

Montana Public Service Commission



James Brown, Chairman

TESTIMONY OF CHAIRMAN JAMES BROWN MONTANA PUBLIC SERVICE COMMISSION TO THE LEGISLATIVE AUDIT COMMITTEE OF THE MONTANA STATE LEGISLATURE

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*PREAMBLE:
REMEMBER TO
Be HUMBLE
Be willing to LISTEN
Be willing to LEARN
Be willing to ACKNOWLEDGE; and
Be willing to take ACTION.*

I. OPENING STATEMENT

Good afternoon, Madam Chairman, members of the Audit Committee.

I am James Brown, presently serving as Chairman of the MT PSC.

With me today in person are:

1. Commissioner Jennifer Fielder; and
2. Acting Chief Legal Counsel Luke Casey

Appearing remote are:

Commissioner O'Donnell, Commissioner Pinocci, and Financial Specialist Angelina Pierson.

- I have brought with me this afternoon a handout that consists of a breakdown of what the agency has done to date to implement the LAD's current recommendations.
- Let me start by thanking Mr. Maciver, Jessica Curtis and the remainder of the audit staff for their great work on this audit.
- As I was sworn into office on January 4th, 2021, this was my first time working with the LAD, and my first time working through the audit process.
- It was a tremendous learning experience, and I appreciate the patience Ms. Curtis showed in answering my many questions about the process. I appreciate her work very much.

- I can assure you the entire Commission appreciates and respects the work of the auditors reflected in the Financial-Compliance Audit for the two fiscal years that ended June 30, 2020.
- I have spoken with each commissioner personally and have run through each of the recommendations with them.
- The Commission agrees with each of the auditors' findings.
- As the auditors determined, the Commission clearly has work to do. This is exemplified by the fact that several of the issues raised in this audit were raised in the two previous audits.
- The most serious issues identified by the auditors reflect a lack of understanding and appreciation for the importance of internal controls and accounting practices of a few senior management members. Those lapses are intolerable, and the Commission has already initiated disciplinary and corrective action and retraining where warranted.
- I am pleased to report that at the beginning of 2021, even before this audit began, the Commission kicked off an intensive, strategic planning process to improve the operations, performance, culture, and reputation of the agency.
- This commissioner-initiated initiative, which all five commissioners have been actively involved in, has already resulted in several significant improvements, many of which can be found in our written response included within the Audit Report.
- I want to make clear that, after an extensive five month agency review undertaken by Commissioner Fielder and myself have determined that 95% of the agency is in performing well and as expected, and that the agency is able to fully carry out its important regulatory mission – despite the several, and unfortunate high profile distractions that have arisen over the last several years.
- But, this extensive agency review, has determined that vacancies in key positions at the agency have led to gaps in our internal controls. This is being corrected as I stand here today.
- In one week, the PSC's newly hired, full-time, certified public accountant will start work, serving as both a regulatory advisor and an important element of our internal controls.
- Also, as part of our strategic planning process, we are also reorganizing staff and filling other key vacancies at no additional cost to ratepayers.
- As I will touch on shortly, the agency has already implemented many of the auditor's recommendations.
- But, some issues will require long-term, continuous improvement of the agency's management and internal controls – particularly as to that recommendation related to the need for commissioners to set the tone from the top.
- Even so, more positive agency changes are already in the works.
- The Commission is committed to making the necessary changes and setting the agency on the right track. There will be no more lip assurance answers from this agency to either this audit committee or to the agency or to the LAD as those empty assurances have been made repeatedly in the past.
- In addition, the Commission is fully committed to working with this Committee and the Legislature, namely the FRET Committee on ways to better the agency so that
- I speak for all of my fellow Commissioners when I say that this agency not only can be, but will be a model of good governance.
- Thank you. I am happy to stand for questions and I look forward to a through discussion.

II. PSC RESPONSES/CORRECTIONS

- Madam Chairwoman,

In response to Audit recommendation #1

This finding relates to the need for the Commission leadership to (1) comply with all internal policies and (2) to develop a comprehensive plan to improve department culture.

The Commission strongly concurs with this recommendation.

In response to the Auditor's recommendation as to the need for the agency to develop a comprehensive plan to improve department culture, shortly after the swearing in of Commissioner Fielder and I on January 4th, 2021, the agency began a strategic planning and agency review process that was and is designed to improve both the culture of the agency and the performance of the agency.

As noted in my written response to the audit findings, this strategic planning process was spurred in part by the two newest commissioners taking the time to review the prior two audits conducted on the agency and, in turn, realizing that several of the auditor's findings had not been adequately addressed. This process also began well before the agency's audit was completed. And, I am pleased to say that the strategic process has put the agency in a place where it can and has quickly responded to recommendations contained in the agency's present audit for the two year period ending June 30, 2021.

This commission strategic process involves all five members of the commission, as well as the division heads of the agency. In fact, within the first two weeks of my being sworn in as Chairman, I went to the three agency division heads and requested they provide me in writing three actions that could be taken in their respective division or by the commissioners to institute positive change. They did as requested and those staff ideas are being incorporated into the strategic plan process of the agency.

What is more, the strategic planning process consists of thoroughly reviewing staff performance and, in turn, restricting the job duties and supervisory responsibilities of personnel within the Centralized Services Division to ensure not only that prior audit recommendation matters are actually carried out, but also to ensure that the centralized services division of the agency runs efficiently and competently.

One of the areas that is being looked at during the process is management restructuring. It was my belief and the belief of other commissioners that the agency needed to create an executive director position for the agency. The Department has done so using the empty FTE position previously allocated for the agency communications director. While the agency is currently in the process of advertising to fill the position, the position, once hired, is intended to bring a level of professional day-to-day management to the agency such that the agency's three division heads no longer manage distinct areas of the agency. The agency's executive director will be responsible for overseeing all administrative matters of the agency – including process development, documentation, and maintenance of internal controls.

In addition, as part of this strategic planning process, the agency identified the importance of

having a CPA in the agency, not only to help with the regulatory duties of the agency, but also to work with the budget and fiscal staff in the centralized services division to ensure agency compliance with state and federal laws, as well as MOM policies. I am pleased to report that the agency has hired an outstanding person to fill the CPA position and that person will be coming on board June 14th. I am confident that this individual will help us come into compliance with a number of the audit recommendations contained in this report.

The Department also agrees with the auditors that with the change in composition of the commissioners themselves, there is opportunity to improve the culture of the agency. I am pleased to report that at my direction, the commissioners themselves have taken a more active role in carrying out our own supervisory responsibilities. Further, this oversight management shift included all commissioners to participate in and be active in the audit process so that the commissioners are themselves personally aware of areas in which the agency is deficient and will adjust their conduct accordingly.

I am confident with these changes that the agency has put itself on a path for positive change and outcome success moving forward and that the work that the agency has undertaken since my first week as chairman will set the tone from the top attitude that is necessary to make this agency the model of good governance.

In response to Audit recommendation #2

This recommendation relates to the deficiencies of the agency in terms of following state process and internal rules adopted by the agency for its own governance.

The commission concurs with this recommendation.

Similar to recommendation number 1, the agency has already begun to implement changes to comply with the audit recommendations in this area.

Let me address the weightiest issue in the audit – that is the attempt by the centralized services division administrator to present the auditors with falsified documentation. There is no excuse for such dishonest conduct whether that conduct is taken in one's private or professional life. As noted, at the top of my remarks, I have today accepted the resignation of that staffer and I am confident that such a situation and conduct will never arise again within the PSC during my term as chairman or ever.

I am both humbled and disappointed to even have to come before you to discuss that matter. Turning to other matters within this recommendation, it is my observation that a vast majority of the problems identified in the area of travel are the result not of the agency having the proper processes or forms in place, but rather as a result of the failure of certain members of management to follow what is clearly required of them.

In response to the initial audit findings, the Chairman directed the now former centralized services division to send to the entire commission and its staff a detailed reminder of agency processes for booking travel, for documenting the purpose of same and for seeking reimbursement. In addition, I also have spoken with each of my commission colleagues about what is required of them in terms of seeking approval for travel and reimbursement, namely approval from the chair of the commission. Strict compliance with the agency's internal 'blue book' and state law and policy is expected moving forward.

As to compliance with tracking and documenting agency inventory equipment and assets, the

agency has since the time of the release of the audit already created a policy and process for doing so. I have brought a copy of that policy with me today and am happy to provide the audit committee with a copy of the same.

The same is true for properly disposing of state surplus or outdated property and equipment. The Commission has now created a policy for properly handling the disposal of property such as by using the surplus property program of the general services division.

The compliance with procurement agreement issue is one that, as the auditors note, the commission was aware of the relevant state policy, but misinterpreted the same. As was noted to the auditors, our agency, along with other state agencies, often need the help of outside legal counsel. Such help is often needed on a time-sensitive basis as legal cases involve sharp deadlines and a short time period under which legal counsel needs to get up to speed on a case. Therefore, based on my own legal experience, it proves difficult to seek outside legal service in an amount that may cost the agency more than \$5,000.00 through some form of competitive solicitation process.

This is one of those areas of the audit where the Chairman is actively seeking to be educated as to how other state agencies find and contract outside legal services when dealing with strict court deadlines.

Turning now to compliance with transfer of receivables, this is an area where the agency has been found to be deficient in past audits. This is also an area that is providing to be somewhat challenging in implementing a timely solution. However, steps have already been taken to improve the department's controls over funding activity and fiscal staff has identified what steps need to be taken to finally take this recommendation off the books, so to speak

These being:

What fiscal staff needs:

- A written PSC debt collection policy detailing fiscal staff duties/responsibilities (number of attempts, waiting period, etc.), available recourse before transfer to DOR, and then listing transfer to DOR as the final recourse.
- The authority and means to require W-9s from any entities that may owe the PSC money. Alternative/additional options, perhaps done through rulemaking:
 - Require pre-payment of legal notice fees.
 - The commission will not act on a docket if there are unpaid fees.
 - The commission impose penalties for unpaid fees (not sure how well this will work since the usual penalty is a fine and they're already not paying the PSC).
- Change the law that requires publication in newspapers and just do online notices. fiscal and other PSC staff spend a ridiculous amount of time on newspaper publications, so staff will not object to this change being implemented in any way.

In response to Audit recommendation #3

This recommendation involves the PSC develop, implement, and document internal controls to ensure the completeness and accuracy of the rate charged and collected on the department's behalf.

The Department concurs with this recommendation.

Again, this is a recommendation that carries over from the prior audit period. In response to the

prior audit, the commission began regularly collecting reports from the Department of Revenue, which collects revenue on behalf of the agency, on agency revenue and assigned the former CPA to review those reports for accuracy and completeness.

Unfortunately, as noted correctly by the auditors, the agency CPA left the PSC to work for the federal government because of the federal government's ability to provide a higher compensation level. And, unfortunately, that employee's work was not documented resulting in the current recommendation.

It is my observation that the concerns raised by the auditors in the area of collecting and properly accounting for agency revenue stem, in part, from an employee knowledge gap. It is my hope and belief that with the hiring of the agency's new CPA, that individual will fill the knowledge gap just referenced. One of the first assignments that will be assigned to the new CPA will be for him to enhance, improve and create controls that ensure this recommendation will not be discussed by this committee for a fourth time.

Further, as noted in the agency's written response, both Commissioner Fielder and I have met with fiscal and budget staff on multiple occasions to learn about and better understand the agency's fiscal process. In turn, this increased commissioner knowledge of the budget process should lead to better internal controls.

In response to Audit recommendation #4

This recommendation relates to improper recording and treatment of revenue and expenditures.

The PSC concurs with this audit recommendation as well.

There are two items discussed here. First, involves an ongoing contract dispute between the PSC and the Department of Administration and the SPC related to SITSD's work on building our electronic case management and calendaring system – EDDI.

As a member of appropriations subcommittee D – representative Kerr-carpenter is certainly familiar with this issue as it was discussed extensively during the recent legislative process.

As noted by the auditors, the PSC disputes it owes the DOA some \$40,000 in billed costs due to clear and documented performance issues with the EDDI system. This dispute over billed charges dates back to the fall of 2019 and is still ongoing.

I am pleased to come before you to say that we are in ongoing talks to resolve this inter-agency contract dispute and I am hopeful that with the next meeting, which is set for this Friday the 11th – this matter will be behind us.

As to the second item in this recommendation, this is another item this committee has considered in the past. This relates to the hiring of a consultant during fiscal year 2018. In that particular instance, the commission had the pay the fee of the consultant directly, instead of going the proper route. The proper route being to have the commission pay the consultant directly, to book that expenditure, then bill the utility for the commission's costs.

Because the contract carried into FY 2019, and because the agency did not record the revenue and expenditures associated with that matter, here we are again.

I am already working on policy and procedure documentation to distribute to appropriate staff to

prevent these accounting occurrences from transpiring in the future. This Committee can be assured that the completeness and accuracy of the agency's financial information is of the utmost importance to current agency leadership.

In response to Audit recommendation #5

This recommendation relates to the Department's deficiencies in regard to the audit note disclosure process.

The Department concurs with this final recommendation as well.

In response to this recommendation, the Department has already created a written financial note schedule response and checklist policy.

In addition, a portion of this recommendation can be attributed to the failure of certain members of management to inform the Chairman and the agency chief legal counsel of their responsibilities in relation to the disclosure process. This failure to properly communicate responsibilities and allocate duties is addressed in the new policy, wherein response duties are assigned to particular individuals within the agency. I expect this clear chain of responsibility will result in a smoother audit in two years.

In addition, as I noted in my written response to the audit, the agency very much appreciates the recommendation for the agency to work with the State Accounting Bureau on improving the agency's note disclosure process.

III. SUGGESTIONS FOR MOVING THE AGENCY FORWARD.

- Request Additional FTE, particularly for placement in the centralized services division to work with financial and budget staff;
- Enhance Chairman's oversight duties and codify those duties in statute;
- Work with ETIC on agency structure/areas of improvement and to better coordinate with agency on proposed legislation; and
- Correct this biennium agency budget to clarify authority to spend cash to fix the agency's EDDI system.

