtha added that the determination of whether to approve the continuing credit union's application to expand its field of membership is an issue of fact and not a matter of law; therefore, the Board has discretion to look at the specific facts relating to each individual situation. Finally, Assistant Attorney General Murtha provided the Board with a brief overview of the current and former federal laws relating to expansion of field of membership.

Assistant Attorney General Murtha indicated since this issue is a question of fact, she will not comment on how the information she provided applies to the application before the Board today; however, stated the Board must determine as a matter of fact that the field of membership expansion will result in the groups having one common bond or association.

In answer to Member Tonneson, Assistant Attorney General Murtha explained that federal law only provides guidance, and the Board is not adhering to or applying these guidelines.

Mr. Tschider indicated the Supreme Court Case referred to by Assistant Attorney General Murtha contains a different factual situation than the application before the Board today. Mr. Tschider added that NCUA was previously approving field of membership expansions of multiple employers; however, the application by Railway does have a common bond through union membership.

Member Brucker stated the past two applications by Railway to merge and expand its field of membership were approved by the State Credit Union Board, and the applications presented today are the exact same.

Member Clark stated he does not feel any laws will be broken if this application is approved. Chairman Entringer clarified, as Assistant Attorney General Murtha explained, it is the Board's responsibility to determine if a common bond of occupation or association exists.

Member Tonneson indicated he feels the union association is a clear common bond; Member Clark and Chairman Entringer agreed.

Chairman Entringer indicated because the application for expansion of field of membership requires interpretation of credit union law, the Department is not issuing a recommended finding.

It was moved by Member Tonneson, seconded by Member Clark, and carried by a vote of 3 to 0, with Member Stillwell absent, and Member Brucker abstaining, to approve the application by Railway Credit Union, Mandan, to expand its field of membership to include the existing membership of Genie-Watt Credit Union, Bismarck; as well as the Articles of Amendment to the Bylaws for Railway Credit Union, Mandan.

Assistant Attorney General Murtha explained there is specific rule regarding abstaining from voting on merger applications, but not regarding the request to expand a field of membership. Assistant Attorney General Murtha explained any Board member can choose to abstain; however, that vote will be counted either for the majority or deemed as an abstention.

Member Brucker clarified that the merger application and application to expand its field of membership by Railway were connected, in that one could not take place without the other.

Assistant Attorney General Murtha, Greg Tschider, Les Bossert, Leslie Heisler, and Doug Erhart left the meeting at 10:05 a.m.

ARTICLES OF AMENDMENT TO THE BYLAWS – UNITED SAVINGS CREDIT UNION, FARGO

Chief Examiner Krebs explained that United Savings Credit Union is eliminating the Credit Committee and replacing it with a Credit Manager function. Chief Examiner Krebs stated this is permissible under Section 6-06-11 of the North Dakota Century Code, and he does not see any conflicts or have safety and soundness concerns with this request.

It was moved by Member Tonneson, seconded by Brucker, and carried by a vote of 4 to 0, with Member Stillwell absent, to approve the Articles of Amendment to the Bylaws, Article X, for United Savings Credit Union, Fargo.

ARTICLES OF AMENDMENT TO THE BYLAWS – CAPITAL CREDIT UNION, BISMARCK

Chief Examiner Krebs reviewed his Memorandum regarding the request by Capital Credit Union, Bismarck, to amend: Article VI – Meeting of Members; Article VII – Elections; Article VIII – Board of Directors; Article X – Credit Committee; Article XI – Supervisory Committee, Article XII – Loans to Members; Article XIX – General; Article XX – Amendments to Certificate of Organization and Bylaws; and Article XXI – Operations Following a National Emergency or Disaster.

Chief Examiner Krebs explained Capital Credit Union is: (1) eliminating the Credit Committee and replacing with a Credit Manager; (2) dispensing the Supervisory Committee and the Board of Directors will assume that function; (3) future changes to the bylaws will be allowed by the Board of Directors without a membership vote; and (4) any reference in the bylaws to New Salem Credit Union was changed to Capital Credit Union.

Chief Examiner Krebs indicated the amendments to the bylaws were passed with the necessary two-thirds majority as required and proper notice was given to the membership. Chief Examiner Krebs concluded that the Department recommends approval of the bylaw changes.

When asked by Member Brucker if the proposed bylaw amendments are due to the merger and charter conversion of Capital Credit Union with New Salem Credit Union, Chief Examiner Krebs stated that was correct.

It was moved by Member Clark, seconded by Member Brucker, and carried by a vote of 4 to 0, with Member Stillwell absent, to approve the Articles of Amendment to the Bylaws, Article VI – Meeting of Members; Article VII – Elections; Article VIII – Board of Directors; Article X – Credit Committee; Article XI – Supervisory Committee, Article XII – Loans to Members; Article XIX – General; Article XX – Amendments to Certificate of Organization and Bylaws; and Article XXI – Operations Following a National Emergency or Disaster, for Capital Credit Union, Bismarck.

CREDIT UNION BUDGET UPDATE

Chairman Entringer reviewed the Organizational Status by Summary Account and Source for credit unions for the month ending July 31, 2013, as presented.

The Board went into closed session at 10:14 a.m. to review the Supervisory Reports of Examination pursuant to North Dakota Century Code 6-01-07.1.

Robert J. Entringer, Chairman

Aaron Webb, Secretary