Client Code 408

PUBLIC SERVICE COMMISSION

BISMARCK, NORTH DAKOTA

Audit Report

For the Biennium Ended
June 30, 2013

ROBERT R. PETERSON
STATE AUDITOR

Office of the State Auditor
Division of State Audit

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Transmittal Letter

May 5, 2014

The Honorable Jack Dalrymple, Governor

Members of the North Dakota Legislative Assembly

The Honorable Brian Kalk, Chairman of the Public Service Commission

We are pleased to submit this audit of the Public Service Commission for the biennium ended June 30, 2013. 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 Kristi Morlock. Elizabeth Rogers and Trevor Huber were the staff auditors. 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 Brian Kalk, Commissioner Randy Christmann, and Commissioner Julie Fedorchak 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 siting, railroads, grain elevators, auctioneers and auction clerks, weighing and measuring devices, pipeline safety, coal mine reclamation, and abandoned mine lands.

The Legislative Audit and Fiscal Review Committee (LAFRC) requests certain items be addressed by auditors performing audits of state agencies. Those items and the Office of the State Auditor's responses are noted below.

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 unmodified opinion was issued.

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

   Yes.

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

   Yes.

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

   Other than our work addressing grain seller protections (pages 13-15) and the Grain Buyer Licensing Division (pages 16-18), there were no indications of a 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 19 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, 2013 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, 2013. 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 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 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 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.
- Performed a detailed review of the Grain Buyer Licensing Division and Weights and Measures Division operated by the Public Service Commission including:
    - Established policies and procedures;
    - Qualifications of staff;
    - Licensing;
    - Inspections;
    - Complaint handling;
    - Enforcement processes; and
    - Management analysis processes.
- Performed a detailed review of the Grain Buyer bond amounts.

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, 2013, 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. The balance of these investments was $17,921,500 at June 30, 2013 and June 30, 2012.

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 $6,558,138 and $6,866,744 at June 30, 2013 and 2012, 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 decreased approximately 29%, which is due to the timing of completing construction work because of late springs. This results in a larger portion of the work being done in the next fiscal year and the revenue to be requested from the federal government at a later date. Other revenues during the audited period included interest income and miscellaneous income and remained fairly constant. Total revenues for the Public Service Commission were $6,255,501 for the year ended June 30, 2013, as compared to $8,786,062 for the year ended June 30, 2012.

Total expenditures for the Public Service Commission were $9,088,848 for the year ended June 30, 2013 as compared to $9,807,672 for the prior year. The decrease in total expenditures for the audited period reflects primarily a decrease in professional services which relates to the explanation above for federal revenue and the late start to construction work. Utility valuation refunds increased during 2013 due to not separately tracking refunds during the prior year and reducing revenue instead. All other expenditures remained fairly constant.

Analysis of Significant Variances - Budgeted and Actual Expenditures

The Public Service Commission expended for the biennium $16,522,947 of their appropriated funds leaving a $2,562,516 unexpended appropriation. The largest unexpended portion of their appropriation was for the Rail Rate Complaint Case line in the amount of $900,000. This is due to no complaints being received within the audit 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 funding was authorized for several employees.

Financial Statements

Statement of Revenues and Expenditures

	June 30, 2013	June 30, 2012
Revenues and Other Sources:		
Federal Revenue	$ 4,249,567	$ 6,542,450
Licenses, Permits, Fees, and Fines	1,939,475	2,132,427
Interest and Investment Earnings	31,510	60,489
Miscellaneous Revenue	15,349	28,196
Transfers In	19,600	22,500
Total Revenues and Other Sources	$ 6,255,501	$ 8,786,062
Expenditures and Other Uses:		
Salaries and Benefits	$ 3,615,727	$ 3,555,678
Professional Services	3,224,033	5,333,272
Utility Valuation Refunds	956,654	
Travel	386,627	344,644
Grain Insolvency Payments	330,630	128,664
Equipment	124,250	76,264
Supplies	119,511	56,038
IT – Data Processing	61,860	50,735
Professional Development	57,865	45,242
Operating Fees and Services	54,744	78,683
IT – Communications	36,480	30,375
Repairs	36,397	15,477
Rent	31,698	33,521
Other Expenses	22,545	30,806
Transfers Out	29,827	28,273
Total Expenditures and Other Uses	$ 9,088,848	$ 9,807,672

Statement of Appropriations

For The Biennium Ended June 30, 2013

Expenditures by Line Item:	Original Appropriation	Adjustments	Final Appropriation	Expenditures	Unexpended Appropriation
Salaries and Benefits	$ 7,482,074	$ 3,600	$ 7,485,674	$ 7,081,192	$ 404,482
Operating Expenses	1,972,572		1,972,572	1,761,405	211,167
Capital Assets	53,000		53,000	49,701	3,299
Grants	16,000		16,000	8,094	7,906
AML Contractual Services	8,000,000		8,000,000	7,509,495	490,505
Rail Rate Complaint Case	900,000		900,000		900,000
Federal Stimulus Funds - 2009	658,217		658,217	113,060	545,157
Totals	$ 19,081,863	$ 3,600	$ 19,085,463	$ 16,522,947	$ 2,562,516
Expenditures by Source:					
General Fund	$ 6,020,215	$ 3,600	$ 6,023,815	$ 5,693,828	$ 329,987
Other Funds	13,061,648		13,061,648	10,829,119	2,232,529
Totals	$ 19,081,863	$ 3,600	$ 19,085,463	$ 16,522,947	$ 2,562,516

Appropriation Adjustments:

The increase in the Salaries and Wages line of $3,600 was for money received from the Human Resources Management Services (HRMS) Division of the Office of Management and Budget to provide internships through the state student internship program.

Expenditures Without Appropriations Of Specific Amounts:

Public Service Commission Valuation Fund has a continuing appropriation authorized by NDCC section 49-02-02 ($1,389,288 of expenditures for this biennium).

Performance Assurance Fund has a continuing appropriation authorized by NDCC section 49-21-31 ($42,100 of expenditures for this biennium).

Siting Process Expense Recovery Fund has a continuing appropriation authorized by NDCC section 49-22-22 ($482,892 of expenditures for this biennium).

Credit Sale Contract Indemnity Fund has a continuing appropriation authorized by NDCC section 60-10-02 ($459,293 of expenditures for this biennium).

Internal Control

In our audit for the biennium ended June 30, 2013, 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 internal control was adequate.

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 did not identify any significant deficiencies in internal control. However, we noted other matters involving internal control that we have reported to management of the Public Service Commission in a management letter dated May 5, 2014.

Compliance With Legislative Intent

In our audit for the biennium ended June 30, 2013, we identified and tested Public Service Commission's compliance with legislative intent for the following areas we determined to be significant and of higher risk of noncompliance:

- Proper use of the following legally restricted funds:
  - Siting Process Recovery fund (NDCC 49-22-22(3)).
  - Credit Sale Contract Indemnity fund (NDCC 60-10-02).
- Application of proper statutory rates relating to the following revenue types:
  - Surface Coal Mining (NDCC 38-14.1-13).
  - Changes in Tariff Rates (NDCC 49-05-05).
  - Siting Process (NDCC 49-22-22 (1)).
  - Auctioneer’s Licenses and Fees (NDCC 51-05.1-01.1).
  - Public Warehouse License and Fees (NDCC 60-02-07).
  - Grain Buyer License Fees (NDCC 60-02.1-07).
  - Testing Weighing and Measuring Devices (NDCC 64-02-10).
- Compliance with appropriations and related transfers (2011 North Dakota Session Laws, chapter 34).
- Compliance with OMB's Purchasing Procedures Manual.
- Travel-related expenditures are made in accordance with OMB policy and state statute.
- Proper authority for investments outside the Bank of North Dakota.
- Adequate blanket bond coverage of employees (NDCC section 26.1-21-08).
- Compliance with fixed asset requirements including record-keeping, surplus property, lease and financing arrangements in budget requests, and lease analysis requirements.
- 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 require 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 no instances of noncompliance that are required to be reported under *Government Auditing Standards.* Thus, we concluded there was compliance with the legislative intent identified above.

Operations

Our audit of the Public Service Commission identified the following areas of potential improvements to operations, as expressed by our operational objectives:

- Are Grain Buyer bond amounts sufficient and how does the Public Service Commission determine what the amount of the bonds should be?
- Is the Grain Buyer Licensing Division operating efficiently and effectively and in compliance with significant high-risk laws?
- Is the Weights and Measures program operating efficiently and effectively and in compliance with significant high-risk laws?

Grain Sellers Not Protected (Finding 13-1)

Condition:
The grain buyer bond amounts set by the Public Service Commission (PSC) are not protecting the grain sellers and are not covering the cost of administering insolvencies in accordance with North Dakota Century Code (NDCC) section 60-02.1-08. In addition, the remedy for losses incurred by grain sellers due to insolvencies is not equitable between credit-sale and non-credit sale transactions.

The PSC is charged with the responsibility of licensing all commercial grain buyers in North Dakota. As part of the licensing requirement, the NDCC requires the grain buyer to be bonded in an amount determined by the PSC. The grain buyer bond is in place to protect the grain seller when making noncredit-sales to the licensed entity and is also used by the PSC to cover the costs of administering the insolvency. These bonds are applicable for noncredit-sales only as credit-sales are covered by an indemnity fund.

Grain buyer insolvencies administered by the PSC have ended with noncredit-sale receiptholders recovering as little as $.06 on the dollar and the PSC not recovering all of its costs associated with administering the insolvency due to inadequate bond amounts.

Credit-sales receiptholders losses due to insolvencies are subject to an indemnity fund. The credit-sale contract indemnity fund was established under NDCC 60-10-02 for the purpose of covering the lesser of 80% or $280,000 of the losses sustained for each grain seller that entered into a credit-sale contract. Noncredit-sale receiptholders are not eligible to receive reimbursement from this fund.

Criteria:
NDCC section 60-02.1-08 states a licensed grain buyer is required to have a bond filed with the PSC for the specific purpose of protecting the sellers of grain and covering the costs incurred by the PSC in the administration of the licensee's insolvency. NDCC 60-10-02 established an indemnity fund that is only for credit-sale contracts.

Cause:
The PSC has not initiated an increase to the grain buyer bonds required, or developed some other type of protection for noncredit-sales such as an insolvency fund to adequately limit the grain sellers' risk. The last time the required grain buyer bond amount changed was in 2001, even though the value of most commodities sold has at least doubled since that time.

Effect or Potential Effect:
Noncredit-sales grain sellers have sustained extensive losses. We noted instances where the bonds were only able to cover from $.06 to $.31 on the dollar of the sellers' losses. In addition, the bond amounts are not adequate to reimburse the PSC for their costs in administering the insolvency.

Operational Improvement:

We recommend the Public Service Commission take action to increase the protection of all grain sellers and cover the cost of administering insolvencies as required by NDCC section 60-02.1-08. Some of the actions or possible solutions the Public Service Commission should consider are as follows:

- Increase the required bond amounts held by grain buyers.
- Establish an indemnity fund for noncredit-sales, funded in a manner similar to the credit-sale contract indemnity fund or allow both credit-sale receiptholders and noncredit-sale receiptholders to recover from one overall indemnity fund.
- Use the grain buyer bond proceeds to cover the PSC's cost of administering the insolvency and use any remaining proceeds to reimburse the indemnity fund created.

Public Service Commission Response:

The Commission is exploring increased bond levels for the grain buyers with the highest risk while trying to keep bond costs down for lower risk grain buyers.

The Legislature has had frequent opportunities to establish another indemnity fund since the creation of the credit-sale contract indemnity fund in 2003. Although it has been discussed on more than one occasion, the Legislature has chosen not to follow the second recommendation and, in fact, defeated a resolution to study these concerns as recently as 2013.

The Commission does use the trust fund and indemnity fund proceeds to reimburse legal costs only if the fund has paid off claimants to the full extent of the law. If the funds are inadequate to pay off claimants, the Commission pays its legal expenses from operating budget.

Insolvency Proceeds Returned to Grain Buyer (Finding 13-2)

Condition:
Current North Dakota Century Code (NDCC) allows insolvent grain buyers to receive money in grain insolvencies even though some grain sellers may not have recovered all of their losses. We noted instances where insolvency proceeds were returned to grain buyers even though the credit-sale receiptholders had unrecovered losses.

A trust fund is established upon the insolvency of any grain buyer using the proceeds from grain sales, grain buyer bonds, and assets acquired. The trust fund is for the benefit of noncredit-sale receiptholders and to pay the costs incurred by the PSC to administer the insolvency. However, credit-sale receiptholders are limited to recovering the lesser of 80% or $280,000 of sustained losses from the credit-sale contract indemnity fund and are not eligible to receive money from the trust fund. Excess funds in the trust are paid back to the insolvent grain buyer even though losses are sustained by credit-sale receiptholders.

Criteria:
North Dakota Century Code (NDCC) section 60-04-03.1 establishes a trust fund for the benefit of noncredit-sale receiptholders that could reimburse losses up to 100%. However, NDCC 60-10-06 limits the amount payable to any eligible person from the credit-sale contract indemnity fund for each insolvency to the lesser of 80% or $280,000 of the amount owed to the grain seller.

Cause:
North Dakota Century Code does not currently allow credit-sale receiptholders to be reimbursed more than the lesser of 80% or $280,000, even if money is available after the claims of non-credit sale receiptholders have been satisfied.

Effect or Potential Effect:
Insolvent grain buyers may receive trust fund proceeds even though credit-sale receiptholders have not recovered their losses.

Operational Improvement:

We recommend the Public Service Commission review Title 60 “Warehousing and Deposits” of the NDCC and propose the necessary legislative updates to ensure all insolvency proceeds available to the PSC are distributed to all receiptholders who have sustained a loss prior to distributing monies to insolvent grain buyers.

Public Service Commission Response:

The Legislature intentionally divided insolvency proceeds into two separate funds, each for a unique and separate category of grain producer. Policy makers can continue to weigh the rationale for grain proceeds distribution. The Commission will continue to provide information, work cooperatively with Legislators, and distribute insolvency proceeds according to law.

Inadequate Grain Buyer Inspection and Enforcement Process (Finding 13-3)

Condition:
The Grain Licensing Division does not have an adequate inspection and enforcement process for grain buyers. The following deficiencies were identified:

- Grain buyer inspections are not completed timely. The PSC has a goal of completing inspections within 18 months; however, there were some grain buyers that were not inspected for 21-54 months.
- During inspections a review of financial solvency is not completed.
- There is not timely follow-up on deficiencies found. Instances were noted where follow-up on deficiencies were not completed from two months to seven months.
- Triggers are not in place to increase sanctions. Several instances were noted where grain buyers had deficiencies for several years.
- The Grain Licensing Division is not communicating to the public significant violations that could impact grain sellers.

Criteria:
Studies prepared by federal and national organizations including the National State Auditor's Association, and Jacobs & Associates – International Consultant in Regulatory Reform focus attention on the importance of identifying and evaluating best practices in executing a state agency regulatory program to improve regulatory effectiveness in carrying out public policies such as protecting health, safety, consumers, and the environment.

Cause:
The Public Service Commission, Grain Licensing Division, does not have policies and procedures in place to ensure the inspection process is handled appropriately and enforcement actions are followed-up on in a timely manner.

Effect or Potential Effect:

The public or grain producers could be at risk if deficiencies are allowed to go un-enforced or if deficiencies are not followed up on to ensure compliance.

Operational Improvement:

We recommend the Public Service Commission, Grain Licensing Division implement an inspection and enforcement process to ensure all inspection and enforcement actions are handled appropriately. Specifically the Grain Buyer Licensing Division should ensure:

- Inspections are completed timely;
- Financial solvency reviews are completed during inspections;
- Timely follow-up is done on deficiencies;
- Triggers are in place to increase sanctions; and
- Significant violations that could impact grain sellers are communicated to the public.

Public Service Commission Response:

Agree. Commission intends to seek legislation granting trade secret protection for grain dealers' financials, which would allow us to collect, protect, and use the documents to verify financial positions. In addition, a written policy that more clearly defines deficiencies with the appropriate follow up, identifies potential triggers that elevate enforcement actions, and methods to increase sanctions is being developed.

Inadequate Grain Buyer Licensing Process (Finding 13-4)

Condition:
The Grain Licensing Division does not have an adequate process to find all unlicensed grain buyers who are buying grain in North Dakota. We noted an instance where a grain buyer was purchasing grain for several years with no license. We also noted the expiration date is not printed on the grain buyer's license.

Criteria:
The Committee of Sponsoring Organizations (COSO) of the Treadway Commission publication *Control Environment – Integrated Framework*, suggests that verifications and proper communication are an important part of internal control structure.

Cause:
The Public Service Commission, Grain Licensing Division, does not have written policies and procedures in place to ensure all areas of the grain buyer licensing process are adequate.

Effect or Potential Effect:

The public or grain sellers could be at risk due to grain buyers going un-licensed and therefore not regulated by the state.

Operational Improvement:

We recommend the Public Service Commission, Grain Licensing Division implement a process to ensure all unlicensed buyers operating in the state of North Dakota are identified. We also recommend that effective and expiration dates are printed on the grain buyer's license.

Public Service Commission Response:

Agree. Commission will investigate the feasibility of working with the Secretary of State's Office to identify unlicensed grain buyers. As of May 2014, the expiration is included with the effective date on all grain licenses issued.

Inadequate Grain Buyer Consumer Complaint Handling Process (Finding 13-5)

Condition:
The Grain Licensing Division does not have an adequate consumer complaint handling process. The following deficiencies were identified:

- The Grain Licensing Division is not logging all complaints received, including those from grain sellers that have not received their money.
- The Grain Licensing Division is not tracking the complaints received to ensure all complaints are handled and resolved properly.
- The Grain Licensing Division is not considering complaints received prior to issuing license renewals.

Criteria:
Studies prepared by federal and national organizations including the National State Auditor's Association, and Jacobs & Associates – International Consultant in Regulatory Reform focus attention on the importance of identifying and evaluating best practices in executing a state agency regulatory program to improve regulatory effectiveness in carrying out public policies such as protecting health, safety, consumers, and the environment.

Cause:
The Grain Licensing Division does not have policies and procedures in place to ensure all areas of the complaint handling process are adequate.

Effect or Potential Effect:

The public or grain sellers could be at risk if legitimate public complaints go unheard and/or are not followed up on.

Operational Improvement:

We recommend the Public Service Commission, Grain Licensing Division implement a complaint handling process to ensure all consumer complaints are handled appropriately. Specifically the Grain Licensing Division should ensure that:

- All complaints are investigated and logged;
- All complaints are tracked to ensure they are handled and resolved properly; and
- All complaints are taken into consideration when issuing license renewals.

Public Service Commission Response:

Agree. Commission is currently reviewing a more modern process using software applications that clearly defines how complaints are logged and resolved.

Management Letter (Informal Recommendations)

May 5, 2014

The Honorable Brian Kalk, Chairman
Public Service Commission
600 E. Boulevard Avenue – Dept. 408
Bismarck, ND 58505

Dear Mr. Kalk:

We have performed an audit of the Public Service Commission for the biennium ended June 30, 2013, 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.

REVENUE

Informal Recommendation 13-1: 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 on the state's accounting system.

GENERAL

Informal Recommendation 13-2: We recommend the Public Service Commission employees and Commissioners read the code of conduct and acknowledge that it was read on a periodic basis.

OPERATIONAL IMPROVEMENTS

Informal Recommendation 13-3: We recommend the Weights and Measures Program ensure licensing policies and procedures are developed, documented, and implemented for tracking application information.

Informal Recommendation 13-4: We recommend the Weights and Measures Program ensure a documented monitoring process is implemented to identify establishments operating without a license.

Informal Recommendation 13-5: We recommend the Weights and Measures Program implement a complaint process to ensure all consumer complaints are handled appropriately. Specifically the program should ensure:

- Policies and procedures are developed, documented, and implemented for all areas of the complaint process; and
- Anonymous complaints are investigated.

Informal Recommendation 13-6: We recommend the Weights and Measures Program ensure:

- Annual inspection standard testing is performed for all inspectors; and
- PSC inspectors are required to take the NIST Handbook exam.

Informal Recommendation 13-7: We recommend the Grain Licensing Division have inspectors sign independence statements on a periodic basis.

Informal Recommendation 13-8: We recommend the Public Service Commission keep the Grain section of their website up-to-date with current information.

Management of 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,

Kristi Morlock

Kristi Morlock
Auditor in-charge

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