Client Code 408

PUBLIC SERVICE COMMISSION

BISMARCK, NORTH DAKOTA

Audit Report

For the Biennium Ended
June 30, 2011

ROBERT R. PETERSON
STATE AUDITOR

Office of the State Auditor
Division of State Audit

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BISMARCK, NORTH DAKOTA 58505

Transmittal Letter

March 19, 2012

The Honorable Jack Dalrymple, Governor

Members of the North Dakota Legislative Assembly

The Honorable Tony Clark, Chairman of the Public Service Commission

We are pleased to submit this audit of the Public Service Commission for the biennium ended June 30, 2011. This audit resulted from the statutory responsibility of the State Auditor to audit or review each state agency once every two years. The same statute gives the State Auditor the responsibility to determine the contents of these audits.

In determining the contents of the audits of state agencies, the primary consideration was to determine how we could best serve the citizens of the state of North Dakota. Naturally we determined financial accountability should play an important part of these audits. Additionally, operational accountability is addressed whenever possible to increase efficiency and effectiveness of state government.

The in-charge auditor for this audit was Michael W. Schmitcke, CPA. Paul Welk, CPA was the audit manager. Inquiries or comments relating to this audit may be directed to the audit manager by calling (701) 328-2241. We wish to express our appreciation to Commissioner Tony Clark, Commissioner Kevin Cramer, and Commissioner Brian Kalk and their staff for the courtesy, cooperation, and assistance they provided to us during this audit.

Respectfully submitted,

Robert R. Peterson
State Auditor

Executive Summary

Introduction

The Public Service Commission is comprised of three Commissioners who are elected on a statewide basis to staggered six-year terms.

The Commission was established before North Dakota became a state. Dakota Territory established a Board of Railroad Commissioners in 1885 to oversee railroads, sleeping car companies, express companies, and telephone companies. The state's constitution retained this board and entrusted it with powers and duties to be prescribed by law. In 1940 the Board's name was changed to Public Service Commission (PSC). The Legislature has significantly broadened the duties of the PSC. Today, the Commission has varying degrees of jurisdiction over electric and gas utilities, telecommunications companies, energy plant and transmission sitings, railroads, grain elevators, auctioneers and auction clerks, weighing and measuring devices, pipeline safety, coal mine reclamation, and abandoned mine lands.

Responses to LAFRC Audit Questions

1. *What type of opinion was issued on the financial statements?*

   Financial statements were not prepared by the Public Service Commission in accordance with generally accepted accounting principles so an opinion is not applicable. The agency's transactions were tested and included in the state's basic financial statements on which an unqualified opinion was issued.

2. *Was there compliance with statutes, laws, rules, and regulations under which the agency was created and is functioning?*

   Other than our finding addressing "lack of fixed asset inventory" (page 14), the Public Service Commission was in compliance with significant statutes, laws, rules, and regulations under which it was created and is functioning.

3. *Was internal control adequate and functioning effectively?*

   Other than our finding addressing the "receipts not properly recorded" (page 11), we determined internal control was adequate.

4. *Were there any indications of lack of efficiency in financial operations and management of the agency?*

   Other than our work addressing "insufficient inspection fees" (page 18), there were no indications of lack of efficiency in financial operations and management of the Public Service Commission.

5. *Has action been taken on findings and recommendations included in prior audit reports?*

   The Public Service Commission has implemented all recommendations included in the prior audit report.

6. *Was a management letter issued? If so, provide a summary below, including any recommendations and the management responses.*

   Yes, a management letter was issued and is included on page 17 of this report, along with management's response.

LAFRC Audit Communications

7. *Identify any significant changes in accounting policies, any management conflicts of interest, any contingent liabilities, or any significant unusual transactions.*

   There were no significant changes in accounting policies, no management conflicts of interest were noted, no contingent liabilities were identified or significant unusual transactions.

8. *Identify any significant accounting estimates, the process used by management to formulate the accounting estimates, and the basis for the auditor's conclusions regarding the reasonableness of those estimates.*

   The Public Service Commission's financial statements do not include any significant accounting estimates.

9. *Identify any significant audit adjustments.*

   Significant audit adjustments were not necessary.

10. *Identify any disagreements with management, whether or not resolved to the auditor's satisfaction relating to a financial accounting, reporting, or auditing matter that could be significant to the financial statements.*

    None.

11. *Identify any serious difficulties encountered in performing the audit.*

    None.

12. *Identify any major issues discussed with management prior to retention.*

    This is not applicable for audits conducted by the Office of the State Auditor.

13. *Identify any management consultations with other accountants about auditing and accounting matters.*

    None.

14. *Identify any high-risk information technology systems critical to operations based on the auditor's overall assessment of the importance of the system to the agency and its mission, or whether any exceptions identified in the six audit report questions to be addressed by the auditors are directly related to the operations of an information technology system.*

    ConnectND Finance, Human Resource Management System (HRMS), Weights and Measures, Grain, and Case Management are high-risk information technology systems critical to the Public Service Commission.

Audit Objectives, Scope, and Methodology

Audit Objectives

The objectives of this audit of the Public Service Commission for the biennium ended June 30, 2011 were to provide reliable, audited financial statements and to answer the following questions:

1. What are the highest risk areas of the Public Service Commission's operations and is internal control adequate in these areas?

2. What are the significant and high-risk areas of legislative intent applicable to the Public Service Commission and are they in compliance with these laws?

3. Are there areas of the Public Service Commission's operations where we can help to improve efficiency or effectiveness?

Audit Scope

This audit of the Public Service Commission is for the biennium ended June 30, 2011. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The Public Service Commission's sole location is its Bismarck office located in the State Capitol which was included in the audit scope.

Audit Methodology

To meet the objectives outlined above, we:

- Prepared financial statements from the legal balances on the state's accounting system tested as part of this audit and the audit of the state's Comprehensive Annual Financial Report and developed a discussion and analysis of the financial statements.
- Performed detailed analytical procedures including computer-assisted auditing techniques. These procedures were used to identify high-risk transactions and potential problem areas for additional testing.
- Tested internal control and compliance with laws and regulations which included selecting representative samples to determine if controls were operating effectively and to determine if laws were being followed consistently. Non-statistical sampling was used and the results were projected to the population. Where applicable, populations were stratified to ensure that particular groups within a population were adequately represented in the sample, and to improve efficiency by gaining greater control on the composition of the sample.
- Interviewed appropriate agency personnel.

- Queried the ConnectND (PeopleSoft) system. Significant evidence was obtained from ConnectND.
- Observed Public Service Commission's processes and procedures.
- Weights and Measures Operational Improvement – Reviewed ConnectND (PeopleSoft) system reports. Performed overview of Title 64 of North Dakota Century Code. Contacted registered service persons to determine fees charged. Interviewed appropriate agency personnel.

In aggregate there were no significant limitations or uncertainties related to our overall assessment of the sufficiency and appropriateness of audit evidence.

Discussion and Analysis

The accompanying financial statements have been prepared to present the Public Service Commission's revenues and expenditures on the legal (budget) basis. The accompanying financial statements are not intended to be presented in accordance with generally accepted accounting principles (GAAP).

For the biennium ended June 30, 2011, operations of the Public Service Commission were primarily supported by appropriations from the state's general fund and federal funds. This is supplemented by fees credited to the agency's special funds.

Financial Summary

The Public Service Commission has significant amounts in investments held at the Bank of North Dakota in the Public Service Commission Trustee Account. This account is established in accordance with North Dakota Century Code section 38-14.1-16. These investments had balances of $17,491,555 and $16,409,525 at June 30, 2011 and 2010, respectively.

The Commission also has money market accounts and investments not held at the Bank of North Dakota in the Credit-Sale Contract Indemnity Fund. The fund is held for the benefit of grain sellers who enter into credit-sale contracts and is made up of private funds. The balances in the fund were $6,948,162 and $6,870,232 at June 30, 2011 and 2010, respectively. These investments are authorized in accordance with North Dakota Century Code section 60-10-02.

Revenues consisted primarily of federal funds, as well as inspection and other regulatory fees, licenses, and permits. Overall revenue increased approximately 1%, which is due to the increase in activity within the state resulting in an increase in fee, license, and permit collections. Other revenues during the audited period included interest income and miscellaneous income and remained fairly consistent. Total revenues for the Public Service Commission were $5,405,537 for the year ended June 30, 2011 as compared to $5,359,953 for the year ended June 30, 2010.

Total expenditures for the Public Service Commission were $6,336,152 for the year ended June 30, 2011 as compared to $6,211,266 for the prior year. The increase in total expenditures and other uses for the audited period reflects primarily an increase in use of attorneys and consultants for increased utility rate cases and siting. All other expenditures remained fairly constant.

Analysis of Significant Variances - Budgeted and Actual Expenditures

The Public Service Commission expended for the biennium $11,302,292 of their appropriated funds leaving a $5,803,315 unexpended appropriation. The largest unexpended portion of their appropriation was for Abandoned Mine Lands (AML) contractual services line in the amount of $3,412,996. The unexpended appropriation for AML contractual services was for abandoned coal mine projects that came in under estimates and were not completed or were not started by the time the biennium ended at June 30, 2011. These projects are continued until completed but may be budgeted for in more than one biennium.

The unexpended portion of the Rail Rate Complaint Case line in the amount of $900,000 is due to no complaints received within the audited period. These moneys are exempt from NDCC 54-44.1-11 and may be carried over to the next biennium.

The unexpended portion of the Federal Stimulus Funds - 2009 line was due to the hiring of one full-time temporary employee while three full-time temporary employees were authorized.

Financial Statements

Statement of Revenues and Expenditures

	June 30, 2011	June 30, 2010
Revenues and Other Sources:		
Federal Revenue	$ 3,056,705	$ 3,326,139
Licenses, Permits, Fees, and Fines	2,198,165	1,808,511
Interest and Investment Earnings	102,237	164,648
Miscellaneous Revenue	21,930	42,546
Transfers In	26,500	18,109
Total Revenues and Other Sources	$ 5,405,537	$ 5,359,953
Expenditures and Other Uses:		
Salaries and Benefits	$ 3,440,238	$ 3,154,259
Capital Payments	1,332,400	1,731,336
Professional Services	406,180	43,639
Travel	346,139	272,962
Refunds	145,625	589,989
Equipment	220,686	94,040
IT Software	65,364	29,062
Professional Development	62,730	34,540
Other Expenses	290,068	235,552
Transfers Out	26,722	25,887
Total Expenditures and Other Uses	$ 6,336,152	$ 6,211,266

Statement of Appropriations

For The Biennium Ended June 30, 2011

Expenditures by Line Item:	Original Appropriation	Adjustments	Final Appropriation	Expenditures	Unexpended Appropriation
Salaries and Wages	$ 6,747,961	$ 108,850	$ 6,856,811	$ 6,501,705	$ 355,106
Operating Expenses	1,944,946		1,944,946	1,468,559	476,387
Capital Assets	127,500		127,500	117,950	9,550
Grants	10,000		10,000	8,000	2,000
AML Contractual Services	6,500,000		6,500,000	3,087,004	3,412,996
Rail Rate Complaint Case	900,000		900,000		900,000
Federal Stimulus Funds - 2009		766,350	766,350	119,074	647,276
Totals	$ 16,230,407	$ 875,200	$ 17,105,607	$ 11,302,292	$ 5,803,315
Expenditures by Source:					
General Fund	$ 5,603,165	$ 73,850	$ 5,677,015	$ 5,172,969	$ 504,046
Other Funds	10,627,242	801,350	11,428,592	6,129,323	5,299,269
Totals	$ 16,230,407	$ 875,200	$ 17,105,607	$ 11,302,292	$ 5,803,315

Appropriation Adjustments:

The $108,850 increase to the Salaries and Wages line was authorized by House Bill 1015 of the 2009 Session Laws – Section 18, for market equity increases.

The $766,350 increase in the Federal Stimulus Funds – 2009 line was approved by the Emergency Commission to increase spending authority to accept federal funds from the U.S. Department of Energy provided by the American Recovery and Reinvestment Act.

Expenditures Without Appropriations Of Specific Amounts:

Public Service Commission Valuation Fund has a continuing appropriation authorized by NDCC section 49-02-02 ($247,742 of expenditures for this biennium).

Performance Assurance Fund has a continuing appropriation authorized by NDCC section 49-21-31 ($45,742 of expenditures for this biennium).

Siting Process Expense Recovery Fund has a continuing appropriation authorized by NDCC section 49-22-22 ($951,642 of expenditures for this biennium.)

Internal Control

In our audit for the biennium ended June 30, 2011, we identified the following areas of the Public Service Commission's internal control as being the highest risk:

Internal Controls Subjected to Testing:

- Controls surrounding the processing of revenues.
- Controls surrounding the processing of expenditures.
- Controls effecting the safeguarding of assets.
- Controls relating to compliance with legislative intent.
- Controls surrounding the ConnectND (PeopleSoft) system.
- Controls surrounding the Weights and Measures, Grain, and Case Management information systems.

The criteria used to evaluate internal control is published in the publication *Internal Control – Integrated Framework* from the Committee of Sponsoring Organizations (COSO) of the Treadway Commission.

We gained an understanding of internal control surrounding these areas and concluded as to the adequacy of their design. We also tested the operating effectiveness of those controls we considered necessary based on our assessment of audit risk. We concluded that internal control was not adequate noting a certain matter involving internal control and its operation that we consider to be a significant deficiency.

Auditors are required to report deficiencies in internal control that are significant within the context of the objectives of the audit. A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect (1) misstatements in financial or performance information, (2) violations of laws and regulations, or (3) impairments of effectiveness or efficiency of operations, on a timely basis. Considering both qualitative and quantitative factors, we identified the following significant deficiency in internal control. We also noted other matters involving internal control that we have reported to management of the Public Service Commission in a management letter dated March 19, 2012.

Receipts Not Properly Recorded (Finding 11-1)

Condition:
The Public Service Commission uses an automated check log system to record the initial receipt of monies. The following weaknesses were identified related to the revenue receipting and reconciliation procedures:

- Not all receipts of revenue are entered into the check log system;
- Access to cash and undeposited receipts was not limited to individuals with assigned responsibility; and
- Not all receipts entered into the check log system were reconciled to deposits.

Criteria:
The Committee for Sponsoring Organizations of the Treadway Commission's publication *Integrated Framework – Control Activities* requires cash and other assets to be secured physically, and periodically counted and compared with amounts shown on control records to ensure accuracy.

Cause:
Lack of controls surrounding the receipt of revenues

Effect or Potential Effect:
Possible misuse or theft of revenue

Recommendation:

We recommend the Public Service Commission ensure:
- All receipts of revenue are entered into the check log system;
- Access to cash and undeposited receipts is limited to individuals with assigned responsibility; and
- All receipts entered into the check log system are reconciled to deposits.

Public Service Commission Response:

The Commission agrees with the audit finding. We have taken steps to ensure all monies received by and payable to the Public Service Commission are entered into the check-log program through process improvements and employee training. We have also segregated the responsibilities of receipting and depositing to maintain proper internal controls.

Compliance With Legislative Intent

In our audit for the biennium ended June 30, 2011, we identified and tested the Public Service Commission's compliance with legislative intent for the following areas we determined to be significant and of higher risk of noncompliance:

- Compliance in establishing fees, adjusting fees, and duties associated with these fees, as prescribed in Senate Bill 2137 (2009 North Dakota Session Laws).
- Rules have been established for decommissioning of wind energy conversion facilities (NDCC section 49-02-27).
- The metrology program was discontinued and the Public Service Commission collaborated with the Department of Commerce to assist in the transition of services from public to private (2009 North Dakota Session Laws House Bill 1008 section 3).
- Proper use of the following legally restricted funds:
  - PSC Valuation fund.
  - Performance Assurance fund.
  - Siting Process Recovery fund.
  - Credit Sale Contract Indemnity fund.
  - Abandoned Mine Reclamation fund.
- Proper use of the State Treasurer (State Constitution, article X, section 12).
- Salary of elected officials (NDCC section 49-01-05).
- Compliance with appropriations (2009 North Dakota Session Laws, House Bill 1008, section 1).
- Compliance with OMB's Purchasing Procedures Manual.
- Travel-related expenditures are made in accordance with OMB policy and state statute.
- Proper use of outside bank accounts and proper authority for investments outside the Bank of North Dakota.
- Adequate blanket bond coverage of employees (NDCC section 26.1-21-08).
- Compliance with payroll-related laws including statutory salaries for applicable elected and appointed positions, and certification of payroll.

The criteria used to evaluate legislative intent are the laws as published in the *North Dakota Century Code* and the *North Dakota Session Laws*.

Government Auditing Standards requires auditors to report all instances of fraud and illegal acts unless they are inconsequential within the context of the audit objectives. Further, auditors are required to report significant violations of provisions of contracts or grant agreements, and significant abuse that has occurred or is likely to have occurred.

The results of our tests disclosed an instance of noncompliance that is required to be reported under *Government Auditing Standards*. The finding is described below. Other than this finding, we concluded there was compliance with the legislative intent identified above. We also noted a certain inconsequential instance of noncompliance that we have reported to management of the Public Service Commission in a management letter dated March 19, 2012.

Lack of Fixed Asset Inventory (Finding 11-2)

Condition:
The Public Service Commission did not take an annual physical inventory of their fixed assets as required by North Dakota Century Code (NDCC) section 44-04-07 during the two years under audit.

Criteria:
NDCC section 44-04-07 requires an annual inventory be taken of all property of sufficient value and permanence.

Cause:
Client oversight.

Effect or Potential Effect:
Possible misappropriation of state assets

Recommendation:

We recommend the Public Service Commission take an annual physical inventory of their fixed assets in accordance with NDCC section 44-04-07.

Public Service Commission Response:

The Commission agrees with the audit finding. The annual inventory for the period in question was started but not completed due to a change in personnel. The Commission has adopted a policy that clearly outlines items maintained on the agency inventory list and a procedure for conducting a review of the annual fixed inventory.

Operations

Our audit of the Public Service Commission identified the following area of potential improvement to operations:

Insufficient Inspection Fees (Finding 11-3)

Condition:
The fees established in North Dakota Century Code (NDCC) for the Public Service Commission's (PSC) testing or calibrating of weighing and measuring devices are not adequate to cover their cost. In addition, the PSC is currently unable to handle all requests for these required inspections, so private registered service persons are performing them at a rate substantially higher than charged by PSC. As a result, taxpayers are subsidizing the cost of inspections to businesses when performed by the PSC, while other businesses have to pay the full cost themselves.

Criteria:
NDCC section 64-02-02 charges the PSC with the responsibility of supervising and controlling all weighing and measuring devices in the state. NDCC section 64-02-10 establishes the fees for testing and calibrating of measuring devices. The Government Finance Officers Association's best practices titled Establishing Government Charges and Fees states: "The full cost of providing a service should be calculated in order to provide a basis for setting the charge or fee. Full cost incorporates direct and indirect costs, including operations and maintenance, overhead, and charges for the use of capital facilities. Examples of overhead costs include: payroll processing, accounting services, computer usage, and other central administrative services. Charges and fees should be reviewed and updated periodically based on factors such as the impact of inflation, other cost increases, the adequacy of the coverage of costs, and current competitive rates."

Cause:
The fees charged by the PSC to perform the inspections are stipulated in NDCC section 64-02-10. The PSC does not have the authority to adjust these fees when the cost of performing the inspections increases. The fees charged by the PSC have not changed since the 2003 Legislative Session and as a result no longer are sufficient to cover the cost of performing the inspections.

Effect or Potential Effect:
Weights and measures testing performed by the Public Service Commission is appropriated through the state's General Fund. The General Fund expenditures incurred for weights and measures testing exceeded revenues from July through December of 2011 by approximately $80,000. At the current rate, it is expected the General Fund expenditures will exceed revenues for weights and measures testing by approximately $320,000 for the 2011-2013 biennium. Also, entities inspected by the Public Service Commission are unfairly benefiting from the taxpayer subsidized inspections compared to those entities being inspected by private service persons.

Operational Improvement:

We recommend the Public Service Commission propose legislation to update NDCC section 64-02-10 allowing the Commission to establish fees for the testing or calibrating of weighing and measuring devices that would cover their cost of providing the services. If resources available to perform the inspections continue to be inadequate, the PSC should consider allowing registered service persons to perform all inspections and the PSC could continue to perform a regulatory function to ensure all required inspections are performed.

Public Service Commission Response:

While the Commission concurs with the observation that the weights and measures inspection fee schedule does not fully recover the cost of the program, it disagrees with this being included as an audit finding. The fees are set in statute, as determined by the legislature. In other words, the Commission is following the law. When the Commission has discussed the fee issue with the legislature per previous audits, the legislature has declined to raise inspection fees.

State Auditor's Concluding Remarks:

The Commission disagrees that this operational improvement should be included in our report as an audit finding. This audit was conducted under the performance audit standards and the finding is supported by strong criteria from the Government Finance Officers Association. Further, the Commission makes reference to discussions with the legislature relating to this issue. We found no evidence, and the Commission was unable to provide any evidence, of any proposed legislation or discussions with the legislature.

Management Letter (Informal Recommendations)

March 19, 2012

The Honorable Tony Clark, Chairman
Public Service Commission
600 E. Boulevard Avenue - Dept. 408
Bismarck, ND 58505

Dear Mr. Clark:

We have performed an audit of the Public Service Commission for the biennium ended June 30, 2011, and have issued a report thereon. As part of our audit, we gained an understanding of the Public Service Commission's internal control structure to the extent we considered necessary to achieve our audit objectives. We also performed tests of compliance as described in the same report.

Our audit procedures are designed primarily to enable us to report on our objectives including those related to internal control and compliance with laws and regulations and may not bring to light all weaknesses in systems and procedures or noncompliance with laws and regulations which may exist. We aim, however, to use our knowledge of your organization gained during our work to make comments and suggestions which we hope will be useful to you.

In connection with the audit, gaining an understanding of the internal control structure, and tests of compliance with laws and regulations referred to above, we noted certain conditions we did not consider reportable within the context of your audit report. These conditions relate to areas of general business practice or control issues that have no significant bearing on the administration of federal funds. We do, however, want to present our recommendations to you for your consideration and whatever follow-up action you consider appropriate. During the next audit we will determine if these recommendations have been implemented, and if not, we will reconsider their status.

The following present our informal recommendations.

ACCOUNTS PAYABLE/EXPENDITURES

Informal Recommendation 11-1: We recommend the Public Service Commission implement procedures to ensure all correcting entries are properly approved and supported by including a copy of the original entry being adjusted and a brief explanation as to why the adjustment was needed.

Informal Recommendation 11-2: We recommend the Public Service Commission use fleet services for travel in accordance with NDCC section 54-06-09 or obtain an exemption as outlined in NDCC section 24-02-03.3.

INFORMATION SYSTEMS

Informal Recommendation 11-3: We recommend the Public Service Commission:

- Segregate the duties between access to cash and issuing licenses in the Grain System; and
- Reconcile the total licenses issued in the Grain System to the money deposited in PeopleSoft.

PERVASIVE CONTROLS

Informal Recommendation 11-4: We recommend the Public Service Commission update their code of conduct policy to include a statement:

- To inform employees who to report violations of the code to; and
- Outlining what constitutes fraudulent behavior.

Management of the Public Service Commission agreed with these recommendations.

I encourage you to call myself or an audit manager at 328-2241 if you have any questions about the implementation of recommendations included in your audit report or this letter.

Sincerely,

Michael W. Schmitcke, CPA
Auditor in-charge

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