DIVIDER

STATE OF NORTH DAKOTA

□INFORMATION TECHNOLOGY DEPARTMENT

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PU-05-575
Public Service Commission
Public Utilities - Telephone
Rulemaking 05
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Public Service Commission

LEGISLATIVE COUNCIL

ADMINISTRATIVE RULES COMMITTEE

June 14, 2007

N.D. Admin. Code § 69-09-05 (Telecommunications)

Mr. Chairman and committee members, my name is Tony Clark, Public Service Commissioner. Also here with me today is Patrick Fahn, a Public Utility Analyst with the Public Utilities Division of the Public Service Commission. We are here to respond to questions concerning rules recently adopted by the Commission. The rules relate to the Commission's responsibility to determine whether a telecommunications carrier should be designated as eligible to receive universal service support under sections 214 and 254 of the Telecommunications Act of 1996, these carriers are referred to as eligible telecommunications carriers (ETCs).

Out of concern for the long-term sustainability of federal universal service support, appropriate disbursement of support and appropriate use of such support, the Federal Communications Commission (FCC) has established rules for its ETC designation process. However, since most states have authority to determine which telecommunications carriers will be designated as an ETC and receive federal funding, the FCC has encouraged all states to adopt similar rules. If all states adopt similar rules, the carriers seeking designation have a more predictable application process among the states. The rules serve the public interest by establishing a rigorous ETC designation process to ensure that only fully qualified applicants receive designation as ETCs and that all ETC designees are prepared to serve all customers within a designated service area. The rules improve the long-term sustainability of the federal universal funding by allowing only fully qualified carriers that are capable of and committed to providing universal service to receive support. Strengthened reporting requirements for ETCs ensure that high-cost universal service support continues to be used for its intended purposes.

Responses to the questions posed in the Legislative Council's May 23, 2007 letter are presented below. Each question is restated prior to the Commission's response.

1. **Whether the rules resulted from statutory changes made by the Legislative Assembly.**
The rules did not result from statutory changes made by the 60th (2007) Legislative Assembly. The rules implement North Dakota Century Code § 49-21-01.7 subsection 12, which authorizes the Commission to designate telecommunications companies as eligible telecommunications carriers for the purpose of receiving universal service support under sections 214 and 254 of the federal act.

2. **Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.**
The rules generally reflect the requirements adopted by the Federal Communications Commission in its March 17, 2005 Order in CC Docket No. 96-45 and codified at 47 C.F.R. §§ 54.202 and 54.209. The rules are not mandated by federal law, however, the FCC encouraged states that exercise jurisdiction over ETC designations to adopt the requirements of set forth in that FCC Order.

3. **A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.**

On November 17, 2005, the Commission issued a Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing. On November 22, 2005, the Commission issued an Amended Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing. The amended notice of the rulemakings was published in daily newspapers throughout the state as required by North Dakota Century Code Chapter 28-32. A public hearing was held at 1:00 p.m., CST, January 4, 2006, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. Comments were received until January 17, 2006.

4. **Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.**

Under current Commission procedure, a telecommunications company seeking designation as an eligible telecommunications carrier (ETC) must file an application with the Commission. Commission staff testified that the proposed rules codify the application requirements and establish reporting requirements for ETCs, including ETCs previously designated by the Commission. The rules also establish the criteria to be considered by the Commission in designating an

eligible carrier. Staff testified that the proposed rules largely mirror new ETC application and reporting requirements adopted by the FCC.

Written concerns and objections for Commission consideration with regard to these rules are summarized in the attached Amended Order dated March 7, 2007. The Commission made several modifications based on the comments provided.

5. **The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.**

The approximate cost of legal notices associated with this rulemaking proceeding was $256.67. Other than staff time, no other significant costs were incurred.

6. **An explanation of the subject matter of the rules and the reasons for adopting those rules.**

These changes to North Dakota Administrative Code Section 69-09-05-12 and new Section 69-09-05-12.1 implement North Dakota Century Code Section 49-21-01.7 subsection 12, which authorizes the Commission to designate telecommunications companies as eligible telecommunications carriers to receive universal service support under sections 214 and 254 of the federal act. The rules codify the requirements of the application for designation as an eligible telecommunications carrier, set forth eligible telecommunications carrier annual reporting requirements, and establish the criteria to be considered by the Commission in designating an eligible carrier.

7. **Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.**

A regulatory analysis was prepared for the proposed rules, a copy is attached. The proposed rules are not expected to have an impact on the regulatory community in excess of $50,000.

8. **Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide a copy.**

Yes; copy attached

9. **Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. Please provide a copy if one was prepared.**

Yes; copy attached

10. **If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.**

These rules were not adopted as emergency rules.

Mr. Chairman, that completes our testimony. We would be happy to respond to any questions that your committee might have.

AL CARLSON
State Representative
Chairman

JOHN D. OLSRUD
Director

JAY E. BURINGRUD
Assistant Director

JIM W. SMITH
Legislative Budget
Analyst & Auditor

JOHN WALSTAD
Code Revisor

North Dakota Legislative Council

STATE CAPITOL, 600 EAST BOULEVARD, BISMARCK, ND 58505-0360 (701) 328-2916 TTY: 1-800-366-6888

June 15, 2007

RECEIVED
JUN 15 2007
NO PUBLIC SERVICE COMMISSION
KEVIN CRAMER

Ms. Illona A. Jeffcoat-Sacco
Executive Secretary
Public Service Commission
State Capitol
Bismarck, ND 58505-

Dear Ms. Jeffcoat-Sacco:

We have completed preparation of the North Dakota Administrative Code rules changes you recently submitted to our office for publication. Enclosed are copies of two different versions of those rules.

The first enclosed copy shows revised North Dakota Administrative Code sections as they will be published in the next supplement of the North Dakota Administrative Code. There is an instruction sheet for replacement of obsolete pages with these updated pages to be used if your agency maintains a full-sized set of your rules. If you maintain the published North Dakota Administrative Code in reduced size binders, the reduced size replacement pages will be sent to you soon.

The other enclosed copy shows our editorial changes to the rules as submitted. Please observe the style and grammar changes we have made.

Please contact this office if you have any questions regarding these rules. If these rules will be reviewed by the Administrative Rules Committee, we will contact you when the meeting is scheduled.

Sincerely,

John Walstad
Code Revisor

JW/JFB
Encs.

58 **PU-05-575** Pages: 33

Completed preparation of rules

by Legislative Council by J. Walstad
06/15/2007 C: Comm Legal, Illona Pat, Jerry, Annette . .

NORTH DAKOTA ADMINISTRATIVE CODE

Supplement 325

July 1, 2007

The North Dakota Administrative Code Supplement is published each month following the month that rules are filed with the Legislative Council office. A historical source note immediately follows an affected section and indicates the effective date of any amendment, creation, or repeal. A supplement change without any historical source note corrects a nonsubstantive error in the section.

This supplement instruction page should be retained and placed behind your "supplement instruction sheets" divider in Volume 1. **Before inserting any supplement into the code be sure the previous supplement has been inserted.** For those codes purchased after August 1, 1996, the first supplement is Supplement 207.

Instructions for integrating this supplement into the Administrative Code are as follows:

	Pages to be Removed	**Pages to be Inserted**
NDAC Table	13 - 14	13 - 14
Article 46-02 (Chapter 46-02-01)		1
Chapter 46-02-02		1
Chapter 46-02-03		1
Chapter 46-02-04		1
Chapter 46-02-05		1
Chapter 46-02-06		1
Chapter 46-02-07	1 - 13	1 - 11
Title 61	1	1
Article 61-12 (Chapter 61-12-01)		1 - 3
Article 67-19 (Chapter 67-19-01)	1 - 59	1 - 29
Chapter 69-09-05	1 - 15	1 - 19
Article 74-03 (Chapter 74-03-00.1)	1 - 3	1 - 3
Chapter 74-03-01	1 - 16	1 - 17
Article 74-04 (Chapter 74-04-01)	1 - 20	1 - 21
Article 74-05 (Chapter 74-05-01)	1 - 2	1 - 2
Chapter 75-02-07.1	1 - 54	1 - 56
Chapter 92-05-02	1 - 4	1 - 4
Chapter 92-05-03	1	1 - 2
Chapter 93-02-03	1 - 3	1 - 4
Chapter 97-02-03	1	1

CHAPTER 69-09-05
STANDARDS OF SERVICE - TELEPHONE

Section	
69-09-05-00.1	Definitions
69-09-05-01	Lowest Priced Service Alternatives
69-09-05-02	Discontinuance of Telecommunications Services
69-09-05-02.1	Determination of Delinquency
69-09-05-03	Deposits and Guarantees
69-09-05-04	Rules for Resale of Telecommunications Services
69-09-05-04.1	Identification of IntraLATA Interexchange Carriers
69-09-05-04.2	Unauthorized Service Changes
69-09-05-05	Rules for the Provision of Operator Services
69-09-05-06	Rules for Pay Telephones [Repealed]
69-09-05-07	Customer Trouble Reports
69-09-05-08	Adoption of Regulations
69-09-05-09	911 and E-911 Service
69-09-05-10	Registration - Procedure
69-09-05-11	Certificate of Public Convenience and Necessity for Incumbent Local Telecommunications Company - Procedure
69-09-05-12	Eligible Telecommunications Carrier Applications and Advertising
69-09-05-12.1	Annual Reporting Requirements for Designated Eligible Telecommunications Carriers
69-09-05-13	Essential Service Provider Bills
69-09-05-14	Procedure for Filing Negotiated Interconnection Agreements

69-09-05-00.1. Definitions.

1. "Competitive local exchange company" means any telecommunications company providing local exchange service, other than an incumbent local exchange carrier, whether by its own facilities, interconnection, or resale.

2. "Eligible telecommunications carrier" means a telecommunications company designated under section 214(e) of the Telecommunications Act of 1996 as eligible to receive universal service support in accordance with section 254 of the Telecommunications Act of 1996.

3. "End user" means a person who uses telecommunications service for the person's own use.

4. "Incumbent local exchange company" means a telecommunications company that meets the definition of section 251(h) of the Telecommunications Act of 1996.

5. "Lifeline service" means a retail local telecommunications offering for which qualifying low-income consumers pay reduced recurring charges for universal service.

6. "Link-up service" means a reduction in the carrier's customary charge for commencing telecommunications service for a single telecommunications connection at a consumer's principal place of residence.

7. "Local exchange company" means an incumbent or competitive local exchange company.

8. "Telecommunications Act of 1996" means the Telecommunications Act of 1996 [Pub. L. 104-104; 110 Stat. 56; 47 U.S.C. 151 et seq.].

History: Effective January 1, 2001.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.7

69-09-05-01. Lowest priced service alternatives. Upon request of a residential customer or prospective customer for service, the utility shall ask if such customer wishes to be informed of the lowest priced service alternatives available from the utility, and upon an affirmative response shall inform such customer of the lowest priced service alternatives available from the utility at the customer's location, giving full consideration to grades of service, equipment options, and installation charges incident thereto. The lowest priced service alternative includes service under the lifeline and link-up plans.

History: Amended effective January 1, 2001.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21-01.4, 49-21-01.7, 49-21-07

69-09-05-02. Discontinuance of telecommunications services. A utility may not discontinue telecommunications services, except as provided in this section.

1. A utility may discontinue the essential services it provides:

   a. If the customer is delinquent in payment for essential services, then essential services may be discontinued even though discontinuing the services results in the discontinuance of all telecommunications services.

   b. If the customer is delinquent in payment for long-distance services rendered by a local exchange company or another company and billed by the local exchange company, but is not delinquent in payment for essential services rendered by the local exchange company, the local exchange company may discontinue the customer's local exchange services only at central offices lacking

the technical ability to discontinue long-distance services while continuing to provide local exchange services.

2. A utility may discontinue nonessential services:

   a. If the customer is delinquent in payment for nonessential services.

   b. If the customer is delinquent in payment for long-distance telecommunications services rendered by another company and billed by the local exchange company, then the local exchange company may deny the customer all forms of access to the network of the telecommunications company to which the customer is delinquent in payment. However, if due to technical limitations, a local exchange company must also deny the customer all forms of access to the long-distance networks of all telecommunications companies, including its own, in order to deny the customer access to the network of the company to which the customer is delinquent, the local exchange company may do so.

3. A utility may discontinue service to a customer for failure to comply with regulations of the utility on file with the commission pertaining to installation and use of equipment, or for use of equipment which interferes with or adversely affects the service to other customers, provided the customer has first been notified and afforded reasonable opportunity to change or disconnect such equipment.

4. A utility may not discontinue service to a customer for failure of the customer to pay for merchandise purchased from the utility, to pay for a different class of service furnished by the utility, to pay for service rendered to a previous occupant of the premises, or to pay the bill of another customer as guarantor thereof.

5. A utility may not discontinue service to a customer for failure to pay for service until the utility first gives the customer notice of its intention to discontinue such service on account of delinquency. The notice must:

   a. Be sent by first-class mail addressed to the billing name and address of the affected account.

   b. Show the amount of the delinquency.

   c. Include the telephone number of the public service commission.

   d. Advise the customer of the customer's rights and remedies, including the customer's right to work out a satisfactory deferred installment agreement for delinquent accounts.

   e. Inform the customer that service will be discontinued if the delinquent account is not paid within ten calendar days from the

date of mailing or personal delivery of the notice, or if a satisfactory installment agreement is not made with the utility for payment of the delinquent bill. The utility may discontinue service without further notice if the customer fails to pay the delinquent account by the due date.

6. a. A deferred installment agreement for essential services may not be combined with a deferred installment agreement for any other services.

   b. A utility may not discontinue essential services if the utility and the customer make a mutually agreed-upon deferred installment agreement for essential services. A utility may discontinue essential services without further notice if the customer fails to pay the delinquent account in accordance with the deferred installment agreement.

   c. A utility may not discontinue nonessential services if the utility and the customer make a mutually agreed-upon deferred installment agreement for nonessential services. A utility may discontinue nonessential services without further notice if the customer fails to pay the delinquent account in accordance with the deferred installment agreement.

7. The customer may pay the delinquent account at any time prior to the actual discontinuance of service.

8. Whenever service has been discontinued for nonpayment of a bill, service must be resumed if the customer:

   a. Pays the fee for resuming service established in the utility's rate schedules;

   b. Makes a deposit under section 69-09-05-03 (if required by the company); and

   c. Makes a satisfactory settlement for the delinquent bill and for the service rendered to the date the service was discontinued.

   Interexchange carriers are not required to resume long-distance service if local service is not connected.

9. If the customer disputes the amount of a bill for service, the customer may, to prevent discontinuance for nonpayment, pay the disputed bill under protest to the utility. Alternatively, the customer may request a formal hearing pursuant to section 69-02-02-02 in which case the utility may not discontinue service for nonpayment of the disputed bill until a final decision has been issued by the commission. The utility shall immediately give the commission notice of the dispute and the

commission may investigate the dispute. The utility shall refund to the customer any part of such payment made under protest found by the commission to be excessive.

10. The commission may order the discontinuance of services where a reseller or operator services provider violates commission rules. The commission will provide ten days' notice of a deficiency or violation and provide an opportunity for the noncomplying reseller or operator services provider to respond or correct the deficiency. A reseller or operator services provider disputing the alleged violation or discontinuance may request a formal hearing under section 69-02-02-02, in which case the discontinuance will be stayed until final decision by the commission.

11. a. Except for discontinuance due to delinquency, a competitive local exchange company may not discontinue service to a customer without first providing the customer with twenty days' written notice of the intent to discontinue service. The notice of intent to discontinue service shall inform the customer of its right to choose between local exchange companies, if more than one local exchange company is providing essential services.

    b. A telecommunications company may not interfere with a competitive local exchange company's obligation to provide notice to a customer; provided that a telecommunications company may disconnect service to a competitive local exchange company under the terms of a resale or interconnection agreement so long as the interconnection agreement is consistent with law and rules.

12. Except in the case of discontinuance for nonpayment, if a telecommunications company providing interexchange service intends to discontinue service or is forced to discontinue service due to abandonment, acquisition, bankruptcy, or for other reasons, the company must provide reasonable advance notice of the discontinuance to each customer. The notice must inform the customer that the customer must choose another primary interexchange carrier or use an alternative service.

History: Effective April 1, 1985; amended effective January 1, 1993; May 1, 1996; July 1, 1997, amendments voided by the Administrative Rules Committee, effective August 16, 1997; January 1, 2001; July 1, 2006.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.4, 49-21-01.7, 49-21-07

69-09-05-02.1. Determination of delinquency. For the purpose of discontinuing or resuming telecommunications service:

1. If a customer's partial payment on outstanding charges for telecommunications services excluding payments on a deferred

installment agreement is less than the outstanding charges for essential services and federal access charges, the customer is delinquent in payment for essential services.

2. If a customer's partial payment on outstanding charges for telecommunications services excluding payments on a deferred installment agreement is equal to or greater than the outstanding charges for essential services and federal access charges, the customer is not delinquent in payment for essential services.

History: Effective January 1, 1993.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.4, 49-21-01.7, 49-21-07

69-09-05-03. Deposits and guarantees.

1. Each telephone utility subject to the public service commission's jurisdiction may require each applicant for service to make a deposit not to exceed two times the estimated amount of one month's average bill. The utility shall each year pay interest on such deposit at the rate paid by the Bank of North Dakota on a six-month certificate of deposit. Such rate will be determined as of the first business day of each year on a six-month certificate of deposit with the smallest deposit required. The interest may be paid to the depositor or may be deducted from the depositor's indebtedness to the utility for telephone service. The payment or deduction for interest must be made during each calendar year, or whenever a deposit is refunded or service discontinued. The utility may accept in lieu of a cash deposit a contract signed by a guarantor, satisfactory to the utility, whereby the payment of a specified sum not to exceed the required cash deposit is guaranteed. The term of such contract must be indeterminate, but it must automatically terminate when the customer gives notice of service discontinuance to the utility or a change in location covered by the guarantee agreement or thirty days after written request for termination is made to the utility by the guarantor. However, no agreement may be terminated without the customer having made satisfactory settlement for any balance which the customer owes the utility. Upon termination of a guarantee contract, a new contract or a cash deposit may be required by the utility.

2. An eligible telecommunications carrier may not collect a service deposit in order to initiate lifeline service, if the qualifying low-income consumer voluntarily elects toll blocking from the carrier, where available. If toll blocking is unavailable, the carrier may charge a service deposit.

History: Effective April 1, 1985; amended effective August 1, 1994; January 1, 2001.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.4, 49-21-01.7, 49-21-07

69-09-05-04. Rules for resale of telecommunications services.

1. Definitions.

   a. "Premise cable" means telecommunications cable or channels on the reseller's side of the point of connection to the local exchange company (demarcation point).

   b. "Prepayment" means payments made by customers of a reseller in advance of receiving service. Prepayment includes a deposit and any customer payment for telecommunications service in advance of receiving the full amount of service for which payment is made.

   c. "Resale" means the subscription to local or long-distance telecommunications services and facilities by one entity, and reoffered for profit or with markup to others with or without enhancements. Where reoffered service is part of a package, and the package is offered for profit or markup, it is resale.

   d. "Reseller" means a person reselling local or long-distance telecommunications services. The definition does not include pay telephone providers, but does include a cellular and personal communication service provider who resells cellular or other wireless service.

   e. "Same continuous property" is contiguous real estate owned by the same individual, group of individuals, or other legal entity having title to the property. The property may be traversed by streets, ditches, or other similar manmade or natural terrain features provided that, but for terrain features, the property would be contiguous and provided that such terrain features are of a nature and dimension that it is reasonable to treat the property as contiguous.

   f. "Shared tenant service provider" means a person reselling telecommunications services to the tenants of a building complex on the same continuous property or to parties with a community of interest.

2. A reseller may not operate in North Dakota except in compliance with applicable laws and rules. A reseller shall:

   a. Register with the commission, on a form provided by the commission, indicating the provision of local resale or long-distance resale services in the state of North Dakota.

   b. If a reseller requires prepayment for service, it shall:

(1) Submit a performance bond in an amount specified by the commission; or

(2) Establish an escrow account in a North Dakota bank containing an amount equal to the prepayments collected at any given time, and file monthly reports showing escrow account activities and call completion data.

(3) Under subsection 7 of North Dakota Century Code section 49-03.7-09 the bonding requirement does not apply to a facility-based company providing commercial mobile radio service, as defined in title 47, Code of Federal Regulations, part 20, section 20.3.

(4) The requirements of paragraphs 1 and 2 are subject to a twenty-five thousand dollar minimum for resellers of local service other than by means of a prepaid calling card. The required amount of a performance bond is the product of the estimated level of customers after three years of operation, times the amount of required customer prepayments, or twenty-five thousand dollars, whichever is greater. The required amount of an escrow account is an amount equal to the prepayments at any given time but no less than twenty-five thousand dollars.

(5) The requirements of paragraphs 1 and 2 are subject to a two thousand five hundred dollar minimum for resellers of any service other than the local service subject to paragraph 4. The amount of a performance bond is the product of the estimated level of customers after three years of operation, times the amount of required customer prepayments, or two thousand five hundred dollars, whichever is greater. The amount of an escrow account is an amount equal to the prepayments, including prepaid calling cards, at any given time.

3. A reseller may not be identified as an optional intrastate interexchange carrier unless it is registered with the commission.

4. Except for residents of dormitories or residence halls of schools, colleges, or universities, the end user has the unrestricted right to choose service from the incumbent local exchange company.

5. A shared tenant service provider shall allow the tenant to use the shared tenant service provider's premise cable and wire in the event an end user wants to receive service from the local exchange company.

6. The reseller is responsible for the charges incurred for telecommunications services to which it subscribes for serving its end users.

7. A reseller is subject to revocation of its authority and the penalties provided in North Dakota Century Code chapters 49-03.1 and 49-07 for violation of any applicable law or rule.

History: Effective March 1, 1989; amended effective August 1, 1991; December 1, 1993; February 1, 1995; July 1, 1997; January 1, 2001; July 1, 2006.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7, 49-21-07

69-09-05-04.1. Identification of intraLATA interexchange carriers.

1. A local exchange carrier shall not identify a telecommunications company as an optional intrastate interexchange carrier unless the telecommunications company provides the local exchange company with evidence of an effective registration authorizing the provision of intrastate interexchange service.

2. A telecommunications company shall immediately notify in writing all local exchange companies for which it has requested identification as an optional intrastate interexchange carrier if the telecommunications company's authority to provide interexchange service is revoked or abandoned. A local exchange company shall cease to identify a telecommunications company as an optional intrastate interexchange carrier upon receipt of a written notice that the telecommunications company's authority to provide interexchange service has been revoked or abandoned.

History: Effective February 1, 1995; amended effective January 1, 2001; July 1, 2006.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21

69-09-05-04.2. Unauthorized service changes. A telecommunications company may not change a customer's local or long-distance carrier without authorization from the customer.

History: Effective July 1, 1997.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.7, 49-21-02.4, 49-21-07

69-09-05-05. Rules for the provision of operator services.

1. Definitions.

   a. "End user" means the person to whom operator service is provided.

b. "Operator service" means service provided to assist in the completion or billing of telephone calls through the use of a live operator or automated equipment. "Operator service" does not include completion of calls through an 800 number or an access code when billed to an account previously established with the carrier by the end user, or the automated operator services provided by pay telephone sets with built-in automated operator messages.

c. "Operator service provider" means the person providing operator service.

2. Operator service providers shall:

a. Register with the commission authorizing the provision of operator services in the state of North Dakota.

b. Provide written material for use in disclosing to the end user the name and toll-free telephone number of the operator service provider. This material must be provided to all coin telephone operators, motels, hospitals, and any other locations where end users may use telephone service not billable to their home or business telephones without operator service.

c. Require operators to clearly identify the operator service provider to all end users and when requested, provide rate information.

d. Provide emergency call service that is equal to that provided by the local exchange telephone company and, if unable to meet this requirement, provide emergency call service by immediate transfer of such calls to the local exchange company.

e. For billing purposes, itemize, identify, and rate calls from the point of origination to the point of termination. No call may be transferred to another carrier by an operator service provider which cannot or will not complete the call, unless the call can be billed in accordance with this subsection.

f. Not charge for incompleted calls.

g. Disclose their names on bills which include charges for services they provided.

History: Effective March 1, 1989; amended effective August 1, 1991; May 1, 1996; January 1, 2001; July 1, 2006.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7, 49-21-07

69-09-05-06. Rules for pay telephones. Repealed effective August 1, 1994.

69-09-05-07. Customer trouble reports. When a customer's service is found to be out of order or a customer reports trouble, the local exchange telecommunications company shall test its facilities to determine if the problem is with the local exchange company's facilities. If it is, the local exchange company shall correct the trouble promptly. There may be no charge to the customer to test to determine if the problem is on the local exchange company's facilities or to correct a problem on the local exchange company's facilities. A local exchange company shall inform a customer in advance what charges will be assessed to identify or correct a problem located on the customer's facilities.

History: Effective August 1, 1991; amended effective January 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 49-21, 49-21-01.7

69-09-05-08. Adoption of regulations. The following parts of title 47, Code of Federal Regulations in effect as of July 17, 1997, are adopted by reference:

Part 54 - Universal Service, Subpart F - Universal Service Support for Schools and Libraries.

Copies of these regulations may be obtained from:

Public Service Commission
State Capitol
Bismarck, North Dakota 58505-0480

History: Effective March 1, 1998.
General Authority: NDCC 28-32-02, 49-02-01
Law Implemented: NDCC 49-21

69-09-05-09. 911 and E-911 service. Each competitive local exchange company shall provide 911 or E-911 service that is comparable to the 911 or E-911 service provided by the incumbent local exchange company operating in each respective service area in which the competitive local exchange company offers service.

History: Effective January 1, 2001.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.7, 49-21-07, 49-21-24

69-09-05-10. Registration - Procedure.

1. A reseller or competitive facilities-based provider desiring authority to provide service in North Dakota shall register on a form provided by the commission. The registration shall include identification of the applicant's authority to do business in North Dakota.

2. A reseller shall follow the procedure set forth in section 69-09-05-04.

3. When a registered company intends to assign its authority to provide telecommunications service in North Dakota to another entity, the assignee must first register with the commission.

4. A registered company may voluntarily, without commission approval, surrender its authority by notifying the commission in writing and updating its registration to reflect this surrender.

5. A competitive local exchange company intending to surrender its authority to provide local exchange service must provide twenty days' prior written notice to the company's customers.

History: Effective January 1, 2001; amended effective July 1, 2006.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21

69-09-05-11. Certificate of public convenience and necessity for incumbent local telecommunications company - Procedure.

1. An applicant for a certificate of public convenience and necessity as an incumbent local exchange company shall file an application with the commission which includes evidence of the applicant's authority to do business in North Dakota, conforms to the commission's rules of practice and procedure under article 69-02, and which identifies:

   a. The type of service the applicant intends to provide.

   b. The service area or areas in which the applicant intends to provide service.

   c. How the applicant meets the issues to be considered in the application.

2. An applicant for a certificate of public convenience and necessity must also file consolidated financial statements for the most recent year available, including:

   a. A balance sheet of the form and style usually followed in the industry.

   b. An income statement of the form and style usually followed in the industry.

   c. If available, an independent accountant's financial opinion.

   d. Any other information requested by the commission.

3. In order to implement North Dakota Century Code chapter 49-03.1 consistent with the Telecommunications Act of 1996, issues to be considered in an application for a certificate of public convenience and necessity for a facilities-based provider of telecommunications services are:

   a. Fitness and ability of the applicant to provide service.

   b. Adequacy of the proposed service.

   c. The technical, financial, and managerial ability of the applicant to provide service.

4. If the application is to be decided on a notice of opportunity for hearing, the applicant shall file affidavits sufficient to meet the applicant's burden of proof on the issues.

5. When the holder of a certificate of public convenience and necessity intends to assign the authority to provide telecommunications service in North Dakota to another entity, the assignee must first obtain a certificate of public convenience and necessity from the commission.

6. Abandonment of a certificate of public convenience and necessity for an incumbent local exchange company requires prior commission approval.

History: Effective January 1, 2001; amended effective July 1, 2006.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7(7)

69-09-05-12. Eligible telecommunications carrier applications and advertising.

1. A telecommunications company that desires designation as an eligible telecommunications carrier as that term is defined in the Telecommunications Act of 1996 shall make application for such designation with the commission.

2. An application for designation as an eligible telecommunications carrier must specifically identify:

   a. The proposed designated service area. Applicants that will not be classified as the incumbent local exchange carrier shall identify the incumbent local exchange carrier study areas that are located, in whole or in part, in the proposed designated service area;

   b. How the applicant meets the requirements for designation as an eligible telecommunications carrier;

c. Whether the applicant requires a waiver of any eligible telecommunications carrier requirement; and

d. If a waiver is required, the specific reasons for the waiver and the length of time for which the waiver is required.

3. An applicant for designation as an eligible telecommunications carrier shall:

a. Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will:

(1) Provide service on a timely basis to requesting customers within the applicant's proposed designated service area where the applicant's network already passes the potential customer's premises; and

(2) Provide service within a reasonable period of time, if the potential customer is within the applicant's proposed designated service area but outside its existing network coverage, if service can be provided at reasonable cost by:

(a) Modifying or replacing the requesting customer's equipment;

(b) Deploying a roof-mounted antenna or other equipment;

(c) Adjusting the nearest cell tower;

(d) Adjusting network or customer facilities;

(e) Reselling services from another carrier's facilities to provide service; or

(f) Employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment.

b. Submit a report estimating the amount of federal high-cost universal service support the applicant expects to receive in the first year following designation as an eligible telecommunications carrier and describing how that support is projected to be used for the provision, maintenance, or upgrading of the carrier's facilities and services pursuant to section 254 of the Telecommunications Act of 1996. The report must identify specific construction, maintenance, or upgrade projects; describe how service will be improved by each project; and provide the projected start date and completion date for each improvement, the estimated amount of investment for each of the specific geographic area where

each improvement will be made, and the estimated population that will be served by each improvement. For applicants that will be classified as the incumbent local exchange carrier, the information required shall be submitted at the study area level. For other applicants, the information shall be submitted at the incumbent local exchange carrier study area level. If a study area or designated service area includes geographic areas in more than one state, the information shall also be submitted at the North Dakota level.

c. Certify that it is able to remain functional in emergency situations, including a certification that it has a reasonable amount of backup power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

d. Certify that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the cellular telecommunications and internet association's consumer code for wireless service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

e. Demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the proposed designated service area.

f. Certify that the carrier acknowledges that the commission may require it to provide equal access to long-distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the proposed designated service area. Wireless carriers must certify that the carrier acknowledges that the federal communications commission may require it to provide equal access to long-distance carriers in the event no other eligible telecommunications carrier is providing equal access within the proposed designated service area.

4. Any common carrier that has been designated as an eligible telecommunications carrier or that has submitted its application for designation before July 1, 2007, must submit the information required by subsection 3 no later than August 1, 2007, as part of its annual reporting requirements.

5. Prior to designating an eligible telecommunications carrier, the commission shall determine that such designation is in the public interest. In doing so, the commission shall consider the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering. When an eligible telecommunications carrier applicant seeks designation below the study area level of a rural telephone company, the commission shall

also conduct an analysis that compares the population density of each wire center in which the eligible telecommunications carrier applicant seeks designation against that of the wire centers in the study area in which the eligible telecommunications carrier applicant does not seek designation. In its analysis, the commission shall consider other factors, such as disaggregation of support by the incumbent local exchange carrier.

6. Eligible telecommunications carrier advertising. The following forms of advertising of the availability of universal service are required of an eligible telecommunications carrier:

   a. A full description of available services in the eligible telecommunications carrier's official telephone directory, including the process to be used by customers to qualify for lifeline and link-up service.

   b. Advertising of the availability of universal services in media of general circulation in each eligible telecommunications carrier's designated service areas. Availability may be advertised in newspapers, company newsletters, company or civic internet sites, bill stuffers, direct mailings, or other means intended to convey availability throughout the service area.

History: Effective January 1, 2001; amended effective July 1, 2007.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.7, 49-21-07

69-09-05-12.1. Annual reporting requirements for designated eligible telecommunications carriers. Eligible telecommunications carriers shall file with the commission on or before August first of each year, beginning in 2007:

1. A report describing the amount of high-cost universal service support the eligible telecommunications carrier received in the prior calendar year and how that support was used for the provision, maintenance, or upgrading of the carrier's facilities and services. The report must also explain any changes from reports that have been previously provided to the commission. The report must include an estimate of the amount of federal high-cost universal service support the carrier anticipates receiving in the following calendar year and describe how that support is projected to be used for the provision, maintenance, or upgrading of the carrier's facilities and services pursuant to section 254 of the Telecommunications Act of 1996. The prior calendar year and following calendar year reports must identify specific construction or upgrade projects, describe how service will be improved by each project, and provide the start date and completion date for each improvement, the amount of investment for each improvement, the specific geographic area where each improvement will be made, and the estimated population that will be served by each improvement. For eligible

telecommunications carriers that are classified as the incumbent local exchange carrier, the information required must be submitted at the study area level. For other eligible telecommunications carriers, the information must be submitted at the incumbent local exchange carrier study area level. If a study area or designated service area includes geographic areas in more than one state, the information must also be submitted at the North Dakota level.

2. Detailed information on any outage, as that term is defined in 47 C.F.R. section 4.5, of at least thirty minutes in duration for each designated service area for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or a 911 special facility, as defined in 47 C.F.R. section 4.5(e). Specifically, the eligible telecommunications carrier's annual report must include information detailing:

   a. The date and time of onset of the outage;

   b. A brief description of the outage and its resolution;

   c. The particular services affected;

   d. The geographic areas affected by the outage;

   e. Steps taken to prevent a similar situation in the future; and

   f. The number of customers affected.

   Eligible telecommunications carriers may file a copy of federal communications commission outage reports that include the information required by this subsection to satisfy this requirement.

3. The number of requests for service from potential customers within the designated service area that were unfulfilled during the past year. The carrier shall also detail how it attempted to provide service to those potential customers.

4. The number of complaints per one thousand handsets or lines.

5. Certification that it is complying with applicable service quality standards and consumer protection rules.

6. Certification that the carrier is able to function in emergency situations.

7. Certification that the carrier is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant designated service area.

8. Certification that the carrier acknowledges that the commission may require it to provide equal access to long-distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the designated service area. Wireless carriers must certify that the carrier acknowledges that the federal communications commission may require it to provide equal access to long-distance carriers in the event no other eligible telecommunications carrier is providing equal access within the designated service area.

History: Effective July 1, 2007.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.7, 49-21-07

69-09-05-13. Essential service provider bills. A provider of essential service, on any bill issued for the provision of essential services, shall:

1. Clearly disclose its name, business address, and a toll-free customer inquiry telephone number. The company name and business address must also be made available via the toll-free customer inquiry number;

2. Clearly and separately identify the essential services for which the bill is issued;

3. Clearly identify all taxes, fees, and surcharges associated with the essential services for which the bill is issued; and

4. Disclose that the provision of essential services may not be discontinued by the provider for nonpayment of charges for nonessential services or use other language that complies with federal billing rules.

History: Effective January 1, 2001.
General Authority: NDCC 28-32-02, 49-02-01.1, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.4, 49-21-01.7, 49-21-07

69-09-05-14. Procedure for filing negotiated interconnection agreements. Carrier-to-carrier interconnection agreements adopted by negotiation must be filed for commission approval under 47 U.S.C. section 252(e), following the procedure set out in this section.

1. The requirements of this section apply to interconnection agreements negotiated under 47 U.S.C. section 251; assignments, assumptions or transfers of interconnection agreements; amendments to interconnection agreements; and agreements for Qwest platform plus (QPP) services. The requirements of this section do not apply to commercial line sharing agreements.

2. Each filing must include a completed cover sheet in a form prescribed by the commission.

3. Filed interconnection agreements will be listed on the commission internet site for comment by interested parties. The internet listing will include the date each agreement was filed and links to the agreement itself.

4. The commission will accept written comments on a listed agreement for sixty days from the date filed.

5. Absent commission action within ninety days of filing to disapprove an agreement, or portion thereof, the agreement will be deemed approved under 47 U.S.C. section 252(e)(4).

6. Any assignment, assumption, or transfer of an approved interconnection agreement requires notification to be filed with the commission within thirty days after the assignment, assumption, or transfer occurs.

7. Any amendment to an interconnection agreement requires a new filing with a new ninety-day review and comment period.

History: Effective July 1, 2006.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.7

Public Service Commission
Public Utilities – Telephone
Rulemaking

Case No. PU-05-575

add July 1 2007 to history ITRA

Amended
Proposed Rules on Eligible Telecommunications Carrier Applications and Advertising

69-09-05-12. Eligible telecommunications carrier applications and advertising.

Deleted: 1.

~~Eligible carrier applications:~~

Deleted:

~~a.~~1. A telecommunications company that desires designation as an eligible telecommunications carrier as that term is defined in the Telecommunications Act of 1996 shall make application for such designation with the commission.

~~b.~~ 2. An application for designation as an eligible telecommunications carrier must specifically identify:

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~~(1)~~ a. The proposed designated service area. Applicants that will not be classified as the incumbent local exchange carrier shall identify the incumbent local exchange carrier study areas that are located, in whole or in part, in the proposed designated service area;

~~(2)~~ b. How the applicant meets the requirements for designation as an eligible telecommunications carrier;

~~(3)~~ c. Whether the applicant requires a waiver of any eligible telecommunications carrier requirement; and

~~(4)~~ d. If a waiver is required, the specific reasons for the waiver and the length of time for which the waiver is required.

3. An applicant for designation as an eligible telecommunications carrier ~~must~~ shall:

a. Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will:

(1) Provide service on a timely basis to requesting customers within the applicant's proposed designated service area where the applicant's network already passes the potential customer's premises; and

(2) Provide service within a reasonable period of time, if the potential customer is within the applicant's proposed designated service area but outside its existing network coverage, if service can be provided at reasonable cost by:

(a) Modifying or replacing the requesting customer's equipment;

(b) Deploying a roof-mounted antenna or other equipment;

(c) Adjusting the nearest cell tower;

(d) Adjusting network or customer facilities;

(e) Reselling services from another carrier's facilities to provide service; or

(f) Employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment.

b. Submit a report estimating the amount of federal high-cost universal service support the applicant expects to receive in the first year following designation as an eligible telecommunications carrier and describing how that support is projected to be used for the provision, maintenance, or upgrading of the carrier's facilities and services pursuant to section 254 of the Telecommunications Act of 1996. The report ~~shall~~ must identify specific construction, maintenance, or upgrade projects; describe how service will be improved by each project; and provide the projected start date and completion date for each improvement, the estimated amount of investment for each of the specific geographic area where each improvement will be made, and the estimated population that will be served by each

improvements. For applicants that will be classified as the incumbent local exchange carrier, the information required shall be submitted at the study area level. For other applicants, the information shall be submitted at the incumbent local exchange carrier study area level. If a study area or designated service area includes geographic areas in more than one state, the information shall also be submitted at the North Dakota level.

c. Certify that it is able to remain functional in emergency situations, including a certification that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

d. Certify that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

e. Demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the proposed designated service area.

f. Certify that the carrier acknowledges that the commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the proposed designated service area. Wireless carriers must certify that the carrier acknowledges that the Federal Communications Commission may require it to provide equal access to long distance carriers in the event no other eligible telecommunications carrier is providing equal access within the proposed designated service area.

4. Any common carrier that has been designated as an eligible telecommunications carrier or that has submitted its application for designation before ~~the effective date of these rules~~ July 1, 2007, must submit the information required by ~~paragraph (3) of this section~~ subsection 3 no later than August 1, 2007, as part of its annual reporting requirements.

5. Prior to designating an eligible telecommunications carrier, the commission shall determine that such designation is in the public interest. In doing so, the commission shall consider the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering. ~~In instances where~~ When an eligible telecommunications carrier applicant seeks designation below the study area level of a rural telephone company, the commission shall also conduct an analysis that compares the population density of each wire center in which the eligible

telecommunications carrier applicant seeks designation against that of the wire centers in the study area in which the eligible telecommunications carrier applicant does not seek designation. In its analysis, the commission shall consider other factors, such as disaggregation of support by the incumbent local exchange carrier.

26. Eligible telecommunications carrier advertising. The following forms of advertising of the availability of universal service are required of an eligible telecommunications carrier:

a. A full description of available services in the eligible telecommunications carrier's official telephone directory, including the process to be used by customers to qualify for lifeline and link-up service.

b. Advertising of the availability of universal services in media of general circulation in each eligible telecommunications carrier's designated service area. Availability may be advertised in newspapers, company newsletters, company or civic internet sites, bill stuffers, direct mailings, or other means intended to convey availability throughout the designated service area.

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History: Effective January 1, 2001
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.7, 49-21-07

69-09-05-12.1. Annual reporting requirements for designated eligible telecommunications carriers.

Eligible telecommunications carriers shall file with the commission on or before August 1st of each year, beginning in 2007:

1. A report describing the amount of high-cost universal service support the eligible telecommunications carrier received in the prior calendar year and how that support was used for the provision, maintenance, or upgrading of the carrier's facilities and services. The report must also explain any changes from reports that have been previously provided to the commission. The report must include an estimate of the amount of federal high-cost universal service support the carrier anticipates receiving in the following calendar year and describe how that support is projected to be used for the provision, maintenance, or upgrading of the carrier's facilities and services pursuant to section 254 of the Telecommunications Act of 1996. The prior calendar year and following calendar year reports must identify specific construction or upgrade projects, describe how service will be improved by each project, and provide the start date and completion date for each improvement, the amount of investment for each improvement, the specific geographic area where each improvement will be made, and the estimated population that will be served by each improvement. For eligible telecommunications carriers that are classified as the incumbent local exchange carrier, the information required must be submitted at the

study area level. For other eligible telecommunications carriers, the information shall be submitted at the incumbent local exchange carrier study area level. If a study area or designated service area includes geographic areas in more than one state, the information shall be also be submitted at the North Dakota level.

2. Detailed information on any outage, as that term is defined in 47 C.F.R. § 4.5, of at least thirty minutes in duration for each designated service area for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect (a) at least ten percent of the end users served in a designated service area; or (b) a 911 special facility, as defined in 47 C.F.R. § 4.5(e). Specifically, the eligible telecommunications carrier's annual report must include information detailing: (a) the date and time of onset of the outage; (b) a brief description of the outage and its resolution; (c) the particular services affected; (d) the geographic areas affected by the outage; (e) steps taken to prevent a similar situation in the future; and (f) the number of customers affected. Eligible telecommunications carriers may file a copy of Federal Communications Commission outage reports that include the information required by this subsection to satisfy this requirement.

3. The number of requests for service from potential customers within the designated service area that were unfulfilled during the past year. The

carrier shall also detail how it attempted to provide service to those potential customers.

4. The number of complaints per one thousand handsets or lines.

5. Certification that it is complying with applicable service quality standards and consumer protection rules.

6. Certification that the carrier is able to function in emergency situations.

7. Certification that the carrier is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant designated service area; and

8. Certification that the carrier acknowledges that the commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the designated service area. Wireless carriers must certify that the carrier acknowledges that the Federal Communications Commission may require it to provide equal access to long distance carriers in the event no other eligible telecommunications carrier is providing equal access within the designated service area.

General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.7, 49-21-07

AL CARLSON
State Representative
Chairman

JOHN D. OLSRUD
Director

JAY E. BURINGRUD
Assistant Director

JIM W. SMITH
Legislative Budget
Analyst & Auditor

JOHN WALSTAD
Code Revisor

North Dakota Legislative Council

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RECEIVED
MAY 24 2007
NORTH DAKOTA
PUBLIC SERVICE COMMISSION

May 23, 2007

Ms. Illona A. Jeffcoat-Sacco
Executive Secretary
Public Service Commission
State Capitol
Bismarck, ND 58505

Dear Ms. Jeffcoat-Sacco:

The Legislative Council's Administrative Rules Committee reviews all rules recently adopted by administrative agencies. The committee will hold its next meeting on Thursday, June 14, 2007, in the Roughrider Room, State Capitol.

You are invited to appear before the committee and describe the procedure followed by the Public Service Commission in adopting the rules published in the July 2007 supplement to the North Dakota Administrative Code.

You are tentatively scheduled to appear before the committee at 1:15 p.m. Enclosed is a copy of the agenda for your reference. If you or a representative are unable to appear at that time, please notify me as soon as possible.

With respect to the rules published in the July 2007 supplement, the committee is interested in and would like you to testify before the committee concerning the following matters:

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.
2. Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.
3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.
4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.
5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.
6. An explanation of the subject matter of the rules and the reasons for adopting those rules.

E-mail: lcouncil@nd.gov Fax: 701-328-3615

Notification of rules committee meeting on June 14, 2007 1:15 p.m.

7. Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.
8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide copies.
9. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. Please provide a copy if one was prepared.
10. If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.

Please provide the committee with **written** testimony.

Enclosed is a copy of the July 2007 rules of the Public Service Commission in the form they will be presented to the committee at the meeting. The page numbers should be used as references for the committee because committee members will have pages with the same numbering. Please contact this office if you have any questions.

Sincerely,

John Walstad
Code Revisor

JW/JFB
Encs.

TITLE 69

PUBLIC SERVICE COMMISSION

JULY 2007

CHAPTER 69-09-05

69-09-05-12. Eligible telecommunications carrier applications and advertising.

~~1. Eligible carrier applications:~~

~~a.~~ 1. A telecommunications company that desires designation as an eligible telecommunications carrier as that term is defined in the Telecommunications Act of 1996 shall make application for such designation with the commission.

~~b.~~ 2. An application for designation as an eligible telecommunications carrier must specifically identify:

~~(1)~~ a. The ~~applicant's~~ proposed designated service area. Applicants that will not be classified as the incumbent local exchange carrier shall identify the incumbent local exchange carrier study areas that are located, in whole or in part, in the proposed designated service area;

~~(2)~~ b. ~~How~~ the applicant meets the requirements for designation as an eligible telecommunications carrier;

~~(3)~~ c. Whether the applicant requires a waiver of any eligible telecommunications carrier requirement; and

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3. An applicant for designation as an eligible telecommunications carrier shall:

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b. Submit a report estimating the amount of federal high-cost universal service support the applicant expects to receive in the first year following designation as an eligible telecommunications carrier and describing how that support is projected to be used for the provision, maintenance, or upgrading of the carrier's facilities and services pursuant to section 254 of the Telecommunications Act of 1996. The report must identify specific construction, maintenance, or upgrade projects; describe how service will be improved by each project; and provide the projected start date and completion date for each improvement, the estimated amount of investment for each of the specific geographic area where each improvement will be made, and the estimated population that will be served by each improvement. For applicants that will be classified as the incumbent local exchange carrier, the information required shall be submitted at the study area level. For other applicants, the information shall be submitted at the incumbent local exchange carrier study area level. If a study area or designated service area includes geographic areas in more than one state, the information shall also be submitted at the North Dakota level.

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History: Effective January 1, 2001; amended effective July 1, 2007.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.7, 49-21-07

69-09-05-12.1. Annual reporting requirements for designated eligible telecommunications carriers. Eligible telecommunications carriers shall file with the commission on or before August first of each year, beginning in 2007:

1. A report describing the amount of high-cost universal service support the eligible telecommunications carrier received in the prior calendar year and how that support was used for the provision, maintenance, or upgrading of the carrier's facilities and services. The report must also explain any changes from reports that have been previously provided to the commission. The report must include an estimate of the amount of federal high-cost universal service support the carrier anticipates receiving in the following calendar year and describe how that support is projected to be used for the provision, maintenance, or upgrading of the carrier's facilities and services pursuant to section 254 of the Telecommunications Act of 1996. The prior calendar year and following calendar year reports must identify specific construction or upgrade projects, describe how service will be improved by each project, and provide the start date and completion date for each improvement, the amount of investment for each improvement, the specific geographic area where each improvement will be made, and the estimated population that will be served by each improvement. For eligible telecommunications carriers that are classified as the incumbent local exchange carrier, the information required must be submitted at the study area level. For other eligible telecommunications carriers, the information must be submitted at the incumbent local exchange carrier study area level. If a study area or designated service area includes geographic areas in more than one state, the information must also be submitted at the North Dakota level.

2. Detailed information on any outage, as that term is defined in 47 C.F.R. section 4.5, of at least thirty minutes in duration for each designated service area for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served

in a designated service area, or a 911 special facility, as defined in 47 C.F.R. section 4.5(e). Specifically, the eligible telecommunications carrier's annual report must include information detailing:

a. The date and time of onset of the outage;

b. A brief description of the outage and its resolution;

c. The particular services affected;

d. The geographic areas affected by the outage;

e. Steps taken to prevent a similar situation in the future; and

f. The number of customers affected.

Eligible telecommunications carriers may file a copy of federal communications commission outage reports that include the information required by this subsection to satisfy this requirement.

3. The number of requests for service from potential customers within the designated service area that were unfulfilled during the past year. The carrier shall also detail how it attempted to provide service to those potential customers.

4. The number of complaints per one thousand handsets or lines.

5. Certification that it is complying with applicable service quality standards and consumer protection rules.

6. Certification that the carrier is able to function in emergency situations.

7. Certification that the carrier is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant designated service area.

8. Certification that the carrier acknowledges that the commission may require it to provide equal access to long-distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the designated service area. Wireless carriers must certify that the carrier acknowledges that the federal communications commission may require it to provide equal access to long-distance carriers in the event no other eligible telecommunications carrier is providing equal access within the designated service area.

History: Effective July 1, 2007.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.7, 49-21-07

Public Service Commission
State of North Dakota

COMMISSIONERS

Susan E. Wefald, President
Kevin Cramer
Tony Clark

Executive Director
Illona A. Jeffcoat-Sacco

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Fax 701-328-2410
Phone 701-328-2400

May 11, 2007

John Walstad, Code Revisor
Legislative Council
State Capitol
Bismarck, North Dakota 58505

Re: Public Service Commission
Telephone
Rulemaking
Case No. PU-05-575

Dear Mr. Walstad:

Enclosed please find a copy of the new and amended regulations under Article 69-09 concerning telecommunications regulations. The Commission's March 7, 2007 amended order includes a summary of the comments and the written record of the agency's consideration of all comments. A copy of the order is attached.

By letter dated May 3, 2007 the Attorney General approved the proposed rules as to their legality. On May 11, 2007 the Public Service Commission adopted the rules as approved, and is now submitting the rules for publication in the North Dakota Administrative Code.

Thank you for your attention to this matter.

Sincerely,

William W. Binek
Chief Counsel

pam
attachments

56 PU-05-575 Pages: 1

Letter to legislative council

by Public Service Commission
05/11/2007 C: Comm Legal, Illona Pat, Jerry, Annette . . .

APPROVED
DATE: 5-11-07
BJB

MOTION

May 11, 2007

Public Service Commission
Public Utilities - Telephone
Rulemaking

Case No. PU-05-575

Having received approval from the Attorney General, I move the Commission adopt the proposed new and amended regulations to Article 69-09 of the North Dakota Administrative Code, and forward them to the Legislative Council for publication, PU-05-575.

PJF/pam

Included
docket #'s
51, 48

55 PU-05-575 Pages: 1

Motion

by Public Service Commission
05/11/2007 C: Comm Legal, Illona Pat, Jerry, Annette . .

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL
STATE CAPITOL
600 E BOULEVARD AVE DEPT 125
BISMARCK, ND 58505-0040
(701) 328-2210 FAX (701) 328-2226

Wayne Stenehjem
ATTORNEY GENERAL

RECEIVED
MAY - 7 2007
NO PUBLIC SERVICE COMMISSION
KEVIN CRAMER

OPINION

May 3, 2007

Ms. Illona Jeffcoat-Sacco
Executive Secretary
Public Service Commission
600 East Boulevard Avenue, Dept 408
Bismarck, ND 58505-0480

Dear Ms. Jeffcoat-Sacco:

The Office of Attorney General has examined the proposed amendments to N.D.A.C. § 69-09-05-12 and proposed new N.D.A.C. § 69-09-05-12.1 concerning telecommunications carriers eligibility for federal universal service funding, along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was issued, 3) a takings assessment was not prepared, 4) a small entity regulatory analysis and economic impact statement were prepared, and 5) the proposed rules are within the agency's statutory authority.

These administrative rules are in compliance with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

Wayne Stenehjem
Attorney General

eee/vkk
cc: John Walstad, Legislative Council

54 PU-05-575 Pages: 1

Opinion

by Attorney General
05/07/2007 C: Comm Legal, Illona Pat, Jerry, Annette . .

Public Service Commission
State of North Dakota

COMMISSIONERS

Susan E. Wefald, President
Kevin Cramer
Tony Clark

Executive Director
Illona A. Jeffcoat-Sacco

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March 12, 2007

The Honorable Wayne Stenehjem
Attorney General
State Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0040

Re: Administrative Rule Making
Case No. PU-05-575

Dear Attorney General Stenehjem:

Enclosed please find the proposed new N.D. Admin. Code § 69-09-05-12.1 and amendments to N.D. Admin. Code § 69-09-05-12 by the North Dakota Public Service Commission. The proposed rules have been approved by the Public Service Commission. In accordance with N.D.C.C. § 28-32-14, Public Service Commission requests your examination of these rules as to their legality so they may be considered for formal adoption and publication in the North Dakota Administrative Code. The time for review of these rules should be recorded under 03-31 and 03-106.

Copies of the following Commission documents are enclosed to assist your review:

1. Copy of the March 7, 2007 Amended Order submitting rules to the Attorney General;
2. Copy of the February 23, 2007 Order Submitting Amended Rules to Attorney General. This order includes a discussion of the comments and the Commission's consideration of the comments;
3. Copy of proposed rules;
4. Copy of takings assessments, summaries and regulatory analyses, as applicable, and written comments;
5. Commission's Notice of Intent to Amend Administrative Rules and Notice of Public Hearing dated January 17, 2006, and abbreviated notice of intent to adopt;
6. Commission's Amended Notice of Intent to Amend Administrative Rules and Notice of Public Hearing dated January 17, 2006, and abbreviated notice of intent to adopt;

7. Proof of publication; and

8. Proof of filing with Legislative Council;

If you have any questions, do not hesitate to contact us.

Thank you.

Sincerely,

Illona A. Jeffcoat-Sacco
Executive Secretary

pam
enclosure

APPROVED
DATE: 3-7-07
BJB

MOTION

March 7, 2007

Public Service Commission
Public Utilities - Telephone
Rulemaking

Case No. PU-05-575

I move the Commission adopt the Amended Order submitting rules to the Attorney General for an opinion as to legality and whether they conflict with any other state law or rule, Case No. PU-05-575.

Article 69-09 — Amendments to Telecommunication and Electric

52 **PU-05-575** Pages: 1

Motion

by Public Service Commission
03/07/2007 C: Comm Legal, Illona Pat, Jerry, Annette

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Public Utilities - Telephone
Rulemaking

Case No. PU-05-575

AMENDED ORDER

March 7, 2007

Appearances

Commissioners Susan Wefald, Tony Clark, and Kevin Cramer

Preliminary Statement

On November 17, 2005, the North Dakota Public Service Commission (Commission) issued its notice of proposed rulemaking, and on November 22, 2005, the Commission issued an amended notice of proposed rulemaking proposing to revise several sections of the Administrative Code including the following:

Public Utilities – Telephone: Case No. PU-05-575

Case No. PU-05-575 consists of proposals concerning telecommunications registration, eligible carrier applications and advertising, and interconnection agreement filings. Proposals concerning eligible carrier applications and advertising concerned changes to North Dakota Administrative Code Section 69-09-05-12 and addressed the application requirements for a telecommunications company seeking designation as an eligible carrier for purposes of receiving federal universal service funding, annual reporting requirements of designated eligible carriers, and the criteria to be considered by the Commission in designating an eligible carrier.

The rules propose that ETCs file annual commitments for providing telecommunications service on a timely basis, that it can remain functional in emergency situation, that it will comply with consumer protection and service quality standards, that it offers a local usage plan comparable to the plan offered by the incumbent local exchange company, and that it may be required to provide equal access to long distance carriers. The proposed rules also require the annual filing of a plan demonstrating how federal high-cost universal service support will be used to improve service coverage, service quality or capacity in each incumbent local exchange carrier study area for which it seeks to be or is designated as an ETC and expects to receive federal universal service support.

On April 12, 2006 the Commission ordered that the proposed changes to North Dakota Administrative Code Section concerning telecommunications registration and interconnection agreement filings be submitted to the Attorney General for an opinion that the rules are in compliance with North Dakota Century Code. The April 12 order did not address the proposals concerning eligible carrier applications and advertising.

Public Hearing

A public hearing on the proposed rule changes was noticed for and held at 1:00 p.m. January 4, 2006. The hearing was held in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The notice of rulemaking was published once in all official county newspapers as evidenced by the affidavit of publication on file with the Commission. The notice was also forwarded to the Legislative Council for publication at least 20 days in advance of the January hearing.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until January 17, 2006, during which data, views, or oral arguments concerning the proposed rulemaking could be received by the Commission and made a part of the rulemaking record to be considered by the Commission.

At the rulemaking hearing, comments were provided by Alltel Communications, Inc., Qwest Corporation (Qwest), the Rural Telephone Company Group (RTCG), and the group called Verizon Partnerships which consisted of Northwest Dakota Cellular of North Dakota Limited Partnership, North Central RSA 2 of North Dakota Limited Partnership, North Dakota RSA No. 3 Limited Partnership, Badlands Cellular of North Dakota Limited Partnership, North Dakota 5 – Kidder Limited Partnership, and Bismarck MSA Limited Partnership.

Verizon Partnerships suggested that the Commission omit as unnecessary the proposed rule requirement that an applicant seeking ETC designation on Tribal lands to serve the affected tribal government with a copy of its petition at the time it files with the Commission. Verizon Partnerships stated that the requirement may be warranted in Federal Communications Commission (FCC) proceedings, but would have no applicability at the state level. The Commission removed the provision from the proposed rules.

Qwest and the Verizon Partnerships testified that reporting regarding outages and service quality would be duplicative of federal requirements and such reporting does not provide assurance that universal service funding is being spent for intended purposes. The Verizon suggested alternative was to require all ETCs to file copies of their FCC outage reports with the Commission. The Commission agrees changed the proposed rules so that the ETCs may file a copy of the FCC reports that include the outages and service quality information to satisfy this requirement.

Qwest testified that reporting of complaints is redundant and unnecessary because the Commission already knows the number and nature of Commission complaints filed against carrier. The Commission finds that, while it does know the number of complaints it receives, it does not know the number of complaints the company receives.

Comments addressed Commission authority and administration, the need for the rules, the applicability of the rules, the time span and detail for the service improvement plan report, confidentiality of the information that would be included in reports to the Commission, and the filing date for the annual report.

Qwest filed comments suggesting that only carriers that actually receive traditional high cost Universal Service Fund (USF) support designated for the purpose of offsetting state costs be subject to the proposed annual reporting requirements. The RTCG comments agreed with Qwest. The Commission finds that a designated ETC that does not actually receive traditional

high cost Universal Service Fund support may file, as its annual report, a statement indicating no support was received and has no requirement to show that USF support was used as intended.

Verizon Partnerships suggested that the Commission amend the proposed rules to remove references to specific technology, such as wireless, to ensure technology and competitive neutrality. The Commission has considered neutrality in the final proposed rules but, in some instances, has agreed with and adopted language from the FCC rules that is technology specific.

In response to the rule for reporting a five-year service improvement plan, Qwest testified that the plans would be meaningless beyond an annual planning cycle. Alltel suggested a two-year build-out plan. Verizon Partnerships recommended a report that supports the use of USF in the past year and indicates the company's use of such support in the following year. We agree that the telecommunications industry is continuously changing and the year-3, -4, and -5 business plans, and possibly the year-2 business plan could change beyond dramatically. We therefore adopt the Verizon Partnerships' proposal for a report that supports the use of USF in the past year and indicates the company's use of such support in the following year.

Qwest suggests annual reporting information be submitted at the state-wide level rather than the proposed wire-center level. The RTCG suggests reporting on a company-wide basis since most RTCG companies do not calculate information on a wire-center basis. The Verizon Partnerships suggest that the information be reported at the designated ETC service area level because wireless transcends the geographic boundaries of the wire-center. Since the RTCGs are designated as ETCs at a study area level, and since the RTCG suggestion for filing on a company-wide basis is generally equivalent to reporting on a study area level, and since Qwest's FCC study area is essentially the whole state, and since the level of federal universal service funding that designated wireless ETCs receive is generally based on the incumbent local exchange company's level of federal universal service funding by study area, the Commission finds that the annual reporting information should be submitted at the study area level.

All companies' requested that confidential, proprietary, trade secret information not be available for public disclosure. The Commission can only treat as confidential such information that is trade secret and is relevant to a contested proceeding. The Commission proposed the ETC rule changes knowing that the industry may take its concerns to the Legislature.

The Commission recognizes the comments suggesting that annual reports be filed well in advance of October 1, which is the date of annual federal universal service fund recertification to the Federal Communications Commission. The Commission has adopted August 1 for filing of ETC annual reports.

The Verizon Partnerships commented that the requirement for a competitive ETC to demonstrate that it offers at least one comparable local usage plan is unnecessary, not competitively neutral, and administratively unenforceable because the term "comparable" defies definition. The Verizon Partnerships similarly believe there is no objective standard for complying with the proposed requirement to demonstrate emergency preparedness. The Commission therefore changed its proposed rule such that the ETC is not required to "demonstrate" compliance but rather to "certify" to the Commission the offering of a comparable local usage plan and the ability to function in emergency situations.

The rules have been revised to exclusively utilize the term "eligible telecommunications carrier" as opposed to "eligible carrier" and to use "designated service area" as opposed to "service area."

Order

The Commission orders that the proposed changes to the North Dakota Administrative Code, as attached to and made a part of this order, be submitted to the Attorney General for an opinion that the rules are in compliance with North Dakota Century Code Section 28-32-14, do not conflict with any provisions of existing state law or rule, and are approved as to their legality.

PUBLIC SERVICE COMMISSION

Tony Clark	**Susan E. Wefald**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

APPROVED
DATE: 2-23-07
SAB

MOTION

February 23, 2007

Public Service Commission
Public Utilities - Telephone
Rulemaking

Case No. PU-05-575

I move the Commission adopt the Order submitting rules to the Attorney General for an opinion as to legality and whether they conflict with any other state law or rule, Case No. PU-05-575.

Article 69-09

Amendments to Telecommunication and Electric

50 **PU-05-575** Pages: 1

Motion

by Public Service Commission
02/23/2007 C: Comm Legal, Illona Pat, Jerry, Annette

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Public Utilities - Telephone
Rulemaking

Case No. PU-05-575

ORDER

February 23, 2007

Appearances

Commissioners Susan Wefald, Tony Clark, and Kevin Cramer

Preliminary Statement

On November 17, 2005, the North Dakota Public Service Commission (Commission) issued its notice of proposed rulemaking, and on November 22, 2005, the Commission issued an amended notice of proposed rulemaking proposing to revise several sections of the Administrative Code including the following:

Public Utilities – Telephone: Case No. PU-05-575

Case No. PU-05-575 consists of proposals concerning telecommunications registration, eligible carrier applications and advertising, and interconnection agreement filings. Proposals concerning eligible carrier applications and advertising concerned changes to North Dakota Administrative Code Section 69-09-05-12 and addressed the application requirements for a telecommunications company seeking designation as an eligible carrier for purposes of receiving federal universal service funding, annual reporting requirements of designated eligible carriers, and the criteria to be considered by the Commission in designating an eligible carrier.

The rules propose that ETCs file annual commitments for providing telecommunications service on a timely basis, that it can remain functional in emergency situation, that it will comply with consumer protection and service quality standards, that it offers a local usage plan comparable to the plan offered by the incumbent local exchange company, and that it may be required to provide equal access to long distance carriers. The proposed rules also require the annual filing of a plan demonstrating how federal high-cost universal service support will be used to improve service coverage, service quality or capacity in each incumbent local exchange carrier study area for which it seeks to be or is designated as an ETC and expects to receive federal universal service support.

On April 12, 2006 the Commission ordered that the proposed changes to North Dakota Administrative Code Section concerning telecommunications registration and interconnection agreement filings be submitted to the Attorney General for an opinion that the rules are in compliance with North Dakota Century Code. The April 12 order did not address the proposals concerning eligible carrier applications and advertising.

49 PU-05-575 Pages: 2
Order
by Public Service Commission
02/23/2007 C: Comm Legal, Illona Pat, Jerry, Annette . .

Public Hearing

A public hearing on the proposed rule changes was noticed for and held at 1:00 p.m. January 4, 2006. The hearing was held in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The notice of rulemaking was published once in all official county newspapers as evidenced by the affidavit of publication on file with the Commission. The notice was also forwarded to the Legislative Council for publication at least 20 days in advance of the January hearing.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until January 17, 2006, during which data, views, or oral arguments concerning the proposed rulemaking could be received by the Commission and made a part of the rulemaking record to be considered by the Commission.

At the rulemaking hearing, comments were provided by Alltel Communications, Inc., Qwest Corporation, the Rural Telephone Company Group, Northwest Dakota Cellular of North Dakota Limited Partnership, North Central RSA 2 of North Dakota Limited Partnership, North Dakota RSA No. 3 Limited Partnership, Badlands Cellular of North Dakota Limited Partnership, North Dakota 5 – Kidder Limited Partnership, and Bismarck MSA Limited Partnership.

Comments addressed Commission authority and administration, the need for the rules, the applicability of the rules, the time span and detail for the service improvement plan report, confidentiality of the information that would be included in reports to the Commission, and the filing date for the annual report.

Qwest Corporation filed comments on January 17, 2006 suggesting that only carriers that actually receive traditional high cost Universal Service Fund support designated for the purpose of offsetting state costs be subject to the proposed annual reporting requirements.

Order

The Commission orders that the proposed changes to the North Dakota Administrative Code, as attached to and made a part of this order, be submitted to the Attorney General for an opinion that the rules are in compliance with North Dakota Century Code Section 28-32-14, do not conflict with any provisions of existing state law or rule, and are approved as to their legality.

PUBLIC SERVICE COMMISSION

Tony Clark **Commissioner**	**Susan E. Wefald** **President**	**Kevin Cramer** **Commissioner**

Public Service Commission
Public Utilities – Telephone
Rulemaking

Case No. PU-05-575

Amended
Proposed Rules on Eligible Telecommunications Carrier Applications and Advertising

69-09-05-12. Eligible telecommunications carrier applications and advertising.

~~Eligible carrier applications:~~

~~a.~~ 1. A telecommunications company that desires designation as an eligible telecommunications carrier as that term is defined in the Telecommunications Act of 1996 shall make application for such designation with the commission.

~~b.~~ 2. An application for designation as an eligible telecommunications carrier must specifically identify:

~~(1)~~ a. The proposed designated service area. Applicants that will not be classified as the incumbent local exchange carrier shall identify the incumbent local exchange carrier study areas that are located, in whole or in part, in the proposed designated service area;

~~(2)~~ b. How the applicant meets the requirements for designation as an eligible telecommunications carrier;

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~~(3)~~ c. Whether the applicant requires a waiver of any eligible telecommunications carrier requirement; and

~~(4)~~ d. If a waiver is required, the specific reasons for the waiver and the length of time for which the waiver is required.

3. An applicant for designation as an eligible telecommunications carrier must:

a. Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will:

(1) Provide service on a timely basis to requesting customers within the applicant's proposed designated service area where the applicant's network already passes the potential customer's premises; and

(2) Provide service within a reasonable period of time, if the potential customer is within the applicant's proposed designated service area but outside its existing network coverage, if service can be provided at reasonable cost by:

(a) Modifying or replacing the requesting customer's equipment;

(b) Deploying a roof-mounted antenna or other equipment;

(c) Adjusting the nearest cell tower;

(d) Adjusting network or customer facilities;

(e) Reselling services from another carrier's facilities to provide service; or

(f) Employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment;

b. Submit a report estimating the amount of federal high-cost universal service support the applicant expects to receive in the first year following designation as an eligible telecommunications carrier and describing how that support is projected to be used for the provision, maintenance, or upgrading of the carrier's facilities and services pursuant to section 254 of the Telecommunications Act of 1996. The report shall identify specific construction, maintenance, or upgrade projects; describe how service will be improved by each project; provide the projected start date and completion date for each improvement, the estimated amount of investment for each the specific geographic area where each improvement will be made, and the estimated population that will be served by each

improvements. For applicants that will be classified as the incumbent local exchange carrier, the information required shall be submitted at the study area level. For other applicants the information shall be submitted at the incumbent local exchange carrier study area level. If a study area or designated service area includes geographic areas in more than one state, the information shall also be submitted at the North Dakota level.

c. Certify that it is able to remain functional in emergency situations, including a certification that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

d. Certify that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

e. Demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the proposed designated service area.

f. Certify that the carrier acknowledges that the commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the proposed designated service area. Wireless carriers must certify that the carrier acknowledges that the Federal Communications Commission may require it to provide equal access to long distance carriers in the event no other eligible telecommunications carrier is providing equal access within the proposed designated service area.

4. Any common carrier that has been designated as an eligible telecommunications carrier or that has submitted its application for designation before the effective date of these rules must submit the information required by paragraph (3) of this section no later than August 1, 2007, as part of its annual reporting requirements.

5. Prior to designating an eligible telecommunications carrier, the commission shall determine that such designation is in the public interest. In doing so, the commission shall consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the applicant's service offering. In instances where an eligible telecommunications carrier applicant seeks designation below the study area level of a rural telephone company, the commission shall also conduct an analysis that compares the population density of each wire center in which the eligible

telecommunications carrier applicant seeks designation against that of the wire centers in the study area in which the eligible telecommunications carrier applicant does not seek designation. In its analysis, the commission shall consider other factors, such as disaggregation of support by the incumbent local exchange carrier.

~~2~~6. Eligible telecommunications carrier advertising. The following forms of advertising of the availability of universal service are required of an eligible telecommunications carrier:

a. A full description of available services in the eligible telecommunications carrier's official telephone directory, including the process to be used by customers to qualify for lifeline and link-up service.

b. Advertising of the availability of universal services in media of general circulation in each eligible telecommunications carrier's designated service area. Availability may be advertised in newspapers, company newsletters, company or civic internet sites, bill stuffers, direct mailings, or other means intended to convey availability throughout the designated service area.

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History: Effective January 1, 2001
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.7, 49-21-07

69-09-05-12.1. Annual reporting requirements for designated eligible telecommunications carriers.

Eligible telecommunications carriers shall file with the commission on or before August 1 of each year, beginning 2007:

1. A report describing the amount of high-cost universal service support the eligible telecommunications carrier received in the prior calendar year and how that support was used for the provision, maintenance or upgrading of the carrier's facilities and services. The report shall also explain any changes from reports that have been previously provided to the commission. The report shall include an estimate of the amount of federal high-cost universal service support the carrier anticipates receiving in the following calendar year and describe how that support is projected to be used for the provision, maintenance, or upgrading of the carrier's facilities and services pursuant to section 254 of the Telecommunications Act of 1996. The prior calendar year and following calendar year reports shall identify specific construction or upgrade projects; describe how service will be improved by each project; provide the start date and completion date for each improvement, the amount of investment for each improvement, the specific geographic area where each improvement will be made, and the estimated population that will be served by each improvement. For eligible telecommunications carriers that are classified as the incumbent local exchange carrier, the information required shall be submitted at the

study area level. For other eligible telecommunications carriers, the information shall be submitted at the incumbent local exchange carrier study area level. If a study area or designated service area includes geographic areas in more than one state, the information shall be also be submitted at the North Dakota level.

2. Detailed information on any outage, as that term is defined in 47 C.F.R. § 4.5, of at least thirty minutes in duration for each designated service area for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect (a) at least ten percent of the end users served in a designated service area; or (b) a 911 special facility, as defined in 47 C.F.R. § 4.5(e). Specifically, the eligible telecommunications carrier's annual report must include information detailing: (a) the date and time of onset of the outage; (b) a brief description of the outage and its resolution; (c) the particular services affected; (d) the geographic areas affected by the outage; (e) steps taken to prevent a similar situation in the future; and (f) the number of customers affected. Eligible telecommunications carriers may file a copy of Federal Communications Commission outage reports that include the information required by this subsection, to satisfy this requirement.

3. The number of requests for service from potential customers within the designated service area that were unfulfilled during the past year. The

carrier shall also detail how it attempted to provide service to those potential customers.

4. The number of complaints per one thousand handsets or lines.

5. Certification that it is complying with applicable service quality standards and consumer protection rules.

6. Certification that the carrier is able to function in emergency situations.

7. Certification that the carrier is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant designated service area; and

8. Certification that the carrier acknowledges that the commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the designated service area. Wireless carriers must certify that the carrier acknowledges that the Federal Communications Commission may require it to provide equal access to long distance carriers in the event no other eligible telecommunications carrier is providing equal access within the designated service area.

General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.7, 49-21-07

Binek, William W.

From: Binek, William W.
Sent: Tuesday, February 13, 2007 3:42 PM
To: -Grp-PSC Commissioners; -Grp-PSC Public Utilities
Cc: -Grp-PSC Legal
Subject: Trade Secret Protection-ETC data pertaining to Proposed Rules, Case NO. PU-05-575

Commissioner Wefald asked me for an opinion regarding protection of sensitive material contained in reports that would be required under the proposed Eligible Telecommunications Rules. The answer depends upon whether the information is merely information that a company must submit to comply with a reporting requirement or whether the information is required to be produced as a part of a Commission investigation or other adjudicative proceeding.

Under the proposed rules, each company designated as and Eligible Telecommunications Carrier (ETC) would be required to submit a report to the Commission describing the amount of federal high-cost universal service support it received in the prior calendar year and how that support was used for the provisions, maintenance or upgrading of the carriers facilities and services. The report must also include an estimate of the amount of federal high-cost support the carrier anticipates receiving in the following calendar year and how the support is projected to be used for the provision, maintenance, or upgrading of the carriers facilities and services pursuant to section 254 of the Telecommunications Act of 1996.

There are two ways under North Dakota law that the Commission can protect trade secret information. Trade secret information can be protected if it falls within one of the open record exemptions under N.D.C.C. §44-04-18.4 or if the information is provided to the Commission as evidence in an adjudicative proceeding.

N.D.C.C. §44-04-18.4(1) provides that "[t]rade secret, proprietary, commercial, and financial information is confidential if it is of a privileged nature and it has not been previously disclosed." However, the exemptions under N.D.C.C. §44-04-18.4 are specifically described and do not apply to information that would be required in the reports filed with the Commission under the proposed ETC rules. The term "trade secret" as applied in section 44-04-18.4(2) is limited to (a) computer software programs and components of software programs which are subject to a copyright or a patent and any formula, pattern, compilation, program, device, method, technique or process supplied to a state agency, institution, department or board, and (b) a discovery or innovation which is subject to patent or a copyright, and any formula, pattern, compilation, program, device, method, technique, or process supplied to or prepared by any public entity. "Proprietary information" that is exempted under section 44-04-18.4(3) includes information received from a sponsor of research conducted by a public entity, as well as any discovery or innovation generated by that research and the financial and marketing information relating to commercialization of the project. Other financial information that is exempt under this section is information contained in economic development records. Bids and proposals received by a public entity are also exempt until bids are opened by the public entity.

Trade secret information can be protected by the Commission if the information is part of an adjudicative proceeding. "Adjudicative proceeding" under N.D.C.C. §28-32-01(1) "means an administrative matter resulting in an agency issuing an order after an opportunity for hearing is provided or required." N.D.C.C. §28-32-24(4) provides that the privileges under the North Dakota Rules of Evidence apply at all stages of an administrative proceeding. Rule 507 of the North Dakota Rules of Evidence provides and evidentiary privilege against disclosing trade secrets.

Another matter that came up today at our PUD/Legal meeting was whether the Commission has the authority to conduct an audit of companies designated as ETC's for purposes of determining the amount of universal support received and how the support was used. The Commission has the power under N.D.C.C. §49-21-01.7(12) to designate telecommunications companies as ETCs to receive universal support under sections 214 and 254 of the federal Act. N.D.C.C. §49-21-01.7(1) also provides that the Commission has the power to investigate all methods and practices of telecommunications companies. The problem under North Dakota law is that N.D.C.C. §49-02-01.1 prohibits the Commission from making any order affecting rates, contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of any telecommunications cooperative or small company. It should be noted that section 49-02-01.1 does provide that these companies are subject to subsections 6 through 14 of section 49-21-01.7. The fact that the telecommunications cooperatives and small companies were not made subject to subsection 1 of section 49-21-01.7 would indicate that the legislature probably intended to exempt telecommunications cooperatives and small companies from the power of the Commission to investigate the methods and practices of those companies.

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June 28, 2006

RECEIVED
JUN 28 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

Ms. Illona A. Jeffcoat-Sacco
Executive Secretary
Public Service Commission
State Capitol
Bismarck, ND 58505

Dear Ms. Jeffcoat-Sacco:

We have completed preparation of the North Dakota Administrative Code rules changes you recently submitted to our office for publication. Enclosed are copies of two different versions of those rules.

The first enclosed copy shows revised North Dakota Administrative Code sections as they will be published in the next supplement of the North Dakota Administrative Code. There is an instruction sheet for replacement of obsolete pages with these updated pages to be used if your agency maintains a full-sized set of your rules. If you maintain the published North Dakota Administrative Code in reduced size binders, the reduced size replacement pages will be sent to you soon.

The other enclosed copy shows our editorial changes to the rules as submitted. Please observe the style and grammar changes we have made.

Please contact this office if you have any questions regarding these rules. If these rules will be reviewed by the Administrative Rules Committee, we will contact you when the meeting is scheduled.

Sincerely,

John Walstad
Code Revisor

JW/CS
Encs.

30	**GS-05-341**	Pages: 48
	Completed ND Admin. Code rules	
50	**PU-05-364**	Pages: 48
	Completed ND Admin. Code rules	
46	**PU-05-575**	Pages: 48
	Completed ND Admin. Code rules (resale & interconnection rules) by Legislative Council	
27	**PU-05-602**	Pages: 48
	Completed ND Admin. Code rules by Legislative Council	

06/28/2006: Comm Legal, Illona Pat, Jerry, Annette

E-mail: lcouncil@state.nd.us Fax: 701-328-36

Public Service Commission
Gas Safety
Rulemaking

Case No. GS-05-341

GAS SAFETY PROPOSED RULES FOR 2005

69-09-03-02. Adoption of regulations. The following parts of title 49, Code of Federal Regulations in effect as of ~~August 1, 2004~~ October 1, 2005, are adopted by reference:

1. Part 190 - Department of Transportation Pipeline Safety Enforcement Procedures.
2. Part 191 - Department of Transportation Regulations for Transportation of Natural Gas by Pipeline; Reports of Leaks.
3. Part 192 - Transportation of Natural Gas and Other Gas by Pipeline: Minimum Safety Standards.
4. Part 199 - Control of Drug Use in Natural Gas; Liquefied Natural Gas and Hazardous Liquids Pipelines.

Copies of these regulations may be obtained from:

Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002, November 1, 2003; May 1, 2005; July 1, 2006

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

Add July 1 2006 to each history line

Public Service Commission
Public Utilities – Siting Rulemaking

Case No. PU-05-602

PROPOSED SITING RULES

69-06-08-01. Energy conversion facility siting criteria. The following criteria shall guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process.

4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits.

History: Amended effective August 1, 1979.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-05.1

69-06-08-02. Transmission facility corridor and route criteria. The following criteria shall guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process. Exclusion and avoidance areas may be located within a corridor, but at no given point shall such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following

policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits.

History: Amended effective August 1, 1979; January 1, 1982; February 1, 1995.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-05.1

CHAPTER 69-06-08
CRITERIA

Section

69-06-08-01 Energy Conversion Facility Siting Criteria
69-06-08-02 Transmission Facility Corridor and Route Criteria

69-06-08-01. Energy conversion facility siting criteria. The following criteria shall guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process.

1. **Exclusion areas.** The following geographical areas shall be excluded in the consideration of a site for an energy conversion facility, and shall include a buffer zone of a reasonable width to protect the integrity of the area. Natural screening may be considered in determining the width of the buffer zone.

   a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; historic districts; monuments; wilderness areas; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.

   b. Designated or registered state: parks; forests; forest management lands; historic sites; monuments; historical markers; archaeological sites; grasslands; wild, scenic, or recreational rivers; game refuges; game management areas; management areas; and nature preserves.

   c. County parks and recreational areas; municipal parks; parks owned or administered by other governmental subdivisions; hardwood draws; and enrolled woodlands.

   d. Prime farmland and unique farmland, as defined by the land inventory and monitoring division of the soil conservation service, United States department of agriculture, in 7 C.F.R. part 657; provided, however, that if the commission finds that the prime farmland and unique farmland that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural productions, such exclusion shall not apply.

   e. Irrigated land.

   f. Areas critical to the lifestages of threatened or endangered animal or plant species.

   g. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.

6g 06-08-01

(1) Law enforcement.

(2) School systems and education programs.

(3) Governmental services and facilities.

(4) General and mental health care facilities.

(5) Recreational programs and facilities.

(6) Transportation facilities and networks.

(7) Retail service facilities.

(8) Utility services.

c. The impact upon:

(1) Local institutions.

(2) Noise sensitive land uses.

(3) Rural residences and businesses.

(4) Aquifers.

(5) Human health and safety.

(6) Animal health and safety.

(7) Plant life.

(8) Temporary and permanent housing.

(9) Temporary and permanent skilled and unskilled labor.

d. The cumulative effects of the location of the facility in relation to existing and planned facilities and other industrial development.

4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits.

a. Recycling of the conversion byproducts and effluents.

b. Energy conservation through location, process, and design.

69-06-08-02

b. Designated or registered state: parks; historic sites; monuments; historical markers; archaeological sites; and nature preserves.

c. County parks and recreational areas; municipal parks; and parks owned or administered by other governmental subdivisions.

d. Areas critical to the lifestages of threatened or endangered animal or plant species.

e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.

2. **Avoidance areas.** The following geographical areas shall not be considered in the routing of a transmission facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility, the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative routes. Economic considerations alone shall not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area shall be included unless a distance is specified in the criteria. Natural screening may be considered in determining the width of the buffer zone.

a. Designated or registered national: historic districts; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.

b. Designated or registered state: wild, scenic, or recreational rivers; game refuges; game management areas; management areas; forests; forest management lands; and grasslands.

c. Historical resources which are not specifically designated as exclusion or avoidance areas.

d. Areas which are geologically unstable.

e. Within five hundred feet [152.4 meters] of a residence, school, or place of business. This criterion shall not apply to a water pipeline transmission facility.

f. Reservoirs and municipal water supplies.

g. Water sources for organized rural water districts.

h. Irrigated land. This criterion shall not apply to an underground transmission facility.

6 9-06-08-02

i. Areas of recreational significance which are not designated as exclusion areas.

3. **Selection criteria.** A corridor or route shall be designated only when it is demonstrated to the commission by the applicant that any significant adverse effects which will result from the location, construction, and maintenance of the facility as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum.

   a. The impact upon agriculture:

      (1) Agricultural production.

      (2) Family farms and ranches.

      (3) Land which the owner can demonstrate has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.

      (4) Surface drainage patterns and ground water flow patterns.

   b. The impact upon:

      (1) Noise sensitive land uses.

      (2) The visual effect on the adjacent area.

      (3) Extractive and storage resources.

      (4) Wetlands, woodlands, and wooded areas.

      (5) Radio and television reception, and other communication or electronic control facilities.

      (6) Human health and safety.

      (7) Animal health and safety.

      (8) Plant life.

4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits.

   a. Location and design.

The heating value tests should be distributed with relation to the time of day in such a manner that the number of tests made will be proportional to the average rate of "sendout" at that time. At least two tests shall be made each day.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-04. Purity of gas.

1. Total sulfur. Manufactured gas distributed in this state shall in no case contain more than thirty grains [1.94 grams] of total sulfur per one hundred cubic feet [2.83 cubic meters] unless specific relief is granted by the commission.

2. Hydrogen sulfide. In no case shall the manufactured or diluted natural gas sold for lighting or heating contain an amount of hydrogen sulfide (sulfurated hydrogen) detectable by the following test:

   The gas shall be considered to contain no more than a trace of hydrogen sulfide if a strip of white filter paper freshly moistened with a solution containing five percent by weight of lead acetate is not distinctly darker than a second paper freshly moistened with the same solution after the first paper has been exposed to the gas one minute in an apparatus through which the gas is flowing at the rate of approximately five cubic feet [141.58 liters] per hour, the gas not impinging directly from a jet upon the test paper.

3. Each utility furnishing manufactured gas service shall daily test the gas supplied by it for the presence of hydrogen sulfide and shall mark and preserve the test papers for at least ten days.

4. Each utility furnishing undiluted natural gas shall file with the commission a statement showing an analysis of the gas being furnished.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-05. Pressure of gas.

1. **Maximum and minimum limits.** The pressure of gas supplied by any utility, as measured at the outlet of the service pipe to any customer, or in the case of high pressure systems at the outlet of the house governor, should be maintained as uniform as practicable. For artificial gas service the pressure should never be less than three inches or more than twelve inches of water pressure. For natural gas service the pressure should never be less than three ounces or more than twelve ounces. Customers desiring service at greater than the maximum allowable should request in writing that a higher service be maintained

and shall also pay any additional expense incurred, over and above the regular cost of service at the standard pressure, in providing and maintaining a special service.

2. **Artificial gas.** At any one outlet between the hours of six a.m. and seven p.m. of any one day, the variation of pressure shall not be greater than the following:

Minimum Pressure Maintained	Greatest Variation Permissible
3 inches	2 inches
3-4 inches	2 1/2 inches
4-5 inches	3 inches
5-6 inches	3 1/2 inches
6-8 inches	4 inches

3. **Natural gas.** At any one outlet the variation of pressure shall not be greater than the following:

Established Pressure	Minimum Pressure Allowable	Maximum Pressure Allowable
4 ounces	3 ounces	6 ounces
6 ounces	3 ounces	9 ounces
8 ounces	4 ounces	12 ounces

4. **Variations.** A utility shall not be deemed to have violated this section if it can be shown that the variations occurring in gas pressure were caused by unforeseen demand, temporary conditions beyond the control of the utility, individual customer owned service lines, or pipelines of such size as to render the maintenance of standard pressure variations impracticable.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-06. Pressure recording equipment and records.

1. Each utility shall be equipped with a sufficient number of portable recording pressure gauges and shall make frequent measurements of the gas pressure variation throughout each separate distribution system. A record shall be kept of the pressure at some point on each system at all times.

2. All pressure charts which have been made shall be filed by the utility for at least two years and shall be sufficiently complete and so arranged

period over which the correction is to be made shall be one-half of the time lapsed since the last previous test. The period shall not exceed six months. If a meter is found not to register for any period, the utility shall estimate the charge for the gas under similar conditions, preceding or subsequent thereto, or overused by averaging the amounts registered over similar and corresponding periods in previous years. Such action shall be taken only in cases of substantial importance where the utility is not at fault allowing the incorrect meter to be in service.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-24. Refunds. No application for refunds of any payments to a utility claimed to be in excess of the rules, regulations, schedules, rates, or tariffs shall be made to the commission after the expiration of six years from the date of payment.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-25. Resale. Gas service furnished on standard rates or contracts furnished by a public utility shall not be resold or caused to be resold by any customer unless the customer is engaged in the business of distributing gas and has a contract to this effect approved by the commission, and has a certificate of public convenience and necessity granted by the commission.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-26. Filing of rates.

1. Each utility shall file with the commission its scheduled rates, rules, regulations, and practices in accordance with the statutory requirements.

2. Each rate filing shall stipulate the classification of service and application thereto, date effective, and the particular rate to be superseded. The filing shall be accompanied by a statement showing the reasons for making the filing and the estimated amount of annual revenue affected, based upon the previous year's business.

General Authority: NDCC 28-32-02
Law Implemented: NDCC 49-02-03

69-09-01-27. Rate applications. Where more than one schedule of rates has been approved by the commission for the same class of service, it shall be the duty of the utility to advise the customer at the beginning of service of the rates and schedules which are available and typical bills for representative consumptions. Upon application by the customer, the utility shall make comparisons on the basis

telecommunications connection at a consumer's principal place of residence.

7. "Local exchange company" means an incumbent or competitive local exchange company.

8. "Telecommunications Act of 1996" means the Telecommunications Act of 1996 [Pub. L. 104-104; 110 Stat. 56; 47 U.S.C. 151 et seq.].

History: Effective January 1, 2001.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.7

69-09-05-01. Lowest priced service alternatives. Upon request of a residential customer or prospective customer for service, the utility shall ask if such customer wishes to be informed of the lowest priced service alternatives available from the utility, and upon an affirmative response shall inform such customer of the lowest priced service alternatives available from the utility at the customer's location, giving full consideration to grades of service, equipment options, and installation charges incident thereto. The lowest price service alternative includes service under the lifeline and link-up plans.

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History: Amended effective January 1, 2001.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21-01.4, 49-21-01.7, 49-21-07

69-09-05-02. Discontinuance of telecommunications services. A utility may not discontinue telecommunications services, except as provided in this section.

1. A utility may discontinue the essential services it provides:

   a. If the customer is delinquent in payment for essential services, then essential services may be discontinued even though discontinuing the services results in the discontinuance of all telecommunications services.

   b. If the customer is delinquent in payment for long-distance services rendered by a local exchange company or another company and billed by the local exchange company, but is not delinquent in payment for essential services rendered by the local exchange company, the local exchange company may discontinue the customer's local exchange services only at central offices lacking the technical ability to discontinue long-distance services while continuing to provide local exchange services.

2. A utility may discontinue nonessential services:

   a. If the customer is delinquent in payment for nonessential services.

Proposed Telecommunications Registration Rulemaking

69-09-05-02. Discontinuance of telecommunications services. A utility may not discontinue telecommunications services, except as provided in this section.

1. A utility may discontinue the essential services it provides:

   a. If the customer is delinquent in payment for essential services, then essential services may be discontinued even though discontinuing the services results in the discontinuance of all telecommunications services.

   b. If the customer is delinquent in payment for long-distance services rendered by a local exchange company or another company and billed by the local exchange company, but is not delinquent in payment for essential services rendered by the local exchange company, the local exchange company may discontinue the customer's local exchange services only at central offices lacking the technical ability to discontinue long-distance services while continuing to provide local exchange services.

2. A utility may discontinue nonessential services:

a. If the customer is delinquent in payment for nonessential services.

b. If the customer is delinquent in payment for long-distance telecommunications services rendered by another company and billed by the local exchange company, then the local exchange company may deny the customer all forms of access to the network of the telecommunications company to which the customer is delinquent in payment. However, if due to technical limitations, a local exchange company must also deny the customer all forms of access to the long-distance networks of all telecommunications companies, including its own, in order to deny the customer access to the network of the company to which the customer is delinquent, the local exchange company may do so.

3. A utility may discontinue service to a customer for failure to comply with regulations of the utility on file with the commission pertaining to installation and use of equipment, or for use of equipment which interferes with or adversely affects the service to other customers, provided the customer has first been notified and afforded reasonable opportunity to change or disconnect such equipment.

4. A utility may not discontinue service to a customer for failure of the customer to pay for merchandise purchased from the utility, to pay

for a different class of service furnished by the utility, to pay for service rendered to a previous occupant of the premises, or to pay the bill of another customer as guarantor thereof.

5. A utility may not discontinue service to a customer for failure to pay for service until the utility first gives the customer notice of its intention to discontinue such service on account of delinquency. The notice must:

   a. Be sent by first-class mail addressed to the billing name and address of the affected account.

   b. Show the amount of the delinquency.

   c. Include the telephone number of the public service commission.

   d. Advise the customer of the customer's rights and remedies, including the customer's right to work out a satisfactory deferred installment agreement for delinquent accounts.

   e. Inform the customer that service will be discontinued if the delinquent account is not paid within ten calendar days from the date of mailing or personal delivery of the notice, or if a satisfactory installment agreement is not made with the utility for payment of the delinquent bill. The utility may discontinue service without further notice if the customer fails to pay the delinquent account by the due date.

6. a. A deferred installment agreement for essential services may not be combined with a deferred installment agreement for any other services.

b. A utility may not discontinue essential services if the utility and the customer make a mutually agreed-upon deferred installment agreement for essential services. A utility may discontinue essential services without further notice if the customer fails to pay the delinquent account in accordance with the deferred installment agreement.

c. A utility may not discontinue nonessential services if the utility and the customer make a mutually agreed-upon deferred installment agreement for nonessential services. A utility may discontinue nonessential services without further notice if the customer fails to pay the delinquent account in accordance with the deferred installment agreement.

7. The customer may pay the delinquent account at any time prior to the actual discontinuance of service.

8. Whenever service has been discontinued for nonpayment of a bill, service must be resumed if the customer:

a. Pays the fee for resuming service established in the utility's rate schedules;

b. Makes a deposit under section 69-09-05-03 (if required by the company); and

c. Makes a satisfactory settlement for the delinquent bill and for the service rendered to the date the service was discontinued. Interexchange carriers are not required to resume long-distance service if local service is not connected.

in Code — Interexchange carriers are not required to resume long-distance service if local service is not connected.

9. If the customer disputes the amount of a bill for service, the customer may, to prevent discontinuance for nonpayment, pay the disputed bill under protest to the utility. Alternatively, the customer may request a formal hearing pursuant to section 69-02-02-02 in which case the utility may not discontinue service for nonpayment of the disputed bill until a final decision has been issued by the commission. The utility shall immediately give the commission notice of the dispute and the commission may investigate the dispute. The utility shall refund to the customer any part of such payment made under protest found by the commission to be excessive.

10. The commission may order the discontinuance of services where a reseller or operator services provider violates commission rules. The commission will provide ten days' notice of a deficiency or violation and provide an opportunity for the noncomplying reseller

or operator services provider to respond or correct the deficiency. A reseller or operator services provider disputing the alleged violation or discontinuance may request a formal hearing under section 69-02-02-02, in which case the discontinuance will be stayed until final decision by the commission.

11. a. Except for discontinuance due to delinquency, a competitive local exchange company may not discontinue service to a customer without first providing the customer with twenty days' written notice of the intent to discontinue service. The notice of intent to discontinue service shall inform the customer of its right to choose between local exchange companies, if more than one local exchange company is providing essential services.

b. A telecommunications company may not interfere with a competitive local exchange company's obligation to provide notice to a customer; provided that a telecommunications company may disconnect service to a competitive local exchange company under the terms of a resale or interconnection agreement so long as the interconnection agreement is consistent with law and rules.

12. Except in the case of discontinuance for nonpayment, if a telecommunications company providing interexchange service

intends to discontinue service or is forced to discontinue service due to abandonment, acquisition, bankruptcy, or for other reasons, the company must provide reasonable advance notice of the discontinuance to each customer. The notice must inform the customer that the customer must choose another primary interexchange carrier or use an alternative service.

History: Effective April 1, 1985; amended effective January 1, 1993; May 1,1996; July 1, 1997, amendments voided by the Administrative Rules Committee effective August 16, 1997; January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-21, 49-21-01.4,49-21-01.7, 49-21-07

69-09-05-04. Rules for resale of telecommunications services.

1. Definitions.

   a. "Premise cable" means telecommunications cable or channels on the reseller's side of the point of connection to the local exchange company (demarcation point).

   b. "Prepayment" means payments made by customers of a reseller in advance of receiving service. Prepayment includes a deposit and any customer payment for telecommunications service in advance of receiving the full amount of service for which payment is made.

   c. "Resale" means the subscription to local or long-distance telecommunications services and facilities by one entity, and

reoffered for profit or with markup to others with or without enhancements. Where reoffered service is part of a package, and the package is offered for profit or markup, it is resale.

d. "Reseller" means a person reselling local or long-distance telecommunications services. The definition does not include pay telephone providers, but does include a cellular and personal communication service ~~providers~~ provider who ~~resell wireline~~ resells cellular or other wireless service ~~as part of their celluar or personal communication service~~.

e. "Same continuous property" is contiguous real estate owned by the same individual, group of individuals, or other legal entity having title to the property. The property may be traversed by streets, ditches, or other similar manmade or natural terrain features provided that, but for terrain features, the property would be contiguous and provided that such terrain features are of a nature and dimension that it is reasonable to treat the property as contiguous.

f. "Shared tenant service provider" means a person reselling telecommunications services to the tenants of a building complex on the same continuous property or to parties with a community of interest.

2. A reseller may not operate in North Dakota except in compliance with applicable laws and rules. A reseller shall:

a. ~~Obtain a certificate of registration from~~ Register with the commission, on a form provided by the commission, ~~authorizing~~ indicating the provision of local resale or long-distance resale services in the state of North Dakota.

b. If a reseller requires prepayment for service, it shall:

(1) Submit a performance bond in an amount specified by the commission; or

(2) Establish an escrow account in a North Dakota bank containing an amount equal to the prepayments collected at any given time, and file monthly reports showing escrow account activities and call completion data.

(3) ~~The requirements of paragraphs 1 and 2 are waived for any company that has provided cellular or personal communication service in North Dakota for one year without a formal complaint having been filed against it. The commission may revoke the waiver after notice and opportunity for hearing if necessary to protect the public interest.~~ Under Subsection 7 of North Dakota Century Code section 49-03.7-09(7) the bonding

requirement does not apply to a facility–based company providing commercial mobile radio service, as defined in title 47, Code of Federal Regulations, part 20, section 20.3.

(4.) The requirements of paragraphs 1 and 2 are subject to a twenty-five thousand dollar minimum for resellers of local service other than by means of a prepaid calling card. The required amount of a performance bond is the product of the estimated level of customers after three years of operation, times the amount of required customer prepayments, or twenty-five thousand dollars, whichever is greater. The required amount of an escrow account is an amount equal to the prepayments at any given time but no less than twenty-five thousand dollars.

(5) The requirements of paragraphs 1 and 2 are subject to a two thousand five hundred dollar minimum for resellers of any service other than the local service subject to paragraph 4. The amount of a performance bond is the product of the estimated level of customers after three years of operation, times the amount of required customer prepayments, or two thousand five hundred dollars, whichever is greater.

The amount of an escrow account is an amount equal to the prepayments (including prepaid calling cards) at any given time.

~~c. Forfeit its registration if it is voluntarily dissolved or involuntarily dissolved under North Dakota law. A reseller may not operate and its registration certificate is void on the effective date of involuntary dissolution under North Dakota Century Code section 10-23-02.2.~~

3. A reseller may not be identified as an optional intrastate interexchange carrier ~~without a certificate of registration from~~ unless it is registered with the commission.

4. Except for residents of dormitories or residence halls of schools, colleges, or universities, the end user has the unrestricted right to choose service from the incumbent local exchange company.

5. A shared tenant service provider shall allow the tenant to use the shared tenant service provider's premise cable and wire in the event an end user wants to receive service from the local exchange company.

6. The reseller is responsible for the charges incurred for telecommunications services to which it subscribes for serving its end users.

7. A reseller is subject to ~~reregulation by the commission,~~ revocation of its ~~certificate~~ authority and the penalties provided in North Dakota Century Code ~~chapter~~ chapters 49-03.1 and 49-07 for violation of any applicable law or rule.

History: Effective March 1, 1989; amended effective August 1, 1991; December 1, 1993; February 1, 1995; July 1, 1997; January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-03.1-01, 49-03.1-03,49-21, 49-21-01.7, 49-21-07

69-09-05-04.1. Identification of intraLATA interexchange carriers.

1. A local exchange carrier shall not identify a telecommunications company as an optional intrastate interexchange carrier unless the telecommunications company provides the local exchange company with evidence of an effective ~~certificate of public convenience and necessity or a current certificate of~~ registration authorizing the provision of intrastate interexchange service.

2. A telecommunications company shall immediately notify in writing all local exchange companies for which it has requested identification as an optional intrastate interexchange carrier if the telecommunications company's authority to provide interexchange service is revoked or abandoned. A local exchange company shall cease to identify a telecommunications company as an optional intrastate interexchange carrier upon receipt of a written notice that

the telecommunications company's authority to provide interexchange service has been revoked or abandoned.

History: Effective February 1, 1995; amended effective January 1, 2001.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21

69-09-05-05. Rules for the provision of operator services.

1. Definitions.

   a. "End user" means the person to whom operator service is provided.

   b. "Operator service" means service provided to assist in the completion or billing of telephone calls through the use of a live operator or automated equipment. "Operator service" does not include completion of calls through an 800 number or an access code when billed to an account previously established with the carrier by the end user, or the automated operator services provided by pay telephone sets with built-in automated operator messages.

   c. "Operator service provider" means the person providing operator service.

2. Operator service providers shall:

a. ~~Obtain a certificate of registration from~~ Register with the commission authorizing the provision of operator services in the state of North Dakota.

b. Provide written material for use in disclosing to the end user the name and toll free telephone number of the operator service provider. This material must be provided to all coin telephone operators, motels, hospitals, and any other locations where end users may use telephone service not billable to their home or business telephones without operator service.

c. Require operators to clearly identify the operator service provider to all end users and when requested, provide rate information.

d. Provide emergency call service that is equal to that provided by the local exchange telephone company and, if unable to meet this requirement, provide emergency call service by immediate transfer of such calls to the local exchange company.

e. For billing purposes, itemize, identify, and rate calls from the point of origination to the point of termination. No call may be transferred to another carrier by an operator service provider

which cannot or will not complete the call, unless the call can be billed in accordance with this subsection.

f. Not charge for incompleted calls.

g. Disclose their names on bills which include charges for services they provided.

History: Effective March 1, 1989; amended effective August 1, 1991; May 1, 1996; January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7, 49-21-07

69-09-05-10. ~~Certificate of registration~~ Registration - Procedure.

1. A reseller ~~applying for a certificate of registration~~ or competitive facilities-based provider desiring authority to provide service in North Dakota shall ~~file an application~~ register on a form provided by the commission. The ~~application~~ registration shall include ~~evidence~~ identification of the applicant's authority to do business in North Dakota.

2. ~~An applicant for a certificate of registration as a~~ A reseller shall follow the procedure set forth in section 69-09-05-04.

3. When ~~the holder of a certificate of registration~~ a registered company intends to assign ~~the~~ its authority to provide telecommunications service in North Dakota to another entity, the

assignee must first ~~obtain a certificate of registration from~~ register with the commission.

4. A ~~reseller~~ registered company may voluntarily, without commission approval, surrender its ~~certificate of registration~~ authority by notifying the commission in writing and updating its registration to reflect this surrender.

5. A competitive local exchange company intending to surrender its authority to provide local exchange service must provide twenty days' prior written notice to the company's customers.

History: Effective January 1, 2001.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21

69-09-05-11. Certificate of public convenience and necessity for incumbent local telecommunications company - Procedure.

1. An applicant for a certificate of public convenience and necessity as an incumbent local exchange company shall file an application with the commission which includes evidence of the applicant's authority to do business in North Dakota, conforms to the commission's rules of practice and procedure under article 69-02, and which identifies:

   a. The type of service the applicant intends to provide.

b. The service area or areas in which the applicant intends to provide service.

c. How the applicant meets the issues to be considered in the application.

2. An applicant for a certificate of public convenience and necessity must also file consolidated financial statements for the most recent year available, including:

a. A balance sheet of the form and style usually followed in the industry.

b. An income statement of the form and style usually followed in the industry.

c. If available, an independent accountant's financial opinion.

d. Any other information requested by the commission.

3. In order to implement North Dakota Century Code chapter 49-03.1 consistent with the Telecommunications Act of 1996, issues to be considered in an application for a certificate of public convenience and necessity for a facilities-based provider of telecommunications services are:

a. Fitness and ability of the applicant to provide service.

b. Adequacy of the proposed service.

c. The technical, financial, and managerial ability of the applicant to provide service.

4. If the application is to be decided on a notice of opportunity for hearing, the applicant shall file affidavits sufficient to meet the applicant's burden of proof on the issues.

5. When the holder of a certificate of public convenience and necessity intends to assign the authority to provide telecommunications service in North Dakota to another entity, the assignee must first obtain a certificate of public convenience and necessity from the commission.

6. ~~Abandonment of a certificate of public convenience and necessity for a competitive local exchange company requires prior written notice to the commission and thirty days' prior written notice to the company's customers.~~ Abandonment of a certificate of public convenience and necessity for an incumbent local exchange company requires prior commission approval.

History: Effective January 1, 2001.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7(7)

Public Service Commission
Public Utilities – Telephone
Rulemaking

Case No. PU-05-575

Amended
Proposed Interconnection Agreement Filing Rules

69-09-05-14. Procedure for filing negotiated interconnection agreements. Carrier-to-carrier interconnection agreements adopted by negotiation must be filed for commission approval under 47 U.S.C. section 252(e), following the procedure set out in this section.

1. The requirements of this section apply to interconnection agreements negotiated under 47 U.S.C. section 251; assignments, assumptions or transfers of interconnection agreements; amendments to interconnection agreements; and agreements for Qwest Platform Plus (QPP) services. The requirements of this section do not apply to commercial line sharing agreements.

2. Each filing must include a completed cover sheet in a form prescribed by the commission.

3. Filed interconnection agreements will be listed on the commission Internet site for comment by interested parties. The Internet listing will include the date each agreement was filed and links to the agreement itself.

4. The commission will accept written comments on a listed agreement for 60 days from the date filed.

5. Absent commission action within 90 days of filing to disapprove an agreement, (or portion thereof), the agreement will be deemed approved under 47 U.S.C. section 252(e)(4).

6. Any assignment, assumption, or transfer of an approved interconnection agreement requires notification to be filed with the commission within thirty days after the assignment, assumption, or transfer occurs.

7. Any amendment to an interconnection agreement requires a new filing with a new 90-day review and comment period.

General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.7

Public Service Commission
Public Utilities – Electric
Rulemaking

Case No. PU-05-364

AMENDED PROPOSED RULES

69-09-08 Renewable electricity and recycled energy tracking system.

69-09-08-01. Purpose, application, and effective date. This chapter establishes a program to include tracking, recording, and verifying the transactions associated with certificates and credits for electricity generated from renewable electricity sources as defined by North Dakota Century Code section 49-02-25 among electric generators, utilities, and other interested entities within this state and with similar entities in other states. This chapter applies to all public utilities, electric cooperatives, and municipal electric utilities. The tracking program will be effective as specified in the commission's order that designates a program administrator and implements these rules.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-02. Definitions. As used in this chapter:

1. "Designated representative" means a responsible individual authorized by the owner or operator of a renewable energy facility or purchaser of energy produced from a renewable resource to register that resource with the program administrator. The designated representative must

have the authority to represent and legally bind the owner, operator, or purchaser in all matters pertaining to the renewable energy certificates tracking program.

2. "Existing facilities" means Renewable energy facilities placed in service before January 1, 2001.

3. "New facilities" means Renewable energy facilities placed in service on or after January 1, 2001.

4. "Program administrator" means The independent entity designated by commission order to carry out the administrative responsibilities related to the renewable energy certificates tracking program as set forth in this chapter.

5. "Renewable energy certificate" means A document recording one or more renewable energy credits that have been certified by the program administrator as representing electricity generated by a renewable energy facility registered with the tracking system or a certificate imported from a compatible certificates tracking system.

6. "Renewable energy certificate account" means An account maintained by the program administrator for the purpose of tracking renewable energy certificates.

7. Renewable energy certificates tracking program means the process of tracking renewable energy certificates as a means of meeting the requirements set forth in section 69-09-08-04.

8. Renewable energy credit means the intangible, generally perceived environmental benefits and attributes associated with generating one megawatt hour ~~(MWH)~~ of renewable electricity or recycled energy that is physically metered and meets the requirements set forth in section 69-09-08-04.

9. Renewable energy facility means a facility generating electricity from one or more generating units that exclusively rely on an energy source or fuel included in North Dakota Century Code section 49-02-25.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-03. Renewable energy certificates tracking program. Renewable energy certificates may be recorded, transferred, and retired as set forth in this chapter. Except where specifically stated, the provisions of this section apply uniformly to all participants in the tracking program.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-04. Facilities eligible for participation in the renewable energy certificates tracking program. For a renewable energy facility to be eligible to

participate in the tracking program, the facility must be either a new facility or existing facility as defined in section 69-09-08-02 and must also:

1. Register under ~~North Dakota Administrative Code~~ Section 69-09-08-07; and

2. Have output that is capable of being physically metered and verified by the program administrator. A renewable energy facility with more than one generating unit may be metered with a single meter.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-05. Responsibilities of program administrator. At a minimum, the program administrator shall perform the following functions:

1. Create accounts that track renewable energy certificates for each participant in the tracking program;

2. Award renewable energy certificates to registered renewable energy facilities based on verified meter reads;

3. Maintain public information on the program administrator's website that provides tracking program information to interested buyers and sellers of renewable energy certificates;

4. Facilitate private trading of renewable energy certificates;

5. Verify the accuracy of metered production data and other information identified in the renewable energy certificate; and

6. Provide an annual report to the commission. Beginning in the year following commission designation of the program administrator, the program administrator shall submit a report to the commission on or before April 15th of each year. At a minimum, the report must contain the amount of registered existing and new generating capacity from a renewable energy facility installed in the state, in megawatts, by technology type, the owner or operator of each facility or the facility's certificates, the date each facility began to produce electricity, and the total number of renewable energy credits certified by the program administrator during each month of the reporting period.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-06. Production and transfer of renewable energy certificates. The program administrator shall administer a tracking program for renewable energy certificates in accordance with the requirements of this chapter.

1. The transfer of renewable energy certificates between parties is effective only when the transfer is recorded by the program administrator.

2. The program administrator shall require that renewable energy certificates be adequately identified prior to recording a transfer and shall issue a confirmation of the transaction to parties when the transfer is recorded.

3. The program administrator shall establish a procedure to ensure that the award, transfer, and retirement of certificates are accurately recorded.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-07. Registration and certification of renewable energy facilities. To be awarded renewable energy certificates, a designated representative must complete the registration process described in this section.

1. The designated representative shall register with the program administrator each renewable energy generation unit. At a minimum, the registration must include the location, owner, technology, rated capacity of the facility, and evidence that the facility meets the resource eligibility criteria in North Dakota Century Code Section 49-02-25.

2. After verifying the information required in the registration process for renewable facilities, the program administrator shall create a

renewable energy certificate account for the designated representative of the renewable energy resource.

3. The commission or its program administrator may make on-site visits to any registered unit of a renewable energy resource and may revoke the registration of any unit not in compliance with applicable law and rules.

4. A renewable energy facility may not be awarded renewable energy certificates under this program if it is not registered.

5. Any disputes will be resolved using dispute resolution procedures established by the commission or its program administrator.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

NORTH DAKOTA ADMINISTRATIVE CODE

Supplement 321

July 1, 2006

The North Dakota Administrative Code Supplement is published each month following the month that rules are filed with the Legislative Council office. A historical source note immediately follows an affected section and indicates the effective date of any amendment, creation, or repeal. A supplement change without any historical source note corrects a nonsubstantive error in the section.

This supplement instruction page should be retained and placed behind your "supplement instruction sheets" divider in Volume 1. **Before inserting any supplement into the code be sure the previous supplement has been inserted.** For those codes purchased after August 1, 1996, the first supplement is Supplement 207.

Instructions for integrating this supplement into the Administrative Code are as follows:

	Pages to be Removed	Pages to be Inserted
Table of Contents	15 - 16	15 - 16
Article 2-03 (Chapter 2-03-01)	1 - 3	1 - 3
Chapter 3-01-02	1 - 2	1 - 2
Article 10-16 (Chapter 10-16-01)	1 - 5	1 - 5
Article 48-02 (Chapter 48-02-01)	1 - 9	1 - 9
Chapter 48-04-04	1 - 6	1 - 11
Chapter 56-02-05	1 - 5	1 - 5
Article 58-01 (Chapter 58-01-01)	1 - 4	1 - 3
Chapter 58-02-08	1 - 10	1 - 11
Chapter 61.5-02-02	1 - 8	1 - 8
Article 61.5-03 (Chapter 61.5-03-01)	1	1
Chapter 61.5-03-04	1 - 2	1 - 2
Chapter 61.5-06-02	1	1
Title 67	1 - 2	1 - 2
Article 67-01 (Chapter 67-01-01)	1 - 6	1 - 6
Chapter 67-01-02	1	1
Article 67-11 (Chapter 67-11-01)	1 - 5	1 - 5
Chapter 67-11-03.3	1 - 3	1 - 3
Chapter 67-11-04	1 - 5	1 - 5
Chapter 67-11-08	1 - 3	1 - 3
Chapter 67-11-14	1 - 5	1 - 5
Chapter 67-11-16	1 - 5	1 - 5
Article 67-12 (Chapter 67-12-01)	1 - 3	1 - 3
Chapter 67-15-02	1 - 7	1 - 7
Article 67-19 (Chapter 67-19-01)	1 - 29	1 - 59
Article 67-20 (Chapter 67-20-01)	1 - 3	1 - 3
Article 67-22 (Chapter 67-22-01)	1 - 3	1 - 3
Article 67-24 (Chapter 67-24-01)	1 - 3	1 - 3

	Pages to be Removed	Pages to be Inserted
Article 67-26	1	1
Article 67-27	1	1
Chapter 67-28-01	-	1 - 6
Chapter 69-06-08	1 - 7	1 - 7
Article 69-09 (Chapter 69-09-01)	1 - 21	1 - 20
Chapter 69-09-03	1	1
Chapter 69-09-05	1 - 15	1 - 15
Chapter 69-09-08	-	1 - 4
Article 70-01 (Chapter 70-01-01)	1 - 2	1
Article 71-02 (Chapter 71-02-01)	1 - 4	1 - 4
Chapter 71-02-02	1	1
Chapter 71-02-03	1- 8	1 - 9
Chapter 71-02-04	1 - 8	1 - 8
Chapter 71-02-05	1 - 7	1 - 8
Chapter 71-02-07	1 - 2	1 - 2
Chapter 71-02-09	1	1
Chapter 71-02-10	1 - 2	1 - 2
Chapter 71-02-11	1 - 4	1 - 4
Chapter 71-04-04	1 - 3	1 - 3
Chapter 71-04-05	1 - 2	1 - 2
Chapter 71-04-06	1 - 4	1 - 4
Article 71-05 (Chapter 71-05-01)	1 - 2	1 - 2
Chapter 71-05-02	1 - 6	1 - 6
Chapter 71-05-04	1 - 6	1 - 7
Chapter 71-05-05	1 - 5	1 - 5
Chapter 71-05-08	1 - 2	1 - 2
Article 71-08 (Chapter 71-08-01)	1 - 3	1 - 3
Chapter 71-08-02	1	1
Chapter 71-08-04	1 - 2	1 - 2
Chapter 71-08-06	1 - 3	1 - 3
Chapter 71-08-07	1 - 2	1 - 2
Chapter 71-08-08	-	1
Chapter 71-08-09	-	1
Article 72-06 (Chapter 72-06-01)	1 - 6	1 - 8
Article 74-01 (Chapter 74-01-01)	1 - 2	1 - 2
Article 74-02 (Chapter 74-02-01)	1 - 10	1 - 7
Chapter 74-02-02	1 - 2	1 - 2
Article 74-03 (Chapter 74-03-00.1)	1 - 3	1 - 3
Chapter 74-03-01	1 - 15	1 - 16
Chapter 74-03-02	1 - 4	1 - 4
Chapter 74-03-03	1 - 2	1 - 2
Chapter 74-03-07.1	1 - 3	1 - 3
Chapter 74-03-08	1 - 2	1 - 2
Chapter 74-03-09	1 - 3	1 - 3
Chapter 74-03-10	1 - 3	1 - 2
Chapter 74-03-11	1 - 4	1 - 4
Chapter 74-03-12	1 - 3	1 - 3
Chapter 74-03-13	1 - 3	1 - 3

	Pages to be Removed	Pages to be Inserted
Article 74-04 (Chapter 74-04-01)	1 - 19	1 - 20
Chapter 75-01-03	1 - 40	1 - 39
Chapter 75-02-02	1 - 41	1 - 43
Chapter 75-02-02.1	1 - 107	1 - 107
Chapter 75-02-02.2	1 - 14	1 - 17
Chapter 75-02-04	1 - 9	1 - 9
Article 75-03 (Chapter 75-03-01)	1 - 2	1 - 2
Chapter 75-03-14	1 - 10	1 - 10
Chapter 75-03-17.1	-	1 - 3
Chapter 75-03-19	1 - 4	1 - 4
Chapter 75-03-19.1	-	1 - 3
Chapter 75-03-34	1 - 4	1 - 4
Article 75-04 (Chapter 75-04-01)	1 - 26	1 - 26
Chapter 75-04-05	1 - 35	1 - 37
Article 89-07 (Chapters 89-07-01 and 89-07-02)	1 - 17	1
Chapter 89-07-02	-	1 - 16
Chapter 92-01-02	1 - 71	1 - 69
Chapter 92-01-03	1 - 4	1 - 4
Article 92-05 (Chapter 92-05-01)	1 - 9	1
Chapter 92-05-02	-	1 - 4
Chapter 92-05-03	-	1
Article 109-02 (Chapter 109-02-01)	1 - 6	1 - 7
Chapter 109-02-02	1 - 10	1 - 10
Chapter 109-02-03	1 - 5	1 - 5
Chapter 109-02-04	1 - 5	1 - 6

CHAPTER 69-06-08
CRITERIA

Section
69-06-08-01 Energy Conversion Facility Siting Criteria
69-06-08-02 Transmission Facility Corridor and Route Criteria

69-06-08-01. Energy conversion facility siting criteria. The following criteria shall guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process.

1. **Exclusion areas.** The following geographical areas shall be excluded in the consideration of a site for an energy conversion facility, and shall include a buffer zone of a reasonable width to protect the integrity of the area. Natural screening may be considered in determining the width of the buffer zone.

   a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; historic districts; monuments; wilderness areas; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.

   b. Designated or registered state: parks; forests; forest management lands; historic sites; monuments; historical markers; archaeological sites; grasslands; wild, scenic, or recreational rivers; game refuges; game management areas; management areas; and nature preserves.

   c. County parks and recreational areas; municipal parks; parks owned or administered by other governmental subdivisions; hardwood draws; and enrolled woodlands.

   d. Prime farmland and unique farmland, as defined by the land inventory and monitoring division of the soil conservation service, United States department of agriculture, in 7 C.F.R. part 657; provided, however, that if the commission finds that the prime farmland and unique farmland that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural productions, such exclusion shall not apply.

   e. Irrigated land.

   f. Areas critical to the life stages of threatened or endangered animal or plant species.

   g. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.

2. **Avoidance areas.** The following geographical areas shall not be approved as a site for an energy conversion facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative sites. Economic considerations alone shall not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area shall be included. Natural screening may be considered in determining the width of the buffer zone.

   a. Historical resources which are not designated as exclusion areas.

   b. Areas within the city limits of a city or the boundaries of a military installation.

   c. Areas within known floodplains as defined by the geographical boundaries of the hundred-year flood.

   d. Areas that are geologically unstable.

   e. Woodlands and wetlands.

   f. Areas of recreational significance which are not designated as exclusion areas.

3. **Selection criteria.** A site shall be approved in an area only when it is demonstrated to the commission by the applicant that any significant adverse effects resulting from the location, construction, and operation of the facility in that area as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum.

   a. The impact upon agriculture:

      (1) Agricultural production.

      (2) Family farms and ranches.

      (3) Land which the owner demonstrates has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.

      (4) Surface drainage patterns and ground water flow patterns.

      (5) The agricultural quality of the cropland.

   b. The impact upon the availability and adequacy of:

(1) Law enforcement.

(2) School systems and education programs.

(3) Governmental services and facilities.

(4) General and mental health care facilities.

(5) Recreational programs and facilities.

(6) Transportation facilities and networks.

(7) Retail service facilities.

(8) Utility services.

c. The impact upon:

(1) Local institutions.

(2) Noise-sensitive land uses.

(3) Rural residences and businesses.

(4) Aquifers.

(5) Human health and safety.

(6) Animal health and safety.

(7) Plant life.

(8) Temporary and permanent housing.

(9) Temporary and permanent skilled and unskilled labor.

d. The cumulative effects of the location of the facility in relation to existing and planned facilities and other industrial development.

4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits.

a. Recycling of the conversion byproducts and effluents.

b. Energy conservation through location, process, and design.

c. Training and utilization of available labor in this state for the general and specialized skills required.

d. Use of a primary energy source or raw material located within the state.

e. Nonrelocation of residents.

f. The dedication of an area adjacent to the facility to land uses such as recreation, agriculture, or wildlife management.

g. Economies of construction and operation.

h. Secondary uses of appropriate associated facilities for recreation and the enhancement of wildlife.

i. Use of citizen coordinating committees.

j. A commitment of a portion of the energy produced for use in this state.

k. Labor relations.

l. The coordination of facilities.

m. Monitoring of impacts.

History: Amended effective August 1, 1979; July 1, 2006.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-05.1

69-06-08-02. Transmission facility corridor and route criteria. The following criteria shall guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process. Exclusion and avoidance areas may be located within a corridor, but at no given point shall such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

1. **Exclusion areas.** The following geographical areas shall be excluded in the consideration of a route for a transmission facility. A buffer zone of a reasonable width to protect the integrity of the area shall be included. Natural screening may be considered in determining the width of the buffer zone.

   a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; monuments; and wilderness areas.

b. Designated or registered state: parks; historic sites; monuments; historical markers; archaeological sites; and nature preserves.

c. County parks and recreational areas; municipal parks; and parks owned or administered by other governmental subdivisions.

d. Areas critical to the life stages of threatened or endangered animal or plant species.

e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.

2. **Avoidance areas.** The following geographical areas shall not be considered in the routing of a transmission facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility, the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative routes. Economic considerations alone shall not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area shall be included unless a distance is specified in the criteria. Natural screening may be considered in determining the width of the buffer zone.

a. Designated or registered national: historic districts; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.

b. Designated or registered state: wild, scenic, or recreational rivers; game refuges; game management areas; management areas; forests; forest management lands; and grasslands.

c. Historical resources which are not specifically designated as exclusion or avoidance areas.

d. Areas which are geologically unstable.

e. Within five hundred feet [152.4 meters] of a residence, school, or place of business. This criterion shall not apply to a water pipeline transmission facility.

f. Reservoirs and municipal water supplies.

g. Water sources for organized rural water districts.

h. Irrigated land. This criterion shall not apply to an underground transmission facility.

i. Areas of recreational significance which are not designated as exclusion areas.

3. **Selection criteria.** A corridor or route shall be designated only when it is demonstrated to the commission by the applicant that any significant adverse effects which will result from the location, construction, and maintenance of the facility as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum.

   a. The impact upon agriculture:

      (1) Agricultural production.

      (2) Family farms and ranches.

      (3) Land which the owner can demonstrate has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.

      (4) Surface drainage patterns and ground water flow patterns.

   b. The impact upon:

      (1) Noise-sensitive land uses.

      (2) The visual effect on the adjacent area.

      (3) Extractive and storage resources.

      (4) Wetlands, woodlands, and wooded areas.

      (5) Radio and television reception, and other communication or electronic control facilities.

      (6) Human health and safety.

      (7) Animal health and safety.

      (8) Plant life.

4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits.

   a. Location and design.

b. Training and utilization of available labor in this state for the general and specialized skills required.

c. Economies of construction and operation.

d. Use of citizen coordinating committees.

e. A commitment of a portion of the transmitted product for use in this state.

f. Labor relations.

g. The coordination of facilities.

h. Monitoring of impacts.

i. Utilization of existing and proposed rights of way and corridors.

j. Other existing or proposed transmission facilities.

History: Amended effective August 1, 1979; January 1, 1982; February 1, 1995; July 1, 2006.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-05.1

ARTICLE 69-09

PUBLIC UTILITY DIVISION

Chapter	
69-09-01	Standards of Service - Gas
69-09-02	Standards of Service - Electric
69-09-03	Gas Pipeline Safety
69-09-04	Uniform Sign Standards - Railroad
69-09-05	Standards of Service - Telephone
69-09-05.1	Accounting Practices
69-09-06	Prohibition on Sale and Direct Industrial Use of Natural Gas for Outdoor Lighting [Repealed]
69-09-07	Small Power Production and Cogeneration
69-09-08	Renewable Electricity and Recycled Energy Tracking System

CHAPTER 69-09-01
STANDARDS OF SERVICE - GAS

Section	
69-09-01-01	Definitions
69-09-01-02	Heating Value
69-09-01-03	Calorimeter Equipment
69-09-01-04	Purity of Gas
69-09-01-05	Pressure of Gas
69-09-01-06	Pressure Recording Equipment and Records
69-09-01-07	Definition of a Cubic Foot of Gas
69-09-01-08	Testing Facilities
69-09-01-09	Meter Prover
69-09-01-10	Location of Meters
69-09-01-11	Service Meters Required
69-09-01-12	Prepayment Meters
69-09-01-13	Gas Meter Accuracy Requirements
69-09-01-14	Periodic Tests
69-09-01-15	Requests and Referee Tests
69-09-01-16	Meter Test Records
69-09-01-17	Deposits and Guarantees
69-09-01-18	Discontinuance of Service [Superseded]
69-09-01-18.1	Discontinuance of Gas Service
69-09-01-19	Extensions of Service
69-09-01-20	Information to Customers
69-09-01-21	Billing Basis
69-09-01-22	Meter Readings on Bills
69-09-01-23	Adjustment of Bills for Meter Error
69-09-01-24	Refunds
69-09-01-25	Resale
69-09-01-26	Filing of Rates
69-09-01-27	Rate Applications
69-09-01-28	Filing of Additional Rules

69-09-01-29 Advertising by Gas Utilities
69-09-01-30 Automatic Adjustment Clauses

69-09-01-01. Definitions. As used in this article:

1. "Commission" means the public service commission of the state of North Dakota.

2. "Customer" means any person, firm, corporation, municipality, or other political subdivision of North Dakota supplied by any such utility.

3. "Utility" means public utility.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-02. Heating value.

1. **Artificial gas.** Each utility furnishing manufactured gas shall supply gas which shall have an average heating value of five hundred twenty-five British thermal units per cubic foot [28.32 liters]; and at no time shall the heating value of the gas at such point be less than five hundred or more than five hundred fifty British thermal units per cubic foot [28.32 liters]; provided, that before the gas utility may lower its present standard, the commission may make an investigation of the operating condition of the plant to determine whether the rates may not be reduced at the same time. The present standards of the gas utility shall not be changed until specifically relieved by the commission. Tests shall be made at least twice a day, Sundays and holidays excepted.

   On or before the tenth day of each month, the above daily heating value averages for the preceding calendar month shall be reported to the commission, together with full explanations of any abnormal operations.

2. **Natural gas.** Each utility furnishing natural gas shall determine the heating value of the gas at regular intervals of not less than thirty days and shall file with the commission, monthly, a report of these tests.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-03. Calorimeter equipment. Each utility shall equip itself with a complete standard calorimeter outfit. This equipment shall be used to test the heating value of gas supplied. The accuracy of all calorimeters, as well as the method of making heating value tests, shall be subject to the approval of the commission.

The heating value tests should be distributed with relation to the time of day in such a manner that the number of tests made will be proportional to the average rate of "sendout" at that time. At least two tests shall be made each day.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-04. Purity of gas.

1. Total sulfur. Manufactured gas distributed in this state shall in no case contain more than thirty grains [1.94 grams] of total sulfur per one hundred cubic feet [2.83 cubic meters] unless specific relief is granted by the commission.

2. Hydrogen sulfide. In no case shall the manufactured or diluted natural gas sold for lighting or heating contain an amount of hydrogen sulfide (sulfurated hydrogen) detectable by the following test:

   The gas shall be considered to contain no more than a trace of hydrogen sulfide if a strip of white filter paper freshly moistened with a solution containing five percent by weight of lead acetate is not distinctly darker than a second paper freshly moistened with the same solution after the first paper has been exposed to the gas one minute in an apparatus through which the gas is flowing at the rate of approximately five cubic feet [141.58 liters] per hour, the gas not impinging directly from a jet upon the test paper.

3. Each utility furnishing manufactured gas service shall daily test the gas supplied by it for the presence of hydrogen sulfide and shall mark and preserve the test papers for at least ten days.

4. Each utility furnishing undiluted natural gas shall file with the commission a statement showing an analysis of the gas being furnished.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-05. Pressure of gas.

1. **Maximum and minimum limits.** The pressure of gas supplied by any utility, as measured at the outlet of the service pipe to any customer, or in the case of high pressure systems at the outlet of the house governor, should be maintained as uniform as practicable. For artificial gas service the pressure should never be less than three inches or more than twelve inches of water pressure. For natural gas service the pressure should never be less than three ounces or more than twelve ounces. Customers desiring service at greater than the maximum allowable should request in writing that a higher service be maintained

and shall also pay any additional expense incurred, over and above the regular cost of service at the standard pressure, in providing and maintaining a special service.

2. **Artificial gas.** At any one outlet between the hours of six a.m. and seven p.m. of any one day, the variation of pressure shall not be greater than the following:

Minimum Pressure Maintained	Greatest Variation Permissible
3 inches	2 inches
3-4 inches	2 1/2 inches
4-5 inches	3 inches
5-6 inches	3 1/2 inches
6-8 inches	4 inches

3. **Natural gas.** At any one outlet the variation of pressure shall not be greater than the following:

Established Pressure	Minimum Pressure Allowable	Maximum Pressure Allowable
4 ounces	3 ounces	6 ounces
6 ounces	3 ounces	9 ounces
8 ounces	4 ounces	12 ounces

4. **Variations.** A utility shall not be deemed to have violated this section if it can be shown that the variations occurring in gas pressure were caused by unforeseen demand, temporary conditions beyond the control of the utility, individual customer-owned service lines, or pipelines of such size as to render the maintenance of standard pressure variations impracticable.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-06. Pressure recording equipment and records.

1. Each utility shall be equipped with a sufficient number of portable recording pressure gauges and shall make frequent measurements of the gas pressure variation throughout each separate distribution system. A record shall be kept of the pressure at some point on each system at all times.

2. All pressure charts which have been made shall be filed by the utility for at least two years and shall be sufficiently complete and so arranged

that compliance with the individual requirements of section 69-09-01-05 can be determined easily.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-07. Definition of a cubic foot of gas. For the purpose of testing the gas under this chapter, a cubic foot of gas shall be taken to be that amount of gas which occupies the volume of one cubic foot [28.3168 liters] when saturated with water vapor at sixty degrees Fahrenheit [15.56 degrees Celsius] and under a pressure equal to that of thirty inches [7.62 centimeters] of mercury at a temperature of thirty-two degrees Fahrenheit [0 degrees Celsius]. For the purpose of measurement of gas to a customer, a cubic foot of gas shall be taken to be that amount of gas which occupies a volume of one cubic foot [28.32 liters] under the conditions existing in such customer's meter as and where installed; provided, however, that when gas is metered at a pressure more than twelve inches [30.48 centimeters] of water column in excess of the prevailing barometric pressure (by agreement with the customer or with the written approval of the commission), the volume of gas metered shall be computed on the basis of the mean pressure in the utility's low-pressure system, or other basis ordered by the commission.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-08. Testing facilities.

1. Each utility shall, unless specifically excused by the commission, provide such laboratory meter testing equipment and other equipment and facilities as may be necessary to make the tests required of it by this chapter or other orders of the commission. The apparatus and equipment so provided shall be subject to the approval of the commission, and it shall be available at all times for the inspection or use of any member or authorized representative of the commission.

2. Each utility shall make such tests as are prescribed under this chapter with such frequency and in such manner and at such places as are herein provided or as may be approved or ordered by the commission. Unless otherwise directed by the commission, the methods and apparatus recommended by the national bureau of standards in the latest edition of its Circular C48, "Standard Method of Gas Testing", may be used.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-09. Meter prover. Each utility furnishing metered gas service shall maintain the equipment and facilities necessary for accurately testing all types and sizes of meters employed for the measurement of gas to its customers unless arrangements approved by the commission shall have been made to have such

testing done elsewhere. In general, each utility will be required, as a minimum, to provide and maintain a meter prover of approved type and of a capacity of not less than five cubic feet [141.58 liters] for the testing of the most numerous class of customers' meters. Each meter prover shall be supplied with all accessories needed for accurate meter testing and shall be located in a room suitable for the work to be done, protected from drafts and excessive changes of temperature. The utility shall maintain this equipment in good condition and correct adjustment so that it shall be capable of determining accuracy of any service meter to within one-half of one percent.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-10. Location of meters. No meter shall be installed in any location where it may be unnecessarily exposed to heat, cold, dampness, or other cause of damage or in any unduly dirty or inaccessible location. Where these conditions cannot be avoided, a location must be chosen that will least affect the meter's accuracy and condition.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-11. Service meters required.

1. All gas sold by a utility shall be charged for by meter measurements, except that which may be otherwise authorized by the commission.

2. Unless otherwise authorized by the commission, each utility shall provide and install at its own expense and shall continue to own, maintain, and operate all equipment necessary for the regulation and measurement of gas to its customers. Where additional meters are furnished by the utility to be used as submeters, or for the convenience of the customer, a charge for such meters may be made in accordance with a schedule approved by the commission.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-12. Prepayment meters. No utility shall use prepayment meters except in special cases or for clearly defined special classes of service authorized by the commission.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-13. Gas meter accuracy requirement.

1. **Installation test.** Every gas service meter, whether new or repaired, or that has been removed from the service for any cause, shall be in good

order and shall be correct to within two percent before being installed for the use of any customer. However, a utility which has less than one thousand customers and which has no facilities for opening meter cases and adjusting the mechanism may put a meter back into service, unless it is found to be in error by more than two percent or appears otherwise to be in poor condition.

2. **Method of testing.** For the purpose of determining compliance with this section, the registration of a displacement meter shall be determined by one test at a rate of flow of approximately one-fifth of the rated capacity of that meter and one test at a rate of flow of approximately the rated capacity of the meter. The tests at the two rates shall agree within two percent. The accuracy of the meter at the lower rate of flow shall be considered as its accuracy in determining compliance with subsection 1 and for the purpose of computing refunds. All tests to determine the accuracy of any gas service meter shall be made with a meter prover, unless, because of the unusual capacity or construction of the meter, such method of test shall be considered impracticable and another method of test shall have been approved by the commission.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-14. Periodic tests. All service meters shall be tested and adjusted at least once in every eight years, or in accordance with a plan approved by the commission.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-15. Requests and referee tests.

1. A gas service utility shall test the accuracy of any meter upon request of the customer, shall provide the customer with a report of the test results, and shall keep the complete original test record and a copy of the report on file in the utility's office.

2. A customer may request in writing to the commission that the utility's test be supervised by a commission representative.

3. The customer shall not be charged for the test provided the customer requests no more than one test each twelve-month period, otherwise the utility may charge a tariffed rate. The charge must be waived if the meter error is more than plus or minus two percent.

History: Amended effective July 1, 1997.
General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-16. Meter test records.

1. Each utility shall keep a record of meter tests for at least two years. The record shall show the identification of the meter, reading of the meter before the test, the results of the test, and accuracy after adjustment, if adjustment is made.

2. Each utility shall annually file with the commission a summary report of meter tests made during the year. This report shall show the number of meters tested, the number of meters found to be accurate within the allowable limits, the number of meters found to be fast, and the number of meters found to be slow.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-17. Deposits and guarantees.

1. Each gas utility may require each applicant for service to make a deposit not to exceed one and one-half times the estimated amount of one month's average bill. A receipt showing the amount of the deposit, the date the deposit was made, and the depositor's name shall be issued to each depositor. Each utility shall keep a deposit record showing the same information as shown on the depositor's receipt and shall provide a method of repayment in case the depositor's receipt has become lost or destroyed.

2. The utility shall pay interest on such deposit at the rate paid by the Bank of North Dakota on a six-month certificate of deposit. Such rate will be determined as of the first business day of each year, on a six-month certificate of deposit with the smallest deposit required. The interest may be paid to the depositor, or may be deducted from the depositor's indebtedness to the utility for gas service. The payment or deduction for interest must be made during each calendar year or whenever a deposit is refunded or service discontinued.

3. The utility may accept in lieu of a cash deposit a contract signed by a guarantor, satisfactory to the utility, whereby the payment of a specified sum not to exceed the required cash deposit is guaranteed. The term of such contract shall be indeterminate, but it shall automatically terminate when the customer gives notice of service discontinuance to the utility or a change in location covered by the guarantee agreement or thirty days after written request for termination is made to the utility by the guarantor. However, no agreement shall be terminated without the customer having made satisfactory settlement for any balance

which the customer owes the utility. Upon termination of a guarantee contract a new contract or a cash deposit may be required by the utility.

History: Amended effective April 1, 1985.
General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-18. Discontinuance of service. Superseded by section 69-09-01-18.1.

69-09-01-18.1. Discontinuance of gas service.

1. A utility may disconnect service if the customer is delinquent in payment for services rendered. However, no utility shall discontinue service to a customer for failure to pay for such service until the utility shall first have given the customer notice of its intention to discontinue such service on account of delinquency. The notice shall:

   a. Be sent by first-class mail addressed to the customer at the place where service is rendered, except that in the case of residential customers sixty-five years of age or older, or for handicapped customers, personal notice by delivery is required. A copy of each notice must also be mailed to the nearest social service office and to any other appropriate financial assistance agency, providing that prior approval has been given by the customer pursuant to subsection 2.

   b. Show the amount of the delinquency.

   c. Include the telephone number of the public service commission.

   d. Advise the customer of the customer's rights and remedies, including the right of the customer to stay termination for up to thirty days if the customer advises the utility within the ten-day notice period that dangerous health conditions exist or that the customer is sixty-five years of age or older or that the customer is handicapped. In addition, the notice shall advise the customer of the customer's right to work out a satisfactory deferred installment agreement for delinquent accounts and of the opportunity to enter into equal monthly payment plans for future service.

   e. Inform the customer that service will be discontinued if the delinquent account is not paid within ten calendar days from the date of mailing or personal delivery of the notice, or if a satisfactory installment agreement is not made with the utility for payment of the delinquent bill.

   If the customer elects to enter into a deferred installment agreement for delinquent accounts, service may not be terminated; however, the utility

may discontinue service without further notice if the customer fails to pay the delinquent account on or before the date specified in the notice, or in accordance with the deferred installment agreement. The customer shall have the privilege of paying the delinquent account at any time prior to the actual disconnection of service, and the person directed by the utility to make the disconnection shall be deemed authorized and shall accept payment of the delinquent account if tendered to the person by the customer before actual disconnection of service is made.

2. It shall be the responsibility of all residential customers sixty-five years of age or older, handicapped, or having an emergency medical problem in the household, including life-sustaining appliances, such as kidney dialysis, to notify the utility of such status. To assist in such notification, all utilities shall annually include a preaddressed postage-paid postcard in the monthly billing mailed to all residential customers during the billing period ending October first. Such notice shall also be provided to all new customers in that service area when they are first provided service by the utility.

   The postcard shall include the following questions:

	YES	NO
1. Is any member of your household 65 years of age or older, or handicapped?	___	___
2. Do you have any emergency medical problem in your household?	___	___
3. Do you desire that the area social service office or other appropriate financial assistance agency be notified in the event of a proposed disconnect?	___	___
4. Do you desire that some other third party be contacted in the event of a disconnect? If so, name and address of person _____ _____	___	___
5. If you are having difficulty paying your utility bill, please contact our local service representative or business office so that we can work with you on your problem. Utility Telephone Number _____ Office Address _____		

   Date _____ Name _____
   Address _____
   _____
   Signature

3. Service shall not be disconnected under this section on weekends, Fridays, state holidays, the day before a state holiday, or after twelve noon on any day. A report describing the total number of

actual disconnects, date and time, type of customer, and amount of delinquency for each disconnected customer shall be filed monthly with the commission within ten days after the last day of each month.

4. Whenever service has been disconnected for nonpayment of a bill, before reconnection is made the customer shall pay the reconnection fee established in the utility's rate schedules; make a deposit pursuant to section 69-09-02-04 if all or a part of the previous deposit was used in settlement of the delinquent bill; and make a satisfactory settlement for the delinquent bill and for service rendered between the last meter reading date and the date service was disconnected.

5. In the event the customer disputes the amount of a bill for service, the customer may, to prevent disconnection for nonpayment, pay the disputed bill under protest to the utility. Alternatively, the customer may request a formal hearing pursuant to section 69-02-02-02 in which case the utility shall not disconnect service for nonpayment of the disputed bill until a final decision has been issued by the commission. The utility shall immediately give the commission notice of the dispute and the commission may investigate the dispute. The utility shall refund to the customer any part of such payment made under protest found by the commission to be excessive.

6. A utility may not disconnect service to a customer for failure of the customer to pay for merchandise purchased from the utility; to pay for a different class of service furnished by the utility; to pay for service rendered to a previous occupant of the premises; or to pay the bill of another customer as guarantor thereof.

7. A utility may discontinue service to a customer for failure to comply with regulations of the utility on file with the commission pertaining to installation and operation of utilization equipment, or for use of equipment which interferes with, or adversely affects, the service to other customers, provided the customer has first been notified and afforded reasonable opportunity to change or disconnect such equipment.

8. A utility may discontinue service to a customer upon ten days' written notice if the meter or other equipment installed by the utility has been tampered with, or if there has been a diversion of service, or if the customer is utilizing gas before the energy has passed through a meter installed by the utility.

9. When a customer who has tenants is including the cost of utility services in the rent charged and the utility bill becomes delinquent, the utility before disconnecting service must also notify the tenants in writing at least ten days prior to the proposed termination date. The utility must allow each tenant to apply to become the customer of the utility in the tenant's own name, to have the service to the rental

facility continued or resumed, and to pay the pro rata share of future bills. Such tenant-customer shall be subject to all the provisions of this chapter.

10. A utility may not discontinue service to a customer for nonpayment of a deposit.

History: Effective October 1, 1980; amended effective May 1, 1996; July 1, 1997; April 1, 2001; January 1, 2002.
General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-19. Extensions of service.

1. The utility shall make all extensions to its mains and services where the investment is justified by the anticipated revenue to be received.

2. In the event the utility does not believe that the extension is justified, the commission shall, when so requested by one or more prospective customers desiring such extension and upon proper hearing, determine whether or not such extension should be made, and shall determine the respective amounts that the prospective customer or customers and the utility shall pay.

3. When so requested by a prospective customer engaged in the operation of a licensed trailer court for month-to-month parking of mobile homes, the utility shall make extension to its mains and services, subject to the provisions of subsections 1 and 2, to provide natural gas service through a master meter installed in a location within the confines of the mobile trailer court. The trailer court operator shall have service facilities to individual trailer parking locations which the operator shall own and maintain constructed by competent and qualified persons, and shall arrange for inspection by and approval from a responsible inspector to assure that the service facilities from the meter location to the mobile home locations and gas service facilities and appliances to and within mobile homes to be served comply with piping and appliance ordinances or requirements of applicable rules and regulations of any authority vested with jurisdiction of the subject matter.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-20. Information to customers. A utility shall:

1. Keep copies of its rate schedules, rules, and regulations on file in every office where payments are received.

2. Send a statement to each customer containing a clear and concise explanation of the existing rate schedule, and any rate schedule applied for, that is applicable to that customer.

   a. The statement shall be sent:

      (1) Not later than sixty days after the date of commencement of service to the customer;

      (2) Not later than thirty days after filing an increase in a rate schedule applicable to such customer. This statement must include for each of the major classes of customers for which there is a separate rate, a summary analysis which shows the economic impact of the proposed rate change and rate design changes, if any, for an average customer within the class based upon an average annual consumption and a statement that the rates are proposed only and, if the rates are suspended by the commission, the new rates will not be effective until commission action has been taken; and

      (3) As required by the commission under 69-02-04-01.

   b. The statement must include notice to customers regarding the availability and location of the information required in subsection 1.

3. Include with each customer bill, at least once each year:

   a. A clear and concise summary of the existing rate schedules applicable to each of the major classes of customers for which there is a separate rate;

   b. An identification of any classes whose rates are not summarized; and

   c. A notice calling the attention of the customer to the availability of alternative rate schedules for the customer's particular class of service and that, upon request, the utility will assist the customer in determining the billing for load conditions specified by the customer under various rate schedules. The customer, after selecting a particular rate schedule, shall take service under the rate schedule for a period of not less than twelve months, unless the rates are changed or there is a material change in the customer's load.

4. Send each customer upon request, without charge, a clear and concise statement of the actual consumption and cost of energy by the customer for each billing period during the prior year, unless the consumption and cost data is not reasonably ascertainable by the utility.

5. Provide, upon request, information and assistance to the extent reasonably possible so that customers may secure safe and efficient service. A utility must inform each customer of any change made or proposed to be made in any condition of service that would affect the efficiency of the service or the operation of appliances which may be in use by the customer.

6. File with the commission a sample copy of the statement format required by subsections 2 and 4 and a copy of the summary and notice required by subsection 3. Any format changes in statements or notices under this section must be filed immediately with the commission.

History: Amended effective April 1, 2001.
General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-21. Billing basis.

1. Bills for service will be rendered monthly unless service rendered covers a period less than a calendar month, or the customer requests and the utility consents to a more frequent billing. The term "month" for billing purposes will mean the period between any two consecutive readings of the meter by the utility, such readings to be taken as nearly as practicable every thirty days. No customer will be billed more than twelve times a year unless the rate applicable to the particular case specifically provides for exceptions to the monthly basis, or unless a more frequent billing has been agreed upon as specified in this subsection. This will not prohibit the utility from accepting periodic payments during the month.

2. The difference between the gross and net bills constitutes a discount for prompt payment. All customers will be billed each month at gross rates except where schedules provide otherwise. Discounts will be applicable in accordance with the terms of the rate schedule.

3. When one or more consecutive meter readings are missed, the utility may bill the customer on an estimated consumption and the difference adjusted when the meter is again read. The basis for this estimate shall be the normal consumption for corresponding periods in the preceding year or normal consumptions of preceding months. At the first reading subsequent to the nonreading the bill will be computed by multiplying blocks of the rate by the number of months for which the meter reading covers, then compute the bill in accordance with the applicable rate adjusted in accordance with the foregoing provisions. Any minimum bills paid in the period for which the meter reading covers shall be credited to the total amount of the bill.

4. When a meter is overread by an amount that exceeds the following month's consumption, the correct consumption shall be ascertained for

the two months, and the bill computed according to the provisions of subsection 3.

5. The utility shall provide each customer with proper metering equipment to indicate the correct reading to constitute a basis for monthly charges for service in accordance with the applicable rate schedule.

6. A customer may not have the customer's meter readings of more than one meter cumulative except where the utility has for its own convenience installed more than one meter for one class of service, and in such case the meter readings will be cumulated when billed.

7. Each customer will be billed separately on the customer's individual meter reading at the rate applicable to the particular class of service.

8. A customer is defined to include any person, firm, or corporation receiving service of one or more classes, and metered by one or more meters.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-22. Meter readings on bills. Bills rendered periodically to consumers for metered service shall show the readings of the meter at the beginning and end of the period for which the bills are rendered and the dates of the meter readings. On all bills which are computed on any other basis than a definite charge per unit of service, the other factors used in computing the bill shall be clearly stated so that the amount may be readily computed from the information appearing on the bill.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-23. Adjustment of bills for meter error. If on testing of any service meter, either by the utility or by the commission, such meter shall be found to have a percentage of error greater than that allowed by the commission, the following provisions for the adjustment of bills shall be observed:

1. **Fast meters.** When a meter is found to be fast in excess of two percent in tests made at the request of the consumer, the utility shall refund to the customer an amount equal to the excess charged for the gas incorrectly metered. The period over which the correction is to be made shall be one-half of the time elapsed since the last previous test. The period shall not exceed six months. No part of a minimum service charge shall be refunded.

2. **Slow meters.** When a meter is found to be slow in excess of two percent in tests made at the request of the consumer, the utility may make a charge to the consumer for the gas incorrectly metered. The

period over which the correction is to be made shall be one-half of the time elapsed since the last previous test. The period shall not exceed six months. If a meter is found not to register for any period, the utility shall estimate the charge for the gas under similar conditions, preceding or subsequent thereto, or overused by averaging the amounts registered over similar and corresponding periods in previous years. Such action shall be taken only in cases of substantial importance where the utility is not at fault allowing the incorrect meter to be in service.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-24. Refunds. No application for refunds of any payments to a utility claimed to be in excess of the rules, regulations, schedules, rates, or tariffs shall be made to the commission after the expiration of six years from the date of payment.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-25. Resale. Gas service furnished on standard rates or contracts furnished by a public utility shall not be resold or caused to be resold by any customer unless the customer is engaged in the business of distributing gas and has a contract to this effect approved by the commission, and has a certificate of public convenience and necessity granted by the commission.

General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-26. Filing of rates.

1. Each utility shall file with the commission its scheduled rates, rules, regulations, and practices in accordance with the statutory requirements.

2. Each rate filing shall stipulate the classification of service and application thereto, date effective, and the particular rate to be superseded. The filing shall be accompanied by a statement showing the reasons for making the filing and the estimated amount of annual revenue affected, based upon the previous year's business.

General Authority: NDCC 28-32-02
Law Implemented: NDCC 49-02-03

69-09-01-27. Rate applications. Where more than one schedule of rates has been approved by the commission for the same class of service, it shall be the duty of the utility to advise the customer at the beginning of service of the rates and schedules which are available and typical bills for representative consumptions. Upon application by the customer, the utility shall make comparisons on the basis

of past billings of the two rates to show which rate is the most advantageous to the customer. The customer upon selecting a rate after a trial period shall be required to remain on the selected rate for a period of not less than twelve months or unless that rate is sooner superseded.

General Authority: NDCC 28-32-02
Law Implemented: NDCC 49-02-03

69-09-01-28. Filing of additional rules. Each utility shall have the right to file additional rules and regulations or terms and conditions of service applicable to the service given by the utility. The additional rules and regulations or terms and conditions are to be subject to approval by the commission in the manner provided by law.

General Authority: NDCC 28-32-02
Law Implemented: NDCC 49-02-03

69-09-01-29. Advertising by gas utilities.

1. Definitions. For purposes of this section:

   a. "Advertising" means the commercial use, by a gas utility, of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to the utility's gas customers.

   b. "Institutional advertising" means advertising which has as its primary objective the enhancement or preservation of the corporate image of the utility and to present it in a favorable light to the general public and investors.

   c. "Political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

   d. "Promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of a gas utility or the selection or installation of any appliance or equipment designed to use the utility's service.

   e. "Institutional advertising", "political advertising", and "promotional advertising" do not include:

      (1) Advertising which informs gas customers how they can conserve energy or can reduce peak demand for gas energy.

      (2) Advertising required by law or regulations.

(3) Advertising relating to service interruptions, safety measures, or emergency conditions.

(4) Advertising concerning employment opportunities with a gas utility.

(5) Advertising which promotes the conservation of limited resources, the use of more plentiful resources, or the use of energy efficient appliances, equipment, or services.

(6) Any explanation or justification of existing or proposed rate schedules, or notifications of hearings thereon.

(7) Advertising determined by the commission to benefit customers and serve the public interest.

2. Any expenditure by the utility for institutional, promotional, or political advertising shall be excluded from operating expenses in the cost of service determination for ratemaking purposes.

3. Advertising expenditures which are reasonable in amount and which are not excluded by the provisions of this section may be included as operating expenses in the cost of service determination for ratemaking purposes.

History: Effective October 1, 1980.
General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

69-09-01-30. Automatic adjustment clauses.

1. As used in this section, the term "automatic adjustment clause" means a tariff provision that provides for increases or decreases, or both, without prior hearing, in rates reflecting increases or decreases, or both, in gas supply costs incurred by a natural gas utility.

2. An automatic adjustment clause that does not conform to principles set out in this section may not be in the public interest. This section contemplates that the filing of a proposed tariff which includes a nonconforming automatic adjustment clause may result in suspension of all or part of the tariff.

3. The automatic adjustment clause must be in a form that provides for periodic adjustments per unit of sales equal to the difference between gas supply costs per unit of sales included in base rate schedules and gas supply unit of sales projected for the adjustment period.

4. Gas supply costs included under the adjustment clause must be set forth tariff approved by the commission.

5. The utility shall maintain a balancing account in which the difference between the actual gas supply cost and the amount collected through the adjustment clause is recorded. The balancing account must accrue interest monthly at a rate equal to the three-month treasury bill rate as published monthly by the federal reserve board.

6. An automatic adjustment clause must include a balancing surcharge, which must be recalculated at least annually. The amount of the surcharge must equal the amount in the balancing account at the time of the proposed change that results from the recalculation divided by projected weather normalized sales volumes for the following twelve months.

7. Notice of change in the adjustment must be filed with the commission prior to billing. The notice must include:

   a. Workpapers calculating the adjustment;

   b. Copies of applicable pipeline tariffs and an explanation of regulatory approval status;

   c. A history of the balancing account since the last surcharge update; and

   d. To the extent possible, an explanation of market and other factors causing the change.

8. If a current price is in litigation or otherwise being collected subject to refund the utility shall so advise the commission, inform the commission of the final outcome, and record the outcome in the balancing account.

9. If a particular circumstance prevents the use of a standard provided in this section, or its use would result in an undue burden, the commission may permit deviation from the standard.

10. The commission may review an automatic adjustment clause at any time to ensure the maximum economies in those operations and purchases which affect the rates to which the clause applies. The commission's review may include an evidentiary hearing. In making its review, the commission may examine and, if appropriate, cause to be audited, the practices of a utility relating to costs subject to an automatic adjustment clause, and may require any filings and reports that may be necessary to carry out the review, including volumes, prices, and contracts for each supply source and a disclosure of any affiliation between the utility and the seller of natural gas or other items to the utility.

11. Each utility shall cause an independent audit of its automatic adjustment clause to be performed annually. A copy of the auditor's report must be filed annually with the commission.

History: Effective February 1, 1995; amended effective July 1, 1997.
General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

CHAPTER 69-09-03
GAS PIPELINE SAFETY

Section
69-09-03-01 Safety
69-09-03-02 Adoption of Regulations

69-09-03-01. Safety. Gas pipeline facilities used for the intrastate distribution and transmission of gas shall be designed, constructed, and operated to meet the safety standards set forth in regulations of the United States department of transportation adopted in section 69-09-03-02. The commission may require such proof of compliance as it deems necessary.

History: Amended effective July 1, 1986; January 1, 1988.
General Authority: NDCC 28-32-02, 49-02-04
Law Implemented: NDCC 49-02-01.2, 49-02-04

69-09-03-02. Adoption of regulations. The following parts of title 49, Code of Federal Regulations in effect as of October 1, 2005, are adopted by reference:

1. Part 190 - Department of Transportation Pipeline Safety Enforcement Procedures.
2. Part 191 - Department of Transportation Regulations for Transportation of Natural Gas by Pipeline; Reports of Leaks.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Safety Standards.
4. Part 199 - Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquids Pipelines.

Copies of these regulations may be obtained from:

Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002; November 1, 2003; May 1, 2005; July 1, 2006.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 49-02-01.2

CHAPTER 69-09-05
STANDARDS OF SERVICE - TELEPHONE

Section	
69-09-05-00.1	Definitions
69-09-05-01	Lowest Priced Service Alternatives
69-09-05-02	Discontinuance of Telecommunications Services
69-09-05-02.1	Determination of Delinquency
69-09-05-03	Deposits and Guarantees
69-09-05-04	Rules for Resale of Telecommunications Services
69-09-05-04.1	Identification of IntraLATA Interexchange Carriers
69-09-05-04.2	Unauthorized Service Changes
69-09-05-05	Rules for the Provision of Operator Services
69-09-05-06	Rules for Pay Telephones [Repealed]
69-09-05-07	Customer Trouble Reports
69-09-05-08	Adoption of Regulations
69-09-05-09	911 and E-911 Service
69-09-05-10	Registration - Procedure
69-09-05-11	Certificate of Public Convenience and Necessity for Incumbent Local Telecommunications Company - Procedure
69-09-05-12	Eligible Carrier Applications and Advertising
69-09-05-13	Essential Service Provider Bills
69-09-05-14	Procedure for Filing Negotiated Interconnection Agreements

69-09-05-00.1. Definitions.

1. "Competitive local exchange company" means any telecommunications company providing local exchange service, other than an incumbent local exchange carrier, whether by its own facilities, interconnection, or resale.

2. "Eligible telecommunications carrier" means a telecommunications company designated under section 214(e) of the Telecommunications Act of 1996 as eligible to receive universal service support in accordance with section 254 of the Telecommunications Act of 1996.

3. "End user" means a person who uses telecommunications service for the person's own use.

4. "Incumbent local exchange company" means a telecommunications company that meets the definition of section 251(h) of the Telecommunications Act of 1996.

5. "Lifeline service" means a retail local telecommunications offering for which qualifying low-income consumers pay reduced recurring charges for universal service.

6. "Link-up service" means a reduction in the carrier's customary charge for commencing telecommunications service for a single telecommunications connection at a consumer's principal place of residence.

7. "Local exchange company" means an incumbent or competitive local exchange company.

8. "Telecommunications Act of 1996" means the Telecommunications Act of 1996 [Pub. L. 104-104; 110 Stat. 56; 47 U.S.C. 151 et seq.].

History: Effective January 1, 2001.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.7

69-09-05-01. Lowest priced service alternatives. Upon request of a residential customer or prospective customer for service, the utility shall ask if such customer wishes to be informed of the lowest priced service alternatives available from the utility, and upon an affirmative response shall inform such customer of the lowest priced service alternatives available from the utility at the customer's location, giving full consideration to grades of service, equipment options, and installation charges incident thereto. The lowest priced service alternative includes service under the lifeline and link-up plans.

History: Amended effective January 1, 2001.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21-01.4, 49-21-01.7, 49-21-07

69-09-05-02. Discontinuance of telecommunications services. A utility may not discontinue telecommunications services, except as provided in this section.

1. A utility may discontinue the essential services it provides:

   a. If the customer is delinquent in payment for essential services, then essential services may be discontinued even though discontinuing the services results in the discontinuance of all telecommunications services.

   b. If the customer is delinquent in payment for long-distance services rendered by a local exchange company or another company and billed by the local exchange company, but is not delinquent in payment for essential services rendered by the local exchange company, the local exchange company may discontinue the customer's local exchange services only at central offices lacking the technical ability to discontinue long-distance services while continuing to provide local exchange services.

2. A utility may discontinue nonessential services:

a. If the customer is delinquent in payment for nonessential services.

b. If the customer is delinquent in payment for long-distance telecommunications services rendered by another company and billed by the local exchange company, then the local exchange company may deny the customer all forms of access to the network of the telecommunications company to which the customer is delinquent in payment. However, if due to technical limitations, a local exchange company must also deny the customer all forms of access to the long-distance networks of all telecommunications companies, including its own, in order to deny the customer access to the network of the company to which the customer is delinquent, the local exchange company may do so.

3. A utility may discontinue service to a customer for failure to comply with regulations of the utility on file with the commission pertaining to installation and use of equipment, or for use of equipment which interferes with or adversely affects the service to other customers, provided the customer has first been notified and afforded reasonable opportunity to change or disconnect such equipment.

4. A utility may not discontinue service to a customer for failure of the customer to pay for merchandise purchased from the utility, to pay for a different class of service furnished by the utility, to pay for service rendered to a previous occupant of the premises, or to pay the bill of another customer as guarantor thereof.

5. A utility may not discontinue service to a customer for failure to pay for service until the utility first gives the customer notice of its intention to discontinue such service on account of delinquency. The notice must:

a. Be sent by first-class mail addressed to the billing name and address of the affected account.

b. Show the amount of the delinquency.

c. Include the telephone number of the public service commission.

d. Advise the customer of the customer's rights and remedies, including the customer's right to work out a satisfactory deferred installment agreement for delinquent accounts.

e. Inform the customer that service will be discontinued if the delinquent account is not paid within ten calendar days from the date of mailing or personal delivery of the notice, or if a satisfactory installment agreement is not made with the utility for payment of the delinquent bill. The utility may discontinue service without further notice if the customer fails to pay the delinquent account by the due date.

6. a. A deferred installment agreement for essential services may not be combined with a deferred installment agreement for any other services.

   b. A utility may not discontinue essential services if the utility and the customer make a mutually agreed-upon deferred installment agreement for essential services. A utility may discontinue essential services without further notice if the customer fails to pay the delinquent account in accordance with the deferred installment agreement.

   c. A utility may not discontinue nonessential services if the utility and the customer make a mutually agreed-upon deferred installment agreement for nonessential services. A utility may discontinue nonessential services without further notice if the customer fails to pay the delinquent account in accordance with the deferred installment agreement.

7. The customer may pay the delinquent account at any time prior to the actual discontinuance of service.

8. Whenever service has been discontinued for nonpayment of a bill, service must be resumed if the customer:

   a. Pays the fee for resuming service established in the utility's rate schedules;

   b. Makes a deposit under section 69-09-05-03 (if required by the company); and

   c. Makes a satisfactory settlement for the delinquent bill and for the service rendered to the date the service was discontinued.

   Interexchange carriers are not required to resume long-distance service if local service is not connected.

9. If the customer disputes the amount of a bill for service, the customer may, to prevent discontinuance for nonpayment, pay the disputed bill under protest to the utility. Alternatively, the customer may request a formal hearing pursuant to section 69-02-02-02 in which case the utility may not discontinue service for nonpayment of the disputed bill until a final decision has been issued by the commission. The utility shall immediately give the commission notice of the dispute and the commission may investigate the dispute. The utility shall refund to the customer any part of such payment made under protest found by the commission to be excessive.

10. The commission may order the discontinuance of services where a reseller or operator services provider violates commission rules.

The commission will provide ten days' notice of a deficiency or violation and provide an opportunity for the noncomplying reseller or operator services provider to respond or correct the deficiency. A reseller or operator services provider disputing the alleged violation or discontinuance may request a formal hearing under section 69-02-02-02, in which case the discontinuance will be stayed until final decision by the commission.

11. a. Except for discontinuance due to delinquency, a competitive local exchange company may not discontinue service to a customer without first providing the customer with twenty days' written notice of the intent to discontinue service. The notice of intent to discontinue service shall inform the customer of its right to choose between local exchange companies, if more than one local exchange company is providing essential services.

    b. A telecommunications company may not interfere with a competitive local exchange company's obligation to provide notice to a customer; provided that a telecommunications company may disconnect service to a competitive local exchange company under the terms of a resale or interconnection agreement so long as the interconnection agreement is consistent with law and rules.

12. Except in the case of discontinuance for nonpayment, if a telecommunications company providing interexchange service intends to discontinue service or is forced to discontinue service due to abandonment, acquisition, bankruptcy, or for other reasons, the company must provide reasonable advance notice of the discontinuance to each customer. The notice must inform the customer that the customer must choose another primary interexchange carrier or use an alternative service.

History: Effective April 1, 1985; amended effective January 1, 1993; May 1, 1996; July 1, 1997, amendments voided by the Administrative Rules Committee, effective August 16, 1997; January 1, 2001; July 1, 2006.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.4, 49-21-01.7, 49-21-07

69-09-05-02.1. Determination of delinquency. For the purpose of discontinuing or resuming telecommunications service:

1. If a customer's partial payment on outstanding charges for telecommunications services excluding payments on a deferred installment agreement is less than the outstanding charges for essential services and federal access charges, the customer is delinquent in payment for essential services.

2. If a customer's partial payment on outstanding charges for telecommunications services excluding payments on a deferred

installment agreement is equal to or greater than the outstanding charges for essential services and federal access charges, the customer is not delinquent in payment for essential services.

History: Effective January 1, 1993.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.4, 49-21-01.7, 49-21-07

69-09-05-03. Deposits and guarantees.

1. Each telephone utility subject to the public service commission's jurisdiction may require each applicant for service to make a deposit not to exceed two times the estimated amount of one month's average bill. The utility shall each year pay interest on such deposit at the rate paid by the Bank of North Dakota on a six-month certificate of deposit. Such rate will be determined as of the first business day of each year on a six-month certificate of deposit with the smallest deposit required. The interest may be paid to the depositor or may be deducted from the depositor's indebtedness to the utility for telephone service. The payment or deduction for interest must be made during each calendar year, or whenever a deposit is refunded or service discontinued. The utility may accept in lieu of a cash deposit a contract signed by a guarantor, satisfactory to the utility, whereby the payment of a specified sum not to exceed the required cash deposit is guaranteed. The term of such contract must be indeterminate, but it must automatically terminate when the customer gives notice of service discontinuance to the utility or a change in location covered by the guarantee agreement or thirty days after written request for termination is made to the utility by the guarantor. However, no agreement may be terminated without the customer having made satisfactory settlement for any balance which the customer owes the utility. Upon termination of a guarantee contract, a new contract or a cash deposit may be required by the utility.

2. An eligible telecommunications carrier may not collect a service deposit in order to initiate lifeline service, if the qualifying low-income consumer voluntarily elects toll blocking from the carrier, where available. If toll blocking is unavailable, the carrier may charge a service deposit.

History: Effective April 1, 1985; amended effective August 1, 1994; January 1, 2001.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.4, 49-21-01.7, 49-21-07

69-09-05-04. Rules for resale of telecommunications services.

1. Definitions.

a. "Premise cable" means telecommunications cable or channels on the reseller's side of the point of connection to the local exchange company (demarcation point).

b. "Prepayment" means payments made by customers of a reseller in advance of receiving service. Prepayment includes a deposit and any customer payment for telecommunications service in advance of receiving the full amount of service for which payment is made.

c. "Resale" means the subscription to local or long-distance telecommunications services and facilities by one entity, and reoffered for profit or with markup to others with or without enhancements. Where reoffered service is part of a package, and the package is offered for profit or markup, it is resale.

d. "Reseller" means a person reselling local or long-distance telecommunications services. The definition does not include pay telephone providers, but does include a cellular and personal communication service provider who resells cellular or other wireless service.

e. "Same continuous property" is contiguous real estate owned by the same individual, group of individuals, or other legal entity having title to the property. The property may be traversed by streets, ditches, or other similar manmade or natural terrain features provided that, but for terrain features, the property would be contiguous and provided that such terrain features are of a nature and dimension that it is reasonable to treat the property as contiguous.

f. "Shared tenant service provider" means a person reselling telecommunications services to the tenants of a building complex on the same continuous property or to parties with a community of interest.

2. A reseller may not operate in North Dakota except in compliance with applicable laws and rules. A reseller shall:

a. Register with the commission, on a form provided by the commission, indicating the provision of local resale or long-distance resale services in the state of North Dakota.

b. If a reseller requires prepayment for service, it shall:

(1) Submit a performance bond in an amount specified by the commission; or

(2) Establish an escrow account in a North Dakota bank containing an amount equal to the prepayments collected

at any given time, and file monthly reports showing escrow account activities and call completion data.

(3) Under subsection 7 of North Dakota Century Code section 49-03.7-09 the bonding requirement does not apply to a facility-based company providing commercial mobile radio service, as defined in title 47, Code of Federal Regulations, part 20, section 20.3.

(4) The requirements of paragraphs 1 and 2 are subject to a twenty-five thousand dollar minimum for resellers of local service other than by means of a prepaid calling card. The required amount of a performance bond is the product of the estimated level of customers after three years of operation, times the amount of required customer prepayments, or twenty-five thousand dollars, whichever is greater. The required amount of an escrow account is an amount equal to the prepayments at any given time but no less than twenty-five thousand dollars.

(5) The requirements of paragraphs 1 and 2 are subject to a two thousand five hundred dollar minimum for resellers of any service other than the local service subject to paragraph 4. The amount of a performance bond is the product of the estimated level of customers after three years of operation, times the amount of required customer prepayments, or two thousand five hundred dollars, whichever is greater. The amount of an escrow account is an amount equal to the prepayments, including prepaid calling cards, at any given time.

3. A reseller may not be identified as an optional intrastate interexchange carrier unless it is registered with the commission.

4. Except for residents of dormitories or residence halls of schools, colleges, or universities, the end user has the unrestricted right to choose service from the incumbent local exchange company.

5. A shared tenant service provider shall allow the tenant to use the shared tenant service provider's premise cable and wire in the event an end user wants to receive service from the local exchange company.

6. The reseller is responsible for the charges incurred for telecommunications services to which it subscribes for serving its end users.

7. A reseller is subject to revocation of its authority and the penalties provided in North Dakota Century Code chapters 49-03.1 and 49-07 for violation of any applicable law or rule.

History: Effective March 1, 1989; amended effective August 1, 1991; December 1, 1993; February 1, 1995; July 1, 1997; January 1, 2001; July 1, 2006.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7, 49-21-07

69-09-05-04.1. Identification of intraLATA interexchange carriers.

1. A local exchange carrier shall not identify a telecommunications company as an optional intrastate interexchange carrier unless the telecommunications company provides the local exchange company with evidence of an effective registration authorizing the provision of intrastate interexchange service.

2. A telecommunications company shall immediately notify in writing all local exchange companies for which it has requested identification as an optional intrastate interexchange carrier if the telecommunications company's authority to provide interexchange service is revoked or abandoned. A local exchange company shall cease to identify a telecommunications company as an optional intrastate interexchange carrier upon receipt of a written notice that the telecommunications company's authority to provide interexchange service has been revoked or abandoned.

History: Effective February 1, 1995; amended effective January 1, 2001; July 1, 2006.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21

69-09-05-04.2. Unauthorized service changes. A telecommunications company may not change a customer's local or long-distance carrier without authorization from the customer.

History: Effective July 1, 1997.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.7, 49-21-02.4, 49-21-07

69-09-05-05. Rules for the provision of operator services.

1. Definitions.

   a. "End user" means the person to whom operator service is provided.

   b. "Operator service" means service provided to assist in the completion or billing of telephone calls through the use of a live operator or automated equipment. "Operator service" does not

include completion of calls through an 800 number or an access code when billed to an account previously established with the carrier by the end user, or the automated operator services provided by pay telephone sets with built-in automated operator messages.

c. "Operator service provider" means the person providing operator service.

2. Operator service providers shall:

a. Register with the commission authorizing the provision of operator services in the state of North Dakota.

b. Provide written material for use in disclosing to the end user the name and toll-free telephone number of the operator service provider. This material must be provided to all coin telephone operators, motels, hospitals, and any other locations where end users may use telephone service not billable to their home or business telephones without operator service.

c. Require operators to clearly identify the operator service provider to all end users and when requested, provide rate information.

d. Provide emergency call service that is equal to that provided by the local exchange telephone company and, if unable to meet this requirement, provide emergency call service by immediate transfer of such calls to the local exchange company.

e. For billing purposes, itemize, identify, and rate calls from the point of origination to the point of termination. No call may be transferred to another carrier by an operator service provider which cannot or will not complete the call, unless the call can be billed in accordance with this subsection.

f. Not charge for incompleted calls.

g. Disclose their names on bills which include charges for services they provided.

History: Effective March 1, 1989; amended effective August 1, 1991; May 1, 1996; January 1, 2001; July 1, 2006.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7, 49-21-07

69-09-05-06. Rules for pay telephones. Repealed effective August 1, 1994.

69-09-05-07. Customer trouble reports. When a customer's service is found to be out of order or a customer reports trouble, the local exchange telecommunications company shall test its facilities to determine if the problem is with the local exchange company's facilities. If it is, the local exchange company shall correct the trouble promptly. There may be no charge to the customer to test to determine if the problem is on the local exchange company's facilities or to correct a problem on the local exchange company's facilities. A local exchange company shall inform a customer in advance what charges will be assessed to identify or correct a problem located on the customer's facilities.

History: Effective August 1, 1991; amended effective January 1, 2001.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 49-21, 49-21-01.7

69-09-05-08. Adoption of regulations. The following parts of title 47, Code of Federal Regulations in effect as of July 17, 1997, are adopted by reference:

Part 54 - Universal Service, Subpart F - Universal Service Support for Schools and Libraries.

Copies of these regulations may be obtained from:

Public Service Commission
State Capitol
Bismarck, North Dakota 58505-0480

History: Effective March 1, 1998.
General Authority: NDCC 28-32-02, 49-02-01
Law Implemented: NDCC 49-21

69-09-05-09. 911 and E-911 service. Each competitive local exchange company shall provide 911 or E-911 service that is comparable to the 911 or E-911 service provided by the incumbent local exchange company operating in each respective service area in which the competitive local exchange company offers service.

History: Effective January 1, 2001.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.7, 49-21-07, 49-21-24

69-09-05-10. Registration - Procedure.

1. A reseller or competitive facilities-based provider desiring authority to provide service in North Dakota shall register on a form provided by the commission. The registration shall include identification of the applicant's authority to do business in North Dakota.

2. A reseller shall follow the procedure set forth in section 69-09-05-04.

3. When a registered company intends to assign its authority to provide telecommunications service in North Dakota to another entity, the assignee must first register with the commission.

4. A registered company may voluntarily, without commission approval, surrender its authority by notifying the commission in writing and updating its registration to reflect this surrender.

5. A competitive local exchange company intending to surrender its authority to provide local exchange service must provide twenty days' prior written notice to the company's customers.

History: Effective January 1, 2001; amended effective July 1, 2006.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21

69-09-05-11. Certificate of public convenience and necessity for incumbent local telecommunications company - Procedure.

1. An applicant for a certificate of public convenience and necessity as an incumbent local exchange company shall file an application with the commission which includes evidence of the applicant's authority to do business in North Dakota, conforms to the commission's rules of practice and procedure under article 69-02, and which identifies:

   a. The type of service the applicant intends to provide.

   b. The service area or areas in which the applicant intends to provide service.

   c. How the applicant meets the issues to be considered in the application.

2. An applicant for a certificate of public convenience and necessity must also file consolidated financial statements for the most recent year available, including:

   a. A balance sheet of the form and style usually followed in the industry.

   b. An income statement of the form and style usually followed in the industry.

   c. If available, an independent accountant's financial opinion.

   d. Any other information requested by the commission.

3. In order to implement North Dakota Century Code chapter 49-03.1 consistent with the Telecommunications Act of 1996, issues to be

considered in an application for a certificate of public convenience and necessity for a facilities-based provider of telecommunications services are:

a. Fitness and ability of the applicant to provide service.

b. Adequacy of the proposed service.

c. The technical, financial, and managerial ability of the applicant to provide service.

4. If the application is to be decided on a notice of opportunity for hearing, the applicant shall file affidavits sufficient to meet the applicant's burden of proof on the issues.

5. When the holder of a certificate of public convenience and necessity intends to assign the authority to provide telecommunications service in North Dakota to another entity, the assignee must first obtain a certificate of public convenience and necessity from the commission.

6. Abandonment of a certificate of public convenience and necessity for an incumbent local exchange company requires prior commission approval.

History: Effective January 1, 2001; amended effective July 1, 2006.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7(7)

69-09-05-12. Eligible carrier applications and advertising.

1. Eligible carrier applications:

a. A telecommunications company that desires designation as an eligible carrier as that term is defined in the Telecommunications Act of 1996 shall make application for such designation with the commission.

b. An application for designation as an eligible carrier must specifically identify:

(1) The applicant's service area;

(2) How the applicant meets the requirements for designation as an eligible carrier;

(3) Whether the applicant requires a waiver of any eligible carrier requirement; and

(4) If a waiver is required, the specific reasons for the waiver and the length of time for which the waiver is required.

2. Eligible carrier advertising. The following forms of advertising of the availability of universal service are required of an eligible carrier:

   a. A full description of available services in the eligible carrier's official telephone directory, including the process to be used by customers to qualify for lifeline and link-up service.

   b. Advertising of the availability of universal services in media of general circulation in each eligible carrier's service areas. Availability may be advertised in newspapers, company newsletters, company or civic internet sites, bill stuffers, direct mailings, or other means intended to convey availability throughout the service area.

History: Effective January 1, 2001.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.7, 49-21-07

69-09-05-13. Essential service provider bills. A provider of essential service, on any bill issued for the provision of essential services, shall:

1. Clearly disclose its name, business address, and a toll-free customer inquiry telephone number. The company name and business address must also be made available via the toll-free customer inquiry number;

2. Clearly and separately identify the essential services for which the bill is issued;

3. Clearly identify all taxes, fees, and surcharges associated with the essential services for which the bill is issued; and

4. Disclose that the provision of essential services may not be discontinued by the provider for nonpayment of charges for nonessential services or use other language that complies with federal billing rules.

History: Effective January 1, 2001.
General Authority: NDCC 28-32-02, 49-02-01.1, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.4, 49-21-01.7, 49-21-07

69-09-05-14. Procedure for filing negotiated interconnection agreements. Carrier-to-carrier interconnection agreements adopted by negotiation must be filed for commission approval under 47 U.S.C. section 252(e), following the procedure set out in this section.

1. The requirements of this section apply to interconnection agreements negotiated under 47 U.S.C. section 251; assignments, assumptions or transfers of interconnection agreements; amendments to interconnection agreements; and agreements for Qwest platform plus (QPP) services. The requirements of this section do not apply to commercial line sharing agreements.

2. Each filing must include a completed cover sheet in a form prescribed by the commission.

3. Filed interconnection agreements will be listed on the commission internet site for comment by interested parties. The internet listing will include the date each agreement was filed and links to the agreement itself.

4. The commission will accept written comments on a listed agreement for sixty days from the date filed.

5. Absent commission action within ninety days of filing to disapprove an agreement, or portion thereof, the agreement will be deemed approved under 47 U.S.C. section 252(e)(4).

6. Any assignment, assumption, or transfer of an approved interconnection agreement requires notification to be filed with the commission within thirty days after the assignment, assumption, or transfer occurs.

7. Any amendment to an interconnection agreement requires a new filing with a new ninety-day review and comment period.

History: Effective July 1, 2006.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.7

CHAPTER 69-09-08
RENEWABLE ELECTRICITY AND RECYCLED ENERGY TRACKING SYSTEM

Section	
69-09-08-01	Purpose, Application, and Effective Date
69-09-08-02	Definitions
69-09-08-03	Renewable Energy Certificates Tracking Program
69-09-08-04	Facilities Eligible for Participation in the Renewable Energy Certificates Tracking Program
69-09-08-05	Responsibilities of Program Administrator
69-09-08-06	Production and Transfer of Renewable Energy Certificates
69-09-08-07	Registration and Certification of Renewable Energy Facilities

69-09-08-01. Purpose, application, and effective date. This chapter establishes a program to include tracking, recording, and verifying the transactions associated with certificates and credits for electricity generated from renewable electricity sources as defined by North Dakota Century Code section 49-02-25 among electric generators, utilities, and other interested entities within this state and with similar entities in other states. This chapter applies to all public utilities, electric cooperatives, and municipal electric utilities. The tracking program will be effective as specified in the commission's order that designates a program administrator and implements these rules.

History: Effective July 1, 2006.
General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-02. Definitions. As used in this chapter:

1. "Designated representative" means a responsible individual authorized by the owner or operator of a renewable energy facility or purchaser of energy produced from a renewable resource to register that resource with the program administrator. The designated representative must have the authority to represent and legally bind the owner, operator, or purchaser in all matters pertaining to the renewable energy certificates tracking program.

2. "Existing facilities" means renewable energy facilities placed in service before January 1, 2001.

3. "New facilities" means renewable energy facilities placed in service on or after January 1, 2001.

4. "Program administrator" means the independent entity designated by commission order to carry out the administrative responsibilities related to the renewable energy certificates tracking program as set forth in this chapter.

5. "Renewable energy certificate" means a document recording one or more renewable energy credits that have been certified by the program administrator as representing electricity generated by a renewable energy facility registered with the tracking system or a certificate imported from a compatible certificates tracking system.

6. "Renewable energy certificate account" means an account maintained by the program administrator for the purpose of tracking renewable energy certificates.

7. "Renewable energy certificates tracking program" means the process of tracking renewable energy certificates as a means of meeting the requirements set forth in section 69-09-08-04.

8. "Renewable energy credit" means the intangible, generally perceived environmental benefits and attributes associated with generating one megawatt hour of renewable electricity or recycled energy that is physically metered and meets the requirements set forth in section 69-09-08-04.

9. "Renewable energy facility" means a facility generating electricity from one or more generating units that exclusively rely on an energy source or fuel included in North Dakota Century Code section 49-02-25.

History: Effective July 1, 2006.
General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-03. Renewable energy certificates tracking program. Renewable energy certificates may be recorded, transferred, and retired as set forth in this chapter. Except where specifically stated, the provisions of this section apply uniformly to all participants in the tracking program.

History: Effective July 1, 2006.
General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-04. Facilities eligible for participation in the renewable energy certificates tracking program. For a renewable energy facility to be eligible to participate in the tracking program, the facility must be either a new facility or existing facility as defined in section 69-09-08-02 and must also:

1. Register under section 69-09-08-07; and

2. Have output that is capable of being physically metered and verified by the program administrator. A renewable energy facility with more than one generating unit may be metered with a single meter.

History: Effective July 1, 2006.
General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-05. Responsibilities of program administrator. At a minimum, the program administrator shall perform the following functions:

1. Create accounts that track renewable energy certificates for each participant in the tracking program;

2. Award renewable energy certificates to registered renewable energy facilities based on verified meter reads;

3. Maintain public information on the program administrator's web site that provides tracking program information to interested buyers and sellers of renewable energy certificates;

4. Facilitate private trading of renewable energy certificates;

5. Verify the accuracy of metered production data and other information identified in the renewable energy certificate; and

6. Provide an annual report to the commission. Beginning in the year following commission designation of the program administrator, the program administrator shall submit a report to the commission on or before April fifteenth of each year. At a minimum, the report must contain the amount of registered existing and new generating capacity from a renewable energy facility installed in the state, in megawatts, by technology type, the owner or operator of each facility or the facility's certificates, the date each facility began to produce electricity, and the total number of renewable energy credits certified by the program administrator during each month of the reporting period.

History: Effective July 1, 2006.
General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-06. Production and transfer of renewable energy certificates. The program administrator shall administer a tracking program for renewable energy certificates in accordance with the requirements of this chapter.

1. The transfer of renewable energy certificates between parties is effective only when the transfer is recorded by the program administrator.

2. The program administrator shall require that renewable energy certificates be adequately identified prior to recording a transfer and shall issue a confirmation of the transaction to parties when the transfer is recorded.

3. The program administrator shall establish a procedure to ensure that the award, transfer, and retirement of certificates are accurately recorded.

History: Effective July 1, 2006.
General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-07. Registration and certification of renewable energy facilities. To be awarded renewable energy certificates, a designated representative must complete the registration process described in this section.

1. The designated representative shall register with the program administrator each renewable energy generation unit. At a minimum, the registration must include the location, owner, technology, rated capacity of the facility, and evidence that the facility meets the resource eligibility criteria in North Dakota Century Code section 49-02-25.

2. After verifying the information required in the registration process for renewable facilities, the program administrator shall create a renewable energy certificate account for the designated representative of the renewable energy resource.

3. The commission or its program administrator may make onsite visits to any registered unit of a renewable energy resource and may revoke the registration of any unit not in compliance with applicable law and rules.

4. A renewable energy facility may not be awarded renewable energy certificates under this program if it is not registered.

5. Any disputes will be resolved using dispute resolution procedures established by the commission or its program administrator.

History: Effective July 1, 2006.
General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

LEGISLATIVE COUNCIL

ADMINISTRATIVE RULES COMMITTEE

June 13, 2006

N.D. Admin. Code § 69-09-03 (Gas Pipeline Safety)
N.D. Admin. Code § 69-09-05 (Telecommunications)
N.D. Admin. Code § 69-09-08 (Siting and Electric)

Mr. Chairman and committee members, my name is Annette Bendish, I am a Public Utility Analyst with the Public Utilities Division of the Public Service Commission. Also here with me today are Patrick Fahn, Chief Engineer and Jerry Lein, Public Utility Analyst with the Public Utilities Division and Alan Moch, director of the Commission's Testing and Safety Division. We are here to respond to questions posed concerning four recent rulemaking proceedings.

Our responses to the questions posed to us by the Legislative Council's staff are presented below. In each case, the question is restated prior to our response. The rules in question involve natural gas pipeline safety, telecommunications, electric regulation and siting.

1. **Whether the rules resulted from statutory changes made by the Legislative Assembly.**

Gas Pipeline Safety	No
Telecommunications	Interconnection Rules – No Registration Rules – Yes – House Bill 1156
Siting	No
Electric	Yes – House Bill 1314

2. **Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.**

Gas Pipeline Safety Yes

The Gas Pipeline Safety Federal rules adopted by reference will amend and update the state gas pipeline safety regulations fulfilling one of the requirements of the federal/state gas pipeline safety agreement, and facilitating enforcement of those regulations at the state level.

Siting Yes

The proposed rules were not federally mandated, but will help to ensure that the Commission's siting authority for electric transmission lines is not pre-empted under section 216 of the federal Energy Policies Act of 2005.

Telecommunications No

Electric No

3. **A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.**

On November 17, 2005, the Commission issued a Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing. On November 22, 2005, the Commission issued an Amended Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing. The amended notice of the rulemakings was published in daily newspapers throughout the state as required by North Dakota Century Code Chapter 28-32. A public hearing was held at 1:00 p.m., CST, January 4, 2006, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. Comments were received until January 17, 2006.

4. **Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.**

Gas Pipeline Safety:
Other than staff testimony explaining the proposed rule changes, no comments or testimony were received before, at, or after the hearing. The rules were adopted as proposed.

Telecommunications:

Interconnection Rules

Commission staff testified that proposed new Section 69-09-05-14 of the North Dakota Administrative Code would add a requirement for filing an informational cover sheet and formalize the existing procedure for processing of negotiated interconnection agreements filed for Commission approval under 47 U.S.C section 252(e). The existing procedure is detailed on the Commission's web site and has been working well for several months. Under the existing procedure interconnection agreements are posted on the Commission's web page when filed. The Commission accepts written comments on interconnection agreements for 60 days. Absent Commission action within 90 days, the agreement is deemed approved under 47 U.S.C. section 252(e)(4).

Written comments on the proposed rules were received from a group of North Dakota wireless carriers (Wireless Partnerships). The Wireless Partnerships proposed a modification to exclude the assignment, assumption or transfer of agreements. They contended that Commission approval of the assignment or transfer of an interconnection agreement is not required or authorized under 47 U.S.C. section 252(e) or under North Dakota Century Code Section 49-21-01.7(9). They further contended that requiring such approval is unnecessary and an impediment to any transaction in which an interconnection agreement is assigned.

Staff did not object to eliminating the requirement for Commission approval of assumptions, assignments or transfer of previously approved interconnection agreements. Staff noted that this requirement has been Commission practice all along and believes there is value in maintaining the existing database of interconnection agreements and parties to them. Therefore, staff recommended modifying proposed new subsection 6 to require that a notification be filed with the Commission within 30 days after the assignment, assumption or transfer occurs. No other comments were received.

There were no objections to the staff proposal and the proposed interconnection rules were modified accordingly.

Registration Rules

Staff testified that the proposed changes to North Dakota Administrative Code Section 69-09-05-02 implement new North Dakota Century Code Section 49-03.1-09 which was designed to streamline the regulatory process for telecommunications companies that are not incumbent local exchange companies. Telecommunications companies that are not incumbent local exchange companies are no longer required to obtain a certificate of registration from the Commission. The companies now provide the required information via the internet and no Commission approval is required.

The proposed changes also clarify the definition of prepayment, and set forth the performance bond and escrow account requirements for resellers.

One written comment was received regarding these rules from the Rural Telephone Company Group, but that comment was directed at the need for an existing rule that was not proposed to be repealed. The comment noted no need for North Dakota Administrative Code Section 69-06-05-04.1, concerning the identification of intraLATA interexchange carriers. However, the proposed rule package only proposed a change to that section to delete any reference to certificates of public convenience and necessity or registration certificates, since under the new statutory scheme, certificates will not be granted to any company except incumbent companies. The changes proposed simply make this section consistent with the new law. The issue of the need for the section is not an issue

before the Commission at this time. The Rural Telephone Company Group may petition the Commission for a repeal of this section at any time.

One comment was received at the hearing from Alltel requesting that a definition be included in these rules for the term "facilities-based." Alltel offered to send a written suggestion for such a definition but, none was received. The Commission concluded that because the term "facilities-based" is used in the enabling legislation and has been used in the regulation of the industry for many years, no definition needed to be incorporated into the rules at this time. No other comments were been received.

Siting:
Subsection 69-06-08-01(4) of the North Dakota Administrative Code sets forth policy criteria for the siting of energy conversion facilities and 69-06-08-02(4) sets forth policy criteria for the siting of energy transmission facilities. Both sections provide that the Commission may require, or give preference to an applicant that will maximize benefits that result from, the policies and practices listed therein. The amendment being proposed is identical for both sections and states that the Commission may also give preference to an applicant that will maximize interstate benefits of proposed projects.

Commission staff testified that these amendments were proposed to clarify the Commission's ability to consider interstate benefits of energy conversion and transmission facilities when determining whether to issue siting permits. This clarification is necessary to help ensure that the Commission's siting authority will not be federally pre-empted under the federal Energy Policies Act of 2005. Section 216 of that act provides that the U.S. Department of Energy (Department) is to designate national interest electric transmission corridors and authorizes the Department to issue construction permits within those designated corridors if, among other things, the state does not have authority to approve the siting of facilities or to consider the interstate benefits expected to be achieved form the facilities. No other comments were received.

Electric:
Commission staff presented testimony regarding the creation of North Dakota Administrative Code Chapter 69-09-08 to establish rules for participation in a renewable energy tracking system.

House Bill 1314, now codified as North Dakota Century Code Sections 49-02-24 thru 49-02-26, authorizes that the Commission may, by rule, establish or participate in a program to track, record and verify the trading of credits for electricity generated from renewable and recycled heat sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states.

The proposed rules provide that the Commission may designate a tracking system administrator. The proposed rules set forth the responsibilities of the designated administrator and conditions under which the administrator would issue renewable energy certificates to certify renewable energy production by facilities registered in the program.

House Bill 1314 was enacted with recognition that a Midwest Renewable Energy Tracking System (M-RETS) is being developed in our region. The goal is for M-RETS to be operational by year-end 2006. Voluntary participation in M-RETS is expected to be substantial across several Midwestern states. It is expected that a new regional market will emerge for the trading of renewable energy certificates that can be used to demonstrate the "use of green power," regardless of whether physical delivery of renewable energy actually occurs. For example, Minnesota will require utilities to submit renewable energy certificates demonstrating commitment to a renewable energy objective that 10% of electricity used in Minnesota be from renewable sources by 2015. The proposed rules would enable Minnesota utilities to meet their Minnesota renewable energy objective with renewable energy certificates from North Dakota sources.

During the hearing, Montana-Dakota Utilities Co. recommended minor clarifying language changes and these are incorporated into the proposed rules. On January 17, 2006 Missouri River Energy Services (MRES) filed written comments recommending: 1) Master metering should be allowed for multiple generating units to make reporting requirements easier; and 2) The definition of a Renewable Energy Credit in subsection 69-09-08-02(8) should specify the amount of energy equal to a credit. The Commission agreed with MRES' recommendation for allowing master metering, and relevant language is incorporated into the proposed rules. The proposed rules already included a definition of renewable energy credit with the amount of energy set at one megawatt hour so MRES' recommendation to define the amount of energy equal to a credit was not necessary and no changes regarding that suggestion were made. No other comments were received.

5. **The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.**

Legal notices associated with this rulemaking proceeding cost $1,540.00. Other than staff time, no other significant costs were incurred.

6. **An explanation of the subject matter of the rules and the reasons for adopting those rules.**

Gas Pipeline Safety: The Gas Pipeline Safety Federal rules to be adopted by reference will amend the state pipeline safety regulations to: require gas operators to prepare and follow procedures for periodic inspections of pipeline

facilities located in the Gulf of Mexico and its inlets in waters less than 15 feet deep; codify new program requirements concerning personnel training, notice of program changes, government review and verification of programs, and use of on-the-job performance as a qualification method; amend the requirements for pipeline operators to develop and implement public awareness (also known as public education) programs; revise all references to the former Research and Special Programs Administration in 49 CFR parts 190 through 199 to reflect the creation of Pipeline and Hazardous Materials Safety Administration.

Telecommunications: Proposed changes to North Dakota Administrative Code Section 69-09-05-02 implement new North Dakota Century Code Section 49-03.1-09 which was designed to streamline the regulatory process for telecommunications companies that are not incumbent local exchange companies. The proposed changes also clarify the definition of prepayment, and set forth the performance bond and escrow account requirements for resellers.

New North Dakota Administrative Code Section 69-09-05-14 is being proposed for the purpose of formalizing existing Commission procedures for processing negotiated telecommunications carrier to carrier interconnection agreements filed for Commission approval under 47 U.S.C. Section 252(e).

Siting: Proposed changes to North Dakota Administrative Code Subsections 69-06-08-01(4) and 69-06-08-02(4) add to the policy criteria used in evaluating energy conversion and transmission facility siting applications an indication that the Commission may give preference to applicants that maximize the interstate benefits of proposed projects.

Electric: Proposed rules for establishing or participating in a program to track, record and verify the trading of credits for electricity generated from renewable electricity sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states as authorized and defined by newly-enacted North Dakota Century Code Sections 49-02-24 through 26.

7. **Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.**

A regulatory analysis was prepared for all of the proposed rules. The proposed rules are not expected to have an impact on the regulatory community in excess of $50,000.

8. **Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide a copy.**

Gas Pipeline Safety:	Yes; copy attached.
Telecommunications:	Yes; copy attached
Siting	Yes; copy attached
Electric	Yes; copy attached

9. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. Please provide a copy if one was prepared.

Gas Pipeline Safety:	Yes; copy attached.
Telecommunications:	Yes; copy attached
Siting	Yes; copy attached
Electric	Yes; copy attached

10. If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.

These rules were not adopted as emergency rules.

Mr. Chairman, that completes our testimony. We would be happy to respond to any questions that your committee might have.

State of North Dakota

Public service Commission

Public Service Commission
Gas Pipeline Safety
Rulemaking

Case No. GS-05-341

Regulatory Analysis and Takings Assessment

October 31, 2005

The 2005 Gas Pipeline Safety rule amendments, enacted by the federal government and adopted by reference into state administrative rule, consist of the following changes to the federal gas safety standards: *49 CFR Part 192 - Amendment No. 98* amends the pipeline safety regulations to require operators of gas and hazardous liquid pipelines to prepare and follow procedures for periodic inspections of pipeline facilities located in the Gulf of Mexico and its inlets in waters less than 15 feet deep. These inspections will inform the operator if the pipeline is exposed or a hazard to navigation. *49 CFR Part 192 - Amendment No. 99* codifies the new program requirements concerning personnel training, notice of program changes, government review and verification of programs, and use of on-the-job performance as a qualification method. *49 CFR Part 192 - Amendment No. 100* amends the requirements for pipeline operators to develop and implement public awareness (also known as public education) programs. The changes are part of PHMSA's Office of Pipeline Safety's (OPS) broad pipeline communications initiative to promote pipeline safety. Promoting pipeline safety requires enhanced communications (by pipeline operators) with the public to increase public awareness of pipeline operations and safety issues. The amendments for developing and implementing public awareness programs address the requirements of the Pipeline Safety Improvement Act (PSIA) of 2002 and incorporate by reference the guidelines provided in the American Petroleum Institute (API) Recommended Practice (RP) 1162, "Public Awareness Programs for Pipeline Operators." *49 CFR Part 190, 191, 192, and 199 – Re-organization Amendment* revises all references to the former Research and Special Programs Administration (RSPA) in 49 CFR parts 190 through 199 to reflect the creation of PHMSA. The USDOT's pipeline and hazardous materials safety programs were reorganized into the new Pipeline and Hazardous Materials Safety Administration (PHMSA).

All of the above proposed changes are not expected to have an impact on the regulated community in excess of fifty thousand dollars.

A Takings Assessment was considered with regard to the amendments offered during this rulemaking. None of the amendments have any affect on takings.

State of North Dakota

Public service Commission

Public Service Commission
Gas Pipeline Safety
Rulemaking

Case No. GS-05-341

Small Entity Regulatory Analysis

October 31, 2005

The 2005 Gas Pipeline Safety rule amendments, enacted by the federal government and adopted by reference into state administrative rule, consist of the following changes to the federal gas safety standards: amends the pipeline safety regulations to require operators of gas and hazardous liquid pipelines to prepare and follow procedures for periodic inspections of pipeline facilities located in the Gulf of Mexico and its inlets in waters less than 15 feet deep. These inspections will inform the operator if the pipeline is exposed or a hazard to navigation; codifies the new program requirements concerning personnel training, notice of program changes, government review and verification of programs, and use of on-the-job performance as a qualification method; amends the requirements for pipeline operators to develop and implement public awareness (also known as public education) programs. The changes are part of PHMSA's Office of Pipeline Safety's (OPS) broad pipeline communications initiative to promote pipeline safety. Promoting pipeline safety requires enhanced communications (by pipeline operators) with the public to increase public awareness of pipeline operations and safety issues. The amendments for developing and implementing public awareness programs address the requirements of the Pipeline Safety Improvement Act (PSIA) of 2002 and incorporate by reference the guidelines provided in the American Petroleum Institute (API) Recommended Practice (RP) 1162, "Public Awareness Programs for Pipeline Operators;" revises all references to the former Research and Special Programs Administration (RSPA) in 49 CFR parts 190 through 199 to reflect the creation of PHMSA. The USDOT's pipeline and hazardous materials safety programs were reorganized into the new Pipeline and Hazardous Materials Safety Administration (PHMSA).

This regulatory analysis is not required under Chapter 28-32-08.1, N.D.C.C. because the proposed amendments to existing rules are mandated by federal law.

State of North Dakota
Public Service Commission

Public Service Commission
Public Utilities – Telephone
Rulemaking

Case No. PU-05-575

Regulatory Analysis, Takings Assessment, and Small Entity Analysis

November 21, 2005

New North Dakota Administrative Code Section 69-09-05-14 is being proposed for the purpose of formalizing existing Commission procedures for processing negotiated telecommunications carrier to carrier interconnection agreements filed for Commission approval under 47 USC Section 252(e).

Regulatory Analysis

The proposed changes are not expected to have an impact on the regulated community in excess of fifty thousand dollars because they merely codify existing Commission practice and do not enact additional procedures beyond what the Commission currently does.

Takings Assessment

North Dakota Century Code Section 28-32-09(1) requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private property. The assessment must:

a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
b. Clearly and specifically identify the purpose of the proposed rule.
c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
e. Identify the source of payment within the agency's budget for any compensation that may be ordered.
f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

None of these proposed rule changes affect the use of private real property so they will not result in any taking.

The purpose of the proposed rule is to formalizing existing Commission procedures for processing negotiated telecommunications carrier to carrier interconnection agreements filed for Commission approval under 47 USC Section 252(e).

We do not expect any impact on private property owners as a result of the proposed rule changes.

We do not expect the proposed rules to constitute a taking; therefore, there should be no cost to the state.

Subsection e is not applicable because the proposed rule changes will not limit the use of private real property.

Subsection f is not applicable because the proposed rule changes will not limit the use of private real property.

Small Entity Regulatory Analysis

An economic impact analysis under North Dakota Century Code Section 28-32-08.1 requires a regulatory analysis which considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. Subsection 2 states that the agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:

a. Establishment of less stringent compliance or reporting requirements for small entities.
b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities.
c. Consolidation or simplification of compliance or reporting requirements for small entities.
d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule.
e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

No additional compliance standards or reporting requirements are proposed by the rule changes.

No additional performance standards are proposed by these rule changes.

Small entities will not be exempt from any part of the requirements contained in the proposed rule.

State of North Dakota
Public Service Commission

Public Service Commission
Public Utilities – Telephone
Rulemaking

Case No. PU-05-575

Regulatory Analysis, Takings Assessment, and Small Entity Analysis

November 25, 2005

Proposed changes to North Dakota Administrative Code Section 69-09-05-02 implement new North Dakota Century Code Section 49-03.1-09 which was designed to streamline the regulatory process for telecommunications companies that are not incumbent local exchange companies. The proposed changes also clarify the definition of prepayment, and set forth the performance bond and escrow account requirements for resellers.

The proposed changes impose no new or additional burdens on any regulated entity. The bond requirement is not new, and the minimum bond amounts are not new. The bond requirement is now described in the proposed rule, and the statutory exception for facilities based wireless companies is spelled out. The existing minimum bond amounts are now codified in the proposed rules.

The changes are needed because a statute enacted in 2005 substitutes a streamlined self registration process for the previous requirement to obtain a registration certificate (applicable to for resellers) or a certificate of public convenience and necessity (applicable to facilities based carriers).

Regulatory Analysis

The proposed changes are not expected to have an impact on the regulated community in excess of fifty thousand dollars because they lessen the regulatory burden on affected companies. There is no fee for registration.

Takings Assessment

North Dakota Century Code Section 28-32-09(1) requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private property. The assessment must:

a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
b. Clearly and specifically identify the purpose of the proposed rule.
c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
e. Identify the source of payment within the agency's budget for any compensation that may be ordered.

f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

None of these proposed rule changes affects the use of private real property so they will not result in any taking and therefore, there should be no cost to the state and no impact on private property owners.

Subsection e is not applicable because the proposed rule changes will not limit the use of private real property.

Subsection f is not applicable because the proposed rule changes will not limit the use of private real property.

Small Entity Regulatory Analysis

An economic impact analysis under North Dakota Century Code Section 28-32-08.1 requires a regulatory analysis which considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. Subsection 2 states that the agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:

a. Establishment of less stringent compliance or reporting requirements for small entities.
b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities.
c. Consolidation or simplification of compliance or reporting requirements for small entities.
d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule.
e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

The new registration statute establishes a minimal compliance regime. The process is easy, accessible, and free. There is no waiting period and very little required information. The rules simply implement this new streamlined process enacted by law. The rules themselves impose no new or additional reporting or compliance requirements. The new process and the rules implementing it should benefit small entities because they can register to provide telecommunications services more easily and with fewer burdens that ever before.

No additional performance standards are proposed by these rule changes.

Small entities will not be exempt from any part of the requirements contained in the proposed rule because the rules and the law implemented by them make registration easily accessible and affordable for small entities.

State of North Dakota
Public service Commission

Public Service Commission **Case No. PU-05-364**
Public Utilities
Rulemaking

Regulatory Analysis, Takings Assessment and Small Entities Analysis

November 21, 2005

2005 House Bill 1314, now codified as North Dakota Century Code Sections 49-02- 24 thru 26, authorizes that the Commission may by rule establish or participate in a program to track, record and verify the trading of credits for electricity generated from renewable and recycled heat sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states. The purpose of this rulemaking is to establish rules for participation in a renewable energy tracking system.

A tracking system administrator would issue renewable energy certificates to certify renewable energy production by facilities registered in the program. It is expected that a new regional market will emerge for trading of the certificates, which will be used to demonstrate the use of "green power." For example, Minnesota will require utilities to submit renewable energy certificates demonstrating commitment to an objective that 10% of electricity be from renewable sources by 2015.

North Dakota Century Code Section 28-32-08(2) sets forth the requirements of a regulatory analysis.

Subsection a states: "A description of the classes of persons who will likely be affected by the proposed rule, including classes that will bear the cost of the proposed rule and classes that will benefit from the proposed rule."

Analysis: The classes affected will be producers of renewable and recycled waste energy that choose to participate in the tracking program and their customers that purchase renewable energy certificates. Customers in North Dakota will not be required to purchase the certificates, but may if they wish to demonstrate use of such energy.

Subsection b states: "A description of the probable impact, including the economic impact of the proposed rule."

Analysis: Renewable energy certificates are expected to have monetary value, with some estimates now ranging around $2.00 per MWH. There is a Midwest Renewable Energy Tracking System (M-RETS) being developed in our region. Voluntary participation is expected to be substantial across several Midwestern states. M-RETS expects an initial annual operating budget of approximately $300,000 or less. M-RETS anticipates funding entirely from user fees, but has not yet determined a

rate structure. For this analysis it is assumed that the MRETS rate structure will be a flat fee paid by the producer for each MWH tracked:

Assume: Total initial generating capacity enrolled in program = 3,000 MW with an average generating capacity factor of 25%. (Generators produce at rated output an average of 25% of the time)

Then: Total annual MWH tracked would be:
3,000 MW *.25 * 365 days/year * 24 hours/day
= 6,570,000 MWH per year.

The resulting administrative cost to program participants would be:
$300,000/6,570,000=$0.0457 or 4.6 cents per MWH.

Subtracting these administrative costs from the expected value of the renewable energy certificates yields:
$2.00-$0.046=$1.934 per MWH gain for participating producers.

Thus a 20 MW wind farm with an average 25% capacity factor that chooses to participate in the tracking program could experience additional revenue of:
20 MW*.25*24*365*$1.934= $84,709.20 per year.

For ND customers choosing to purchase renewable energy certificates, the impact would be the market price of the certificates, estimated in this analysis to be $2.00 per MWH. There would be no impact to ND customers choosing not to purchase renewable energy certificates.

Subsection c states: "The estimated cost to the agency of implementation and enforcement of the proposed rule and any anticipated effect on state revenues."

Analysis: There is no cost to the agency or the state expected. See fiscal note for House Bill 1314.

Subsection d states: "A description of any alternative methods of achieving the purpose of the proposed rule that were seriously considered by the agency and the reason why the methods were rejected in favor of the proposed rule."

Analysis: No alternative has been considered.

A takings assessment under North Dakota Century Code Section 28-32-09 is not required because the proposed rules will not limit the use of private real property.

An economic impact analysis under North Dakota Century Code Section 28-32-08.1 is not required because the proposed rules will not have an adverse effect on small entities.

JRL

State of North Dakota
Public Service Commission

Public Service Commission **Case No. PU-05-602**
Public Utilities - Siting
Rulemaking

Regulatory Analysis, Takings Assessment, and Small Entity Analysis

November 21, 2005

The siting rule amendments propose changes to North Dakota Administrative Code Subsections 69-06-08-01(4) and 69-06-08-02(4) to add to the policy criteria used in evaluating energy conversion and transmission facility siting applications an indication that the Commission may give preference to applicants that maximize the interstate benefits of proposed projects.

Regulatory Analysis
The proposed changes merely add another factor that the Commission may use in evaluation energy conversion and transmission facility siting applications and are not expected to have an impact on the regulated community in excess of fifty thousand dollars.

Takings Assessment
North Dakota Century Code Section 28-32-09(1) requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private property. The assessment must:

a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
b. Clearly and specifically identify the purpose of the proposed rule.
c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
e. Identify the source of payment within the agency's budget for any compensation that may be ordered.
f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

None of these proposed rule changes affect the use of private real property so they will not result in any taking.

The purpose of the proposed rule is to add to the policy criteria used in evaluating energy conversion and transmission facility siting applications an indication that the Commission may give preference to applicants that maximize the interstate benefits of proposed projects.

We do not expect any impact on private property owners as a result of the proposed rule changes.

We do not expect the proposed rules to constitute a taking; therefore, there should be no cost to the state.

Subsection e is not applicable because the proposed rule changes will not limit the use of private real property.

Subsection f is not applicable because the proposed rule changes will not limit the use of private real property.

Small Entity Regulatory Analysis

An economic impact analysis under North Dakota Century Code Section 28-32-08.1 requires a regulatory analysis which considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. Subsection 2 states that the agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:

a. Establishment of less stringent compliance or reporting requirements for small entities.
b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities.
c. Consolidation or simplification of compliance or reporting requirements for small entities.
d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule.
e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

No additional compliance standards or reporting requirements are proposed by the rule changes.

No additional performance standards are proposed by these rule changes.

Small entities will not be exempt from any part of the requirements contained in the proposed rule.

Bob Stenehjem
State Senator
Chairman

JOHN D. OLSRUD
Director

JAY E. BURINGRUD
Assistant Director

JIM W. SMITH
Legislative Budget
Analyst & Auditor

JOHN WALSTAD
Code Revisor

North Dakota Legislative Council

STATE CAPITOL, 600 EAST BOULEVARD, BISMARCK, ND 58505-0360 (701) 328-2916 TTY: 1-800-366-6888

May 23, 2006

RECEIVED
MAY 24 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

Ms. Illona A. Jeffcoat-Sacco
Executive Secretary
Public Service Commission
State Capitol
Bismarck, ND 58505

Dear Ms. Jeffcoat-Sacco:

The Legislative Council's Administrative Rules Committee reviews all rules recently adopted by administrative agencies. The committee will hold its next meeting on Tuesday, June 13, 2006, in the Roughrider Room, State Capitol.

You are invited to appear before the committee and describe the procedure followed by the Public Service Commission in adopting the rules published in the July 2006 supplement to the North Dakota Administrative Code.

You are tentatively scheduled to appear before the committee at 11:10 a.m. Enclosed is a copy of the agenda for your reference. If you or a representative are unable to appear at that time, please notify me as soon as possible.

With respect to the rules published in the July 2006 supplement, the committee is interested in and would like you to testify before the committee concerning the following matters:

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.
2. Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.
3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.
4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.
5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.
6. An explanation of the subject matter of the rules and the reasons for adopting those rules.

7. Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.
8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide copies.
9. Whether a constitutional takings assessment was prepared as required by NDCC Section 28 32-09. Please provide a copy if one was prepared.
10. If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.

Please provide the committee with **written** testimony.

Enclosed is a copy of the July 2006 rules of the Public Service Commission in the form they will be presented to the committee at the meeting. The page numbers should be used as references for the committee because committee members will have pages with the same numbering. Please contact this office if you have any questions.

Sincerely,

John Walstad
Code Revisor

JW/AC
Encs.

TITLE 69

PUBLIC SERVICE COMMISSION

JULY 2006

CHAPTER 69-06-08

69-06-08-01. Energy conversion facility siting criteria. The following criteria shall guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process.

1. **Exclusion areas.** The following geographical areas shall be excluded in the consideration of a site for an energy conversion facility, and shall include a buffer zone of a reasonable width to protect the integrity of the area. Natural screening may be considered in determining the width of the buffer zone.

   a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; historic districts; monuments; wilderness areas; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.

   b. Designated or registered state: parks; forests; forest management lands; historic sites; monuments; historical markers; archaeological sites; grasslands; wild, scenic, or recreational rivers; game refuges; game management areas; management areas; and nature preserves.

   c. County parks and recreational areas; municipal parks; parks owned or administered by other governmental subdivisions; hardwood draws; and enrolled woodlands.

   d. Prime farmland and unique farmland, as defined by the land inventory and monitoring division of the soil conservation service, United States department of agriculture, in 7 C.F.R. part 657; provided, however, that if the commission finds that the prime farmland and unique farmland that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural productions, such exclusion shall not apply.

   e. Irrigated land.

f. Areas critical to the life stages of threatened or endangered animal or plant species.

g. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.

2. **Avoidance areas.** The following geographical areas shall not be approved as a site for an energy conversion facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative sites. Economic considerations alone shall not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area shall be included. Natural screening may be considered in determining the width of the buffer zone.

   a. Historical resources which are not designated as exclusion areas.

   b. Areas within the city limits of a city or the boundaries of a military installation.

   c. Areas within known floodplains as defined by the geographical boundaries of the hundred-year flood.

   d. Areas that are geologically unstable.

   e. Woodlands and wetlands.

   f. Areas of recreational significance which are not designated as exclusion areas.

3. **Selection criteria.** A site shall be approved in an area only when it is demonstrated to the commission by the applicant that any significant adverse effects resulting from the location, construction, and operation of the facility in that area as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum.

   a. The impact upon agriculture:

      (1) Agricultural production.

      (2) Family farms and ranches.

(3) Land which the owner demonstrates has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.

(4) Surface drainage patterns and ground water flow patterns.

(5) The agricultural quality of the cropland.

b. The impact upon the availability and adequacy of:

(1) Law enforcement.

(2) School systems and education programs.

(3) Governmental services and facilities.

(4) General and mental health care facilities.

(5) Recreational programs and facilities.

(6) Transportation facilities and networks.

(7) Retail service facilities.

(8) Utility services.

c. The impact upon:

(1) Local institutions.

(2) Noise-sensitive land uses.

(3) Rural residences and businesses.

(4) Aquifers.

(5) Human health and safety.

(6) Animal health and safety.

(7) Plant life.

(8) Temporary and permanent housing.

(9) Temporary and permanent skilled and unskilled labor.

d. The cumulative effects of the location of the facility in relation to existing and planned facilities and other industrial development.

4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits.

   a. Recycling of the conversion byproducts and effluents.

   b. Energy conservation through location, process, and design.

   c. Training and utilization of available labor in this state for the general and specialized skills required.

   d. Use of a primary energy source or raw material located within the state.

   e. Nonrelocation of residents.

   f. The dedication of an area adjacent to the facility to land uses such as recreation, agriculture, or wildlife management.

   g. Economies of construction and operation.

   h. Secondary uses of appropriate associated facilities for recreation and the enhancement of wildlife.

   i. Use of citizen coordinating committees.

   j. A commitment of a portion of the energy produced for use in this state.

   k. Labor relations.

   l. The coordination of facilities.

   m. Monitoring of impacts.

History: Amended effective August 1, 1979; July 1, 2006.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-05.1

69-06-08-02. Transmission facility corridor and route criteria. The following criteria shall guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process. Exclusion and avoidance areas may be located within a corridor, but at no given point shall such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

1. **Exclusion areas.** The following geographical areas shall be excluded in the consideration of a route for a transmission facility. A buffer zone of a reasonable width to protect the integrity of the area shall be included. Natural screening may be considered in determining the width of the buffer zone.

    a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; monuments; and wilderness areas.

    b. Designated or registered state: parks; historic sites; monuments; historical markers; archaeological sites; and nature preserves.

    c. County parks and recreational areas; municipal parks; and parks owned or administered by other governmental subdivisions.

    d. Areas critical to the life stages of threatened or endangered animal or plant species.

    e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.

2. **Avoidance areas.** The following geographical areas shall not be considered in the routing of a transmission facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility, the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative routes. Economic considerations alone shall not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area shall be included unless a distance is specified in the criteria. Natural screening may be considered in determining the width of the buffer zone.

    a. Designated or registered national: historic districts; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.

    b. Designated or registered state: wild, scenic, or recreational rivers; game refuges; game management areas; management areas; forests; forest management lands; and grasslands.

    c. Historical resources which are not specifically designated as exclusion or avoidance areas.

    d. Areas which are geologically unstable.

e. Within five hundred feet [152.4 meters] of a residence, school, or place of business. This criterion shall not apply to a water pipeline transmission facility.

f. Reservoirs and municipal water supplies.

g. Water sources for organized rural water districts.

h. Irrigated land. This criterion shall not apply to an underground transmission facility.

i. Areas of recreational significance which are not designated as exclusion areas.

3. **Selection criteria.** A corridor or route shall be designated only when it is demonstrated to the commission by the applicant that any significant adverse effects which will result from the location, construction, and maintenance of the facility as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum.

   a. The impact upon agriculture:

      (1) Agricultural production.

      (2) Family farms and ranches.

      (3) Land which the owner can demonstrate has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.

      (4) Surface drainage patterns and ground water flow patterns.

   b. The impact upon:

      (1) Noise-sensitive land uses.

      (2) The visual effect on the adjacent area.

      (3) Extractive and storage resources.

      (4) Wetlands, woodlands, and wooded areas.

      (5) Radio and television reception, and other communication or electronic control facilities.

      (6) Human health and safety.

      (7) Animal health and safety.

(8) Plant life.

4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits.

   a. Location and design.

   b. Training and utilization of available labor in this state for the general and specialized skills required.

   c. Economies of construction and operation.

   d. Use of citizen coordinating committees.

   e. A commitment of a portion of the transmitted product for use in this state.

   f. Labor relations.

   g. The coordination of facilities.

   h. Monitoring of impacts.

   i. Utilization of existing and proposed rights of way and corridors.

   j. Other existing or proposed transmission facilities.

History: Amended effective August 1, 1979; January 1, 1982; February 1, 1995; July 1, 2006.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-05.1

CHAPTER 69-09-03

69-09-03-02. Adoption of regulations. The following parts of title 49, Code of Federal Regulations in effect as of ~~August 1, 2004~~ October 1, 2005, are adopted by reference:

1. Part 190 - Department of Transportation Pipeline Safety Enforcement Procedures.
2. Part 191 - Department of Transportation Regulations for Transportation of Natural Gas by Pipeline; Reports of Leaks.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Safety Standards.
4. Part 199 - Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquids Pipelines.

Copies of these regulations may be obtained from:

Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002; November 1, 2003; May 1, 2005; July 1, 2006.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 49-02-01.2

CHAPTER 69-09-05

69-09-05-02. Discontinuance of telecommunications services. A utility may not discontinue telecommunications services, except as provided in this section.

1. A utility may discontinue the essential services it provides:

   a. If the customer is delinquent in payment for essential services, then essential services may be discontinued even though discontinuing the services results in the discontinuance of all telecommunications services.

   b. If the customer is delinquent in payment for long-distance services rendered by a local exchange company or another company and billed by the local exchange company, but is not delinquent in payment for essential services rendered by the local exchange company, the local exchange company may discontinue the customer's local exchange services only at central offices lacking the technical ability to discontinue long-distance services while continuing to provide local exchange services.

2. A utility may discontinue nonessential services:

   a. If the customer is delinquent in payment for nonessential services.

   b. If the customer is delinquent in payment for long-distance telecommunications services rendered by another company and billed by the local exchange company, then the local exchange company may deny the customer all forms of access to the network of the telecommunications company to which the customer is delinquent in payment. However, if due to technical limitations, a local exchange company must also deny the customer all forms of access to the long-distance networks of all telecommunications companies, including its own, in order to deny the customer access to the network of the company to which the customer is delinquent, the local exchange company may do so.

3. A utility may discontinue service to a customer for failure to comply with regulations of the utility on file with the commission pertaining to installation and use of equipment, or for use of equipment which interferes with or adversely affects the service to other customers, provided the customer has first been notified and afforded reasonable opportunity to change or disconnect such equipment.

4. A utility may not discontinue service to a customer for failure of the customer to pay for merchandise purchased from the utility, to pay for a different class of service furnished by the utility, to pay for service

rendered to a previous occupant of the premises, or to pay the bill of another customer as guarantor thereof.

5. A utility may not discontinue service to a customer for failure to pay for service until the utility first gives the customer notice of its intention to discontinue such service on account of delinquency. The notice must:

   a. Be sent by first-class mail addressed to the billing name and address of the affected account.

   b. Show the amount of the delinquency.

   c. Include the telephone number of the public service commission.

   d. Advise the customer of the customer's rights and remedies, including the customer's right to work out a satisfactory deferred installment agreement for delinquent accounts.

   e. Inform the customer that service will be discontinued if the delinquent account is not paid within ten calendar days from the date of mailing or personal delivery of the notice, or if a satisfactory installment agreement is not made with the utility for payment of the delinquent bill. The utility may discontinue service without further notice if the customer fails to pay the delinquent account by the due date.

6. a. A deferred installment agreement for essential services may not be combined with a deferred installment agreement for any other services.

   b. A utility may not discontinue essential services if the utility and the customer make a mutually agreed-upon deferred installment agreement for essential services. A utility may discontinue essential services without further notice if the customer fails to pay the delinquent account in accordance with the deferred installment agreement.

   c. A utility may not discontinue nonessential services if the utility and the customer make a mutually agreed-upon deferred installment agreement for nonessential services. A utility may discontinue nonessential services without further notice if the customer fails to pay the delinquent account in accordance with the deferred installment agreement.

7. The customer may pay the delinquent account at any time prior to the actual discontinuance of service.

8. Whenever service has been discontinued for nonpayment of a bill, service must be resumed if the customer:

a. Pays the fee for resuming service established in the utility's rate schedules;

b. Makes a deposit under section 69-09-05-03 (if required by the company); and

c. Makes a satisfactory settlement for the delinquent bill and for the service rendered to the date the service was discontinued.

Interexchange carriers are not required to resume long-distance service if local service is not connected.

9. If the customer disputes the amount of a bill for service, the customer may, to prevent discontinuance for nonpayment, pay the disputed bill under protest to the utility. Alternatively, the customer may request a formal hearing pursuant to section 69-02-02-02 in which case the utility may not discontinue service for nonpayment of the disputed bill until a final decision has been issued by the commission. The utility shall immediately give the commission notice of the dispute and the commission may investigate the dispute. The utility shall refund to the customer any part of such payment made under protest found by the commission to be excessive.

10. The commission may order the discontinuance of services where a reseller or operator services provider violates commission rules. The commission will provide ten days' notice of a deficiency or violation and provide an opportunity for the noncomplying reseller or operator services provider to respond or correct the deficiency. A reseller or operator services provider disputing the alleged violation or discontinuance may request a formal hearing under section 69-02-02-02, in which case the discontinuance will be stayed until final decision by the commission.

11. a. Except for discontinuance due to delinquency, a competitive local exchange company may not discontinue service to a customer without first providing the customer with twenty days' written notice of the intent to discontinue service. The notice of intent to discontinue service shall inform the customer of its right to choose between local exchange companies, if more than one local exchange company is providing essential services.

b. A telecommunications company may not interfere with a competitive local exchange company's obligation to provide notice to a customer; provided that a telecommunications company may disconnect service to a competitive local exchange company under the terms of a resale or interconnection agreement so long as the interconnection agreement is consistent with law and rules.

12. Except in the case of discontinuance for nonpayment, if a telecommunications company providing interexchange service intends to discontinue service or is forced to discontinue service due to abandonment, acquisition, bankruptcy, or for other reasons, the company must provide reasonable advance notice of the discontinuance to each customer. The notice must inform the customer that the customer must choose another primary interexchange carrier or use an alternative service.

History: Effective April 1, 1985; amended effective January 1, 1993; May 1, 1996; July 1, 1997, amendments voided by the Administrative Rules Committee, effective August 16, 1997; January 1, 2001; July 1, 2006.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.4, 49-21-01.7, 49-21-07

69-09-05-04. Rules for resale of telecommunications services.

1. Definitions.

   a. "Premise cable" means telecommunications cable or channels on the reseller's side of the point of connection to the local exchange company (demarcation point).

   b. "Prepayment" means payments made by customers of a reseller in advance of receiving service. Prepayment includes a deposit and any customer payment for telecommunications service in advance of receiving the full amount of service for which payment is made.

   c. "Resale" means the subscription to local or long-distance telecommunications services and facilities by one entity, and reoffered for profit or with markup to others with or without enhancements. Where reoffered service is part of a package, and the package is offered for profit or markup, it is resale.

   d. "Reseller" means a person reselling local or long-distance telecommunications services. The definition does not include pay telephone providers, but does include a cellular and personal communication service ~~providers~~ provider who ~~resell wireline~~ resells cellular or other wireless service ~~as part of their cellular or personal communication service~~.

   e. "Same continuous property" is contiguous real estate owned by the same individual, group of individuals, or other legal entity having title to the property. The property may be traversed by streets, ditches, or other similar manmade or natural terrain features provided that, but for terrain features, the property would be contiguous and provided that such terrain features are of a nature and dimension that it is reasonable to treat the property as contiguous.

f. "Shared tenant service provider" means a person reselling telecommunications services to the tenants of a building complex on the same continuous property or to parties with a community of interest.

2. A reseller may not operate in North Dakota except in compliance with applicable laws and rules. A reseller shall:

   a. ~~Obtain a certificate of registration from~~ Register with the commission, on a form provided by the commission, ~~authorizing~~ indicating the provision of local resale or long-distance resale services in the state of North Dakota.

   b. If a reseller requires prepayment for service, it shall:

      (1) Submit a performance bond in an amount specified by the commission; or

      (2) Establish an escrow account in a North Dakota bank containing an amount equal to the prepayments collected at any given time, and file monthly reports showing escrow account activities and call completion data.

      (3) ~~The requirements of paragraphs 1 and 2 are waived for any company that has provided cellular or personal communication service in North Dakota for one year without a formal complaint having been filed against it. The commission may revoke the waiver after notice and opportunity for hearing if necessary to protect the public interest.~~ Under subsection 7 of North Dakota Century Code section 49-03.7-09 the bonding requirement does not apply to a facility-based company providing commercial mobile radio service, as defined in title 47, Code of Federal Regulations, part 20, section 20.3.

      (4) The requirements of paragraphs 1 and 2 are subject to a twenty-five thousand dollar minimum for resellers of local service other than by means of a prepaid calling card. The required amount of a performance bond is the product of the estimated level of customers after three years of operation, times the amount of required customer prepayments, or twenty-five thousand dollars, whichever is greater. The required amount of an escrow account is an amount equal to the prepayments at any given time but no less than twenty-five thousand dollars.

      (5) The requirements of paragraphs 1 and 2 are subject to a two thousand five hundred dollar minimum for resellers of any service other than the local service subject to paragraph 4.

The amount of a performance bond is the product of the estimated level of customers after three years of operation, times the amount of required customer prepayments, or two thousand five hundred dollars, whichever is greater. The amount of an escrow account is an amount equal to the prepayments, including prepaid calling cards, at any given time.

~~c. Forfeit its registration certificate if it is voluntarily dissolved or involuntarily dissolved under North Dakota law. A reseller may not operate and its registration certificate is void on the effective date of involuntary dissolution under North Dakota Century Code section 10-23-02.2.~~

3. A reseller may not be identified as an optional intrastate interexchange carrier ~~without a certificate of registration from~~ unless it is registered with the commission.

4. Except for residents of dormitories or residence halls of schools, colleges, or universities, the end user has the unrestricted right to choose service from the incumbent local exchange company.

5. A shared tenant service provider shall allow the tenant to use the shared tenant service provider's premise cable and wire in the event an end user wants to receive service from the local exchange company.

6. The reseller is responsible for the charges incurred for telecommunications services to which it subscribes for serving its end users.

7. A reseller is subject to ~~reregulation by the commission,~~ revocation of its ~~certificate,~~ authority and the penalties provided in North Dakota Century Code ~~chapter~~ chapters 49-03.1 and 49-07 for violation of any applicable law or rule.

History: Effective March 1, 1989; amended effective August 1, 1991; December 1, 1993; February 1, 1995; July 1, 1997; January 1, 2001; July 1, 2006.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7, 49-21-07

69-09-05-04.1. Identification of intraLATA interexchange carriers.

1. A local exchange carrier shall not identify a telecommunications company as an optional intrastate interexchange carrier unless the telecommunications company provides the local exchange company with evidence of an effective ~~certificate of public convenience and necessity or a current certificate of~~ registration authorizing the provision of intrastate interexchange service.

2. A telecommunications company shall immediately notify in writing all local exchange companies for which it has requested identification as an optional intrastate interexchange carrier if the telecommunications company's authority to provide interexchange service is revoked or abandoned. A local exchange company shall cease to identify a telecommunications company as an optional intrastate interexchange carrier upon receipt of a written notice that the telecommunications company's authority to provide interexchange service has been revoked or abandoned.

History: Effective February 1, 1995; amended effective January 1, 2001; July 1, 2006.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21

69-09-05-05. Rules for the provision of operator services.

1. Definitions.

   a. "End user" means the person to whom operator service is provided.

   b. "Operator service" means service provided to assist in the completion or billing of telephone calls through the use of a live operator or automated equipment. "Operator service" does not include completion of calls through an 800 number or an access code when billed to an account previously established with the carrier by the end user, or the automated operator services provided by pay telephone sets with built-in automated operator messages.

   c. "Operator service provider" means the person providing operator service.

2. Operator service providers shall:

   a. ~~Obtain a certificate of registration from~~ Register with the commission authorizing the provision of operator services in the state of North Dakota.

   b. Provide written material for use in disclosing to the end user the name and toll-free telephone number of the operator service provider. This material must be provided to all coin telephone operators, motels, hospitals, and any other locations where end users may use telephone service not billable to their home or business telephones without operator service.

   c. Require operators to clearly identify the operator service provider to all end users and when requested, provide rate information.

d. Provide emergency call service that is equal to that provided by the local exchange telephone company and, if unable to meet this requirement, provide emergency call service by immediate transfer of such calls to the local exchange company.

e. For billing purposes, itemize, identify, and rate calls from the point of origination to the point of termination. No call may be transferred to another carrier by an operator service provider which cannot or will not complete the call, unless the call can be billed in accordance with this subsection.

f. Not charge for incompleted calls.

g. Disclose their names on bills which include charges for services they provided.

History: Effective March 1, 1989; amended effective August 1, 1991; May 1, 1996; January 1, 2001; July 1, 2006.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7, 49-21-07

69-09-05-10. ~~Certificate of registration~~ Registration - Procedure.

1. A reseller ~~applying for a certificate of registration~~ or competitive facilities-based provider desiring authority to provide service in North Dakota shall ~~file an application~~ register on a form provided by the commission. The ~~application~~ registration shall include ~~evidence~~ identification of the applicant's authority to do business in North Dakota.

2. ~~An applicant for a certificate of registration as a~~ A reseller shall follow the procedure set forth in section 69-09-05-04.

3. When ~~the holder of a certificate of registration~~ a registered company intends to assign ~~the~~ its authority to provide telecommunications service in North Dakota to another entity, the assignee must first ~~obtain a certificate of registration from~~ register with the commission.

4. A ~~reseller~~ registered company may voluntarily, without commission approval, surrender its ~~certificate of registration~~ authority by notifying the commission in writing and updating its registration to reflect this surrender.

5. A competitive local exchange company intending to surrender its authority to provide local exchange service must provide twenty days' prior written notice to the company's customers.

History: Effective January 1, 2001; amended effective July 1, 2006.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21

69-09-05-11. Certificate of public convenience and necessity for incumbent local telecommunications company - Procedure.

1. An applicant for a certificate of public convenience and necessity as an incumbent local exchange company shall file an application with the commission which includes evidence of the applicant's authority to do business in North Dakota, conforms to the commission's rules of practice and procedure under article 69-02, and which identifies:

   a. The type of service the applicant intends to provide.

   b. The service area or areas in which the applicant intends to provide service.

   c. How the applicant meets the issues to be considered in the application.

2. An applicant for a certificate of public convenience and necessity must also file consolidated financial statements for the most recent year available, including:

   a. A balance sheet of the form and style usually followed in the industry.

   b. An income statement of the form and style usually followed in the industry.

   c. If available, an independent accountant's financial opinion.

   d. Any other information requested by the commission.

3. In order to implement North Dakota Century Code chapter 49-03.1 consistent with the Telecommunications Act of 1996, issues to be considered in an application for a certificate of public convenience and necessity for a facilities-based provider of telecommunications services are:

   a. Fitness and ability of the applicant to provide service.

   b. Adequacy of the proposed service.

c. The technical, financial, and managerial ability of the applicant to provide service.

4. If the application is to be decided on a notice of opportunity for hearing, the applicant shall file affidavits sufficient to meet the applicant's burden of proof on the issues.

5. When the holder of a certificate of public convenience and necessity intends to assign the authority to provide telecommunications service in North Dakota to another entity, the assignee must first obtain a certificate of public convenience and necessity from the commission.

6. ~~Abandonment of a certificate of public convenience and necessity for a competitive local exchange company requires prior written notice to the commission and thirty days' prior written notice to the company's customers.~~ Abandonment of a certificate of public convenience and necessity for an incumbent local exchange company requires prior commission approval.

History: Effective January 1, 2001; amended effective July 1, 2006.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7(7)

69-09-05-14. Procedure for filing negotiated interconnection agreements. Carrier-to-carrier interconnection agreements adopted by negotiation must be filed for commission approval under 47 U.S.C. section 252(e), following the procedure set out in this section.

1. The requirements of this section apply to interconnection agreements negotiated under 47 U.S.C. section 251; assignments, assumptions or transfers of interconnection agreements; amendments to interconnection agreements; and agreements for Qwest platform plus (QPP) services. The requirements of this section do not apply to commercial line sharing agreements.

2. Each filing must include a completed cover sheet in a form prescribed by the commission.

3. Filed interconnection agreements will be listed on the commission internet site for comment by interested parties. The internet listing will include the date each agreement was filed and links to the agreement itself.

4. The commission will accept written comments on a listed agreement for sixty days from the date filed.

5. Absent commission action within ninety days of filing to disapprove an agreement, or portion thereof, the agreement will be deemed approved under 47 U.S.C. section 252(e)(4).

6. Any assignment, assumption, or transfer of an approved interconnection agreement requires notification to be filed with the commission within thirty days after the assignment, assumption, or transfer occurs.

7. Any amendment to an interconnection agreement requires a new filing with a new ninety-day review and comment period.

History: Effective July 1, 2006.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.7

CHAPTER 69-09-08
RENEWABLE ELECTRICITY AND RECYCLED ENERGY TRACKING SYSTEM

Section	
69-09-08-01	Purpose, Application, and Effective Date
69-09-08-02	Definitions
69-09-08-03	Renewable Energy Certificates Tracking Program
69-09-08-04	Facilities Eligible for Participation in the Renewable Energy Certificates Tracking Program
69-09-08-05	Responsibilities of Program Administrator
69-09-08-06	Production and Transfer of Renewable Energy Certificates
69-09-08-07	Registration and Certification of Renewable Energy Facilities

69-09-08-01. Purpose, application, and effective date. This chapter establishes a program to include tracking, recording, and verifying the transactions associated with certificates and credits for electricity generated from renewable electricity sources as defined by North Dakota Century Code section 49-02-25 among electric generators, utilities, and other interested entities within this state and with similar entities in other states. This chapter applies to all public utilities, electric cooperatives, and municipal electric utilities. The tracking program will be effective as specified in the commission's order that designates a program administrator and implements these rules.

History: Effective July 1, 2006.
General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-02. Definitions. As used in this chapter:

1. "Designated representative" means a responsible individual authorized by the owner or operator of a renewable energy facility or purchaser of energy produced from a renewable resource to register that resource with the program administrator. The designated representative must have the authority to represent and legally bind the owner, operator, or purchaser in all matters pertaining to the renewable energy certificates tracking program.

2. "Existing facilities" means renewable energy facilities placed in service before January 1, 2001.

3. "New facilities" means renewable energy facilities placed in service on or after January 1, 2001.

4. "Program administrator" means the independent entity designated by commission order to carry out the administrative responsibilities related to the renewable energy certificates tracking program as set forth in this chapter.

5. "Renewable energy certificate" means a document recording one or more renewable energy credits that have been certified by the program administrator as representing electricity generated by a renewable energy facility registered with the tracking system or a certificate imported from a compatible certificates tracking system.

6. "Renewable energy certificate account" means an account maintained by the program administrator for the purpose of tracking renewable energy certificates.

7. "Renewable energy certificates tracking program" means the process of tracking renewable energy certificates as a means of meeting the requirements set forth in section 69-09-08-04.

8. "Renewable energy credit" means the intangible, generally perceived environmental benefits and attributes associated with generating one megawatt hour of renewable electricity or recycled energy that is physically metered and meets the requirements set forth in section 69-09-08-04.

9. "Renewable energy facility" means a facility generating electricity from one or more generating units that exclusively rely on an energy source or fuel included in North Dakota Century Code section 49-02-25.

History: Effective July 1, 2006.
General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-03. Renewable energy certificates tracking program. Renewable energy certificates may be recorded, transferred, and retired as set forth in this chapter. Except where specifically stated, the provisions of this section apply uniformly to all participants in the tracking program.

History: Effective July 1, 2006.
General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-04. Facilities eligible for participation in the renewable energy certificates tracking program. For a renewable energy facility to be eligible to participate in the tracking program, the facility must be either a new facility or existing facility as defined in section 69-09-08-02 and must also:

1. Register under section 69-09-08-07; and

2. Have output that is capable of being physically metered and verified by the program administrator. A renewable energy facility with more than one generating unit may be metered with a single meter.

History: Effective July 1, 2006.
General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-05. Responsibilities of program administrator. At a minimum, the program administrator shall perform the following functions:

1. Create accounts that track renewable energy certificates for each participant in the tracking program;

2. Award renewable energy certificates to registered renewable energy facilities based on verified meter reads;

3. Maintain public information on the program administrator's web site that provides tracking program information to interested buyers and sellers of renewable energy certificates;

4. Facilitate private trading of renewable energy certificates;

5. Verify the accuracy of metered production data and other information identified in the renewable energy certificate; and

6. Provide an annual report to the commission. Beginning in the year following commission designation of the program administrator, the program administrator shall submit a report to the commission on or before April fifteenth of each year. At a minimum, the report must contain the amount of registered existing and new generating capacity from a renewable energy facility installed in the state, in megawatts, by technology type, the owner or operator of each facility or the facility's certificates, the date each facility began to produce electricity, and the total number of renewable energy credits certified by the program administrator during each month of the reporting period.

History: Effective July 1, 2006.
General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-06. Production and transfer of renewable energy certificates. The program administrator shall administer a tracking program for renewable energy certificates in accordance with the requirements of this chapter.

1. The transfer of renewable energy certificates between parties is effective only when the transfer is recorded by the program administrator.

2. The program administrator shall require that renewable energy certificates be adequately identified prior to recording a transfer and shall issue a confirmation of the transaction to parties when the transfer is recorded.

3. The program administrator shall establish a procedure to ensure that the award, transfer, and retirement of certificates are accurately recorded.

History: Effective July 1, 2006.
General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-07. Registration and certification of renewable energy facilities. To be awarded renewable energy certificates, a designated representative must complete the registration process described in this section.

1. The designated representative shall register with the program administrator each renewable energy generation unit. At a minimum, the registration must include the location, owner, technology, rated capacity of the facility, and evidence that the facility meets the resource eligibility criteria in North Dakota Century Code section 49-02-25.

2. After verifying the information required in the registration process for renewable facilities, the program administrator shall create a renewable energy certificate account for the designated representative of the renewable energy resource.

3. The commission or its program administrator may make onsite visits to any registered unit of a renewable energy resource and may revoke the registration of any unit not in compliance with applicable law and rules.

4. A renewable energy facility may not be awarded renewable energy certificates under this program if it is not registered.

5. Any disputes will be resolved using dispute resolution procedures established by the commission or its program administrator.

History: Effective July 1, 2006.
General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

Revised
5/22/06

NORTH DAKOTA LEGISLATIVE COUNCIL

Tentative Agenda

ADMINISTRATIVE RULES COMMITTEE

Tuesday, June 13, 2006
Roughrider Room, State Capitol
Bismarck, North Dakota

9:00 a.m.	Call to order Roll call Consideration of the minutes of the previous meeting
9:05 a.m.	Presentation by representatives of the Department of Public Instruction regarding rules carried over for consideration from the April committee meeting
9:20 a.m.	Comments of interested persons in attendance
9:25 a.m.	Committee discussion and directives
9:30 a.m.	Presentation by a representative of the state lottery regarding rules carried over for consideration from the April committee meeting
9:45 a.m.	Comments of interested persons in attendance
9:50 a.m.	Committee discussion and directives
10:00 a.m.	Coffee break
10:15 a.m.	Presentation by a representative of the Secretary of State regarding July 2006 rules of the Secretary of State (pages 111-120)
10:30 a.m.	Presentation by a representative of the State Board of Animal Health regarding July 2006 rules of the board (pages 1-18)
10:50 a.m.	Presentation by a representative of the Department of Public Instruction regarding July 2006 rules of the department (pages 19-28)
11:10 a.m.	Presentation by a representative of the Public Service Commission regarding July 2006 rules of the commission (pages 29-54)
11:30 a.m.	Presentation by a representative of the Public Employees Retirement System Board regarding July 2006 rules of the board (pages 55-110)
11:45 a.m.	Presentation by a representative of the Seed Commission regarding July 2006 rules of the commission (pages 121-184)
12:00 noon	Luncheon recess
1:00 p.m.	Presentation by a representative of the State Board of Accountancy regarding rules carried over for consideration from the April committee meeting
1:15 p.m.	Comments of interested persons in attendance
1:25 p.m.	Committee discussion and directives
1:30 p.m.	Presentation by a representative of the Department of Human Services regarding July 2006 rules of the department (pages 185-330)
2:00 p.m.	Coffee break
2:15 p.m.	Presentation by a representative of the Atmospheric Resource Board regarding July 2006 rules of the board (pages 331-338)

2:30 p.m.	Presentation by a representative of Workforce Safety and Insurance regarding July 2006 rules of the organization (pages 339-388)
2:50 p.m.	Presentation by a representative of the Peace Officer Standards and Training Board regarding July 2006 rules of the board (pages 389-401)
3:10 p.m.	Presentation by a representative of the Office of Management and Budget State Procurement Office of a request for an extension of time to adopt rules
3:20 p.m.	Committee discussion and directives
3:30 p.m.	Adjourn

Committee Members

Representatives William R. Devlin (Chairman), LeRoy G. Bernstein, Randy Boehning, Duane DeKrey, Mary Ekstrom, Rod Froelich, Pat Galvin, Ronald A. Iverson, Kim Koppelman, Jon O. Nelson, Sally M. Sandvig, Margaret Sitte, Blair Thoreson, Dwight Wrangham

Senators John M. Andrist, Dennis Bercier, Richard L. Brown, April Fairfield, Tom Fischer, Layton W. Freborg, Jerry Klein, Gary A. Lee, Constance Triplett

Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

May 15, 2006

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John Walstad, Code Revisor
Legislative Council
State Capitol
Bismarck, North Dakota 58505

Re: Public Service Commission
Electric
Rulemaking
Case No. PU-05-364

Public Service Commission
Telephone
Rulemaking
Case No. PU-05-575

Public Service Commission
Siting
Rulemaking
Case No. PU-05-602

Dear Mr. Walstad:

Enclosed please find a copy of new and amendments to Article 69-06 and 69-09 concerning siting, telecommunications and electric regulations. The Commission's April 12, 2006, order includes a summary of the comments and the written record of the agency's consideration of all comments. A copy of the order is attached.

By letter dated May 15, 2006, the Attorney General approved the proposed rules as to their legality. On May 15, 2006, the Public Service Commission adopted the rules as approved, and is now submitting the rules for publication in the North Dakota Administrative Code.

Thank you for your attention to this matter.

Sincerely,

Illona A. Jeffcoat-Sacco
Executive Secretary

Attachments

43 **PU-05-575** Pages: 39

Proposed rules submitted to Legislative Council for publication by Public Service Commission
05/15/2006: Comm Legal, Illona Pat, Jerry, Annette . .

Public Service Commission
Public Utilities – Telephone
Rulemaking

Case No. PU-05-575

Proposed Telecommunications Registration Rulemaking

69-09-05-02. Discontinuance of telecommunications services. A utility may not discontinue telecommunications services, except as provided in this section.

1. A utility may discontinue the essential services it provides:

   a. If the customer is delinquent in payment for essential services, then essential services may be discontinued even though discontinuing the services results in the discontinuance of all telecommunications services.

   b. If the customer is delinquent in payment for long-distance services rendered by a local exchange company or another company and billed by the local exchange company, but is not delinquent in payment for essential services rendered by the local exchange company, the local exchange company may discontinue the customer's local exchange services only at central offices lacking the technical ability to discontinue long-distance services while continuing to provide local exchange services.

2. A utility may discontinue nonessential services:

a. If the customer is delinquent in payment for nonessential services.

b. If the customer is delinquent in payment for long-distance telecommunications services rendered by another company and billed by the local exchange company, then the local exchange company may deny the customer all forms of access to the network of the telecommunications company to which the customer is delinquent in payment. However, if due to technical limitations, a local exchange company must also deny the customer all forms of access to the long-distance networks of all telecommunications companies, including its own, in order to deny the customer access to the network of the company to which the customer is delinquent, the local exchange company may do so.

3. A utility may discontinue service to a customer for failure to comply with regulations of the utility on file with the commission pertaining to installation and use of equipment, or for use of equipment which interferes with or adversely affects the service to other customers, provided the customer has first been notified and afforded reasonable opportunity to change or disconnect such equipment.

4. A utility may not discontinue service to a customer for failure of the customer to pay for merchandise purchased from the utility, to pay

for a different class of service furnished by the utility, to pay for service rendered to a previous occupant of the premises, or to pay the bill of another customer as guarantor thereof.

5. A utility may not discontinue service to a customer for failure to pay for service until the utility first gives the customer notice of its intention to discontinue such service on account of delinquency. The notice must:

   a. Be sent by first-class mail addressed to the billing name and address of the affected account.

   b. Show the amount of the delinquency.

   c. Include the telephone number of the public service commission.

   d. Advise the customer of the customer's rights and remedies, including the customer's right to work out a satisfactory deferred installment agreement for delinquent accounts.

   e. Inform the customer that service will be discontinued if the delinquent account is not paid within ten calendar days from the date of mailing or personal delivery of the notice, or if a satisfactory installment agreement is not made with the utility for payment of the delinquent bill. The utility may discontinue service without further notice if the customer fails to pay the delinquent account by the due date.

6. a. A deferred installment agreement for essential services may not be combined with a deferred installment agreement for any other services.

b. A utility may not discontinue essential services if the utility and the customer make a mutually agreed upon deferred installment agreement for essential services. A utility may discontinue essential services without further notice if the customer fails to pay the delinquent account in accordance with the deferred installment agreement.

c. A utility may not discontinue nonessential services if the utility and the customer make a mutually agreed upon deferred installment agreement for nonessential services. A utility may discontinue nonessential services without further notice if the customer fails to pay the delinquent account in accordance with the deferred installment agreement.

7. The customer may pay the delinquent account at any time prior to the actual discontinuance of service.

8. Whenever service has been discontinued for nonpayment of a bill, service must be resumed if the customer:

a. Pays the fee for resuming service established in the utility's rate schedules;

b. Makes a deposit under section 69-09-05-03 (if required by the company); and

c. Makes a satisfactory settlement for the delinquent bill and for the service rendered to the date the service was discontinued. Interexchange carriers are not required to resume long-distance service if local service is not connected.

9. If the customer disputes the amount of a bill for service, the customer may, to prevent discontinuance for nonpayment, pay the disputed bill under protest to the utility. Alternatively, the customer may request a formal hearing pursuant to section 69-02-02-02 in which case the utility may not discontinue service for nonpayment of the disputed bill until a final decision has been issued by the commission. The utility shall immediately give the commission notice of the dispute and the commission may investigate the dispute. The utility shall refund to the customer any part of such payment made under protest found by the commission to be excessive.

10. The commission may order the discontinuance of services where a reseller or operator services provider violates commission rules. The commission will provide ten days' notice of a deficiency or violation and provide an opportunity for the noncomplying reseller

or operator services provider to respond or correct the deficiency. A reseller or operator services provider disputing the alleged violation or discontinuance may request a formal hearing under section 69-02-02-02, in which case the discontinuance will be stayed until final decision by the commission.

11. a. Except for discontinuance due to delinquency, a competitive local exchange company may not discontinue service to a customer without first providing the customer with twenty days' written notice of the intent to discontinue service. The notice of intent to discontinue service shall inform the customer of its right to choose between local exchange companies, if more than one local exchange company is providing essential services.

b. A telecommunications company may not interfere with a competitive local exchange company's obligation to provide notice to a customer; provided that a telecommunications company may disconnect service to a competitive local exchange company under the terms of a resale or interconnection agreement so long as the interconnection agreement is consistent with law and rules.

12. Except in the case of discontinuance for nonpayment, if a telecommunications company providing interexchange service

intends to discontinue service or is forced to discontinue service due to abandonment, acquisition, bankruptcy, or for other reasons, the company must provide reasonable advance notice of the discontinuance to each customer. The notice must inform the customer that the customer must choose another primary interexchange carrier or use an alternative service.

History: Effective April 1, 1985; amended effective January 1, 1993; May 1,1996; July 1, 1997, amendments voided by the Administrative Rules Committee effective, August 16, 1997; January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-21, 49-21-01.4,49-21-01.7, 49-21-07

69-09-05-04. Rules for resale of telecommunications services.

1. Definitions.

   a. "Premise cable" means telecommunications cable or channels on the reseller's side of the point of connection to the local exchange company (demarcation point).

   b. "Prepayment" means payments made by customers of a reseller in advance of receiving service. Prepayment includes a deposit and any customer payment for telecommunications service in advance of receiving the full amount of service for which payment is made.

   c. "Resale" means the subscription to local or long-distance telecommunications services and facilities by one entity, and

reoffered for profit or with markup to others with or without enhancements. Where reoffered service is part of a package, and the package is offered for profit or markup, it is resale.

d. "Reseller" means a person reselling local or long-distance telecommunications services. The definition does not include pay telephone providers, but does include a cellular and personal communication service ~~providers~~ provider who ~~resell wireline~~ resells cellular or other wireless service ~~as part of their celluar or personal communication service~~.

e. "Same continuous property" is contiguous real estate owned by the same individual, group of individuals, or other legal entity having title to the property. The property may be traversed by streets, ditches, or other similar manmade or natural terrain features provided that, but for terrain features, the property would be contiguous and provided that such terrain features are of a nature and dimension that it is reasonable to treat the property as contiguous.

f. "Shared tenant service provider" means a person reselling telecommunications services to the tenants of a building complex on the same continuous property or to parties with a community of interest.

2. A reseller may not operate in North Dakota except in compliance with applicable laws and rules. A reseller shall:

a. ~~Obtain a certificate of registration from~~ Register with the commission, on a form provided by the commission, ~~authorizing~~ indicating the provision of local resale or long-distance resale services in the state of North Dakota.

b. If a reseller requires prepayment for service, it shall:

(1) Submit a performance bond in an amount specified by the commission; or

(2) Establish an escrow account in a North Dakota bank containing an amount equal to the prepayments collected at any given time, and file monthly reports showing escrow account activities and call completion data.

(3) ~~The requirements of paragraphs 1 and 2 are waived for any company that has provided cellular or personal communication service in North Dakota for one year without a formal complaint having been filed against it. The commission may revoke the waiver after notice and opportunity for hearing if necessary to protect the public interest.~~ Under North Dakota Century Code section 49-03.7-09(7) the bonding

requirement does not apply to a facility based company providing commercial mobile radio service, as defined in title 47, Code of Federal Regulations, part 20, section 20.3.

4. The requirements of paragraphs 1 and 2 are subject to a twenty-five thousand dollar minimum for resellers of local service other than by means of a prepaid calling card. The required amount of a performance bond is the product of the estimated level of customers after three years of operation, times the amount of required customer prepayments, or twenty-five thousand dollars, whichever is greater. The required amount of an escrow account is an amount equal to the prepayments at any given time but no less than twenty-five thousand dollars.

(5) The requirements of paragraphs 1 and 2 are subject to a two thousand five hundred dollar minimum for resellers of any service other than the local service subject to paragraph 4. The amount of a performance bond is the product of the estimated level of customers after three years of operation, times the amount of required customer prepayments, or two thousand five hundred dollars, whichever is greater.

The amount of an escrow account is an amount equal to the prepayments (including prepaid calling cards) at any given time.

~~c. Forfeit its registration if it is voluntarily dissolved or involuntarily dissolved under North Dakota law. A reseller may not operate and its registration certificate is void on the effective date of involuntary dissolution under North Dakota Century Code section 10-23-02.2.~~

3. A reseller may not be identified as an optional intrastate interexchange carrier ~~without a certificate of registration from~~ unless it is registered with the commission.

4. Except for residents of dormitories or residence halls of schools, colleges, or universities, the end user has the unrestricted right to choose service from the incumbent local exchange company.

5. A shared tenant service provider shall allow the tenant to use the shared tenant service provider's premise cable and wire in the event an end user wants to receive service from the local exchange company.

6. The reseller is responsible for the charges incurred for telecommunications services to which it subscribes for serving its end users.

7. A reseller is subject to ~~reregulation by the commission,~~ revocation of its ~~certificate~~ authority, and the penalties provided in North Dakota Century Code ~~chapter~~ chapters 49-03.1 and 49-07 for violation of any applicable law or rule.

History: Effective March 1, 1989; amended effective August 1, 1991; December 1, 1993; February 1, 1995; July 1, 1997; January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-03.1-01, 49-03.1-03,49-21, 49-21-01.7, 49-21-07

69-09-05-04.1. Identification of intraLATA interexchange carriers.

1. A local exchange carrier shall not identify a telecommunications company as an optional intrastate interexchange carrier unless the telecommunications company provides the local exchange company with evidence of an effective ~~certificate of public convenience and necessity or a current certificate of~~ registration authorizing the provision of intrastate interexchange service.

2. A telecommunications company shall immediately notify in writing all local exchange companies for which it has requested identification as an optional intrastate interexchange carrier if the telecommunications company's authority to provide interexchange service is revoked or abandoned. A local exchange company shall cease to identify a telecommunications company as an optional intrastate interexchange carrier upon receipt of a written notice that

the telecommunications company's authority to provide interexchange service has been revoked or abandoned.

History: Effective February 1, 1995; amended effective January 1, 2001.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21

69-09-05-05. Rules for the provision of operator services.

1. Definitions.

   a. "End user" means the person to whom operator service is provided.

   b. "Operator service" means service provided to assist in the completion or billing of telephone calls through the use of a live operator or automated equipment. "Operator service" does not include completion of calls through an 800 number or an access code when billed to an account previously established with the carrier by the end user, or the automated operator services provided by pay telephone sets with built-in automated operator messages.

   c. "Operator service provider" means the person providing operator service.

2. Operator service providers shall:

a. ~~Obtain a certificate of registration from~~ Register with the commission authorizing the provision of operator services in the state of North Dakota.

b. Provide written material for use in disclosing to the end user the name and toll free telephone number of the operator service provider. This material must be provided to all coin telephone operators, motels, hospitals, and any other locations where end users may use telephone service not billable to their home or business telephones without operator service.

c. Require operators to clearly identify the operator service provider to all end users and when requested, provide rate information.

d. Provide emergency call service that is equal to that provided by the local exchange telephone company and, if unable to meet this requirement, provide emergency call service by immediate transfer of such calls to the local exchange company.

e. For billing purposes, itemize, identify, and rate calls from the point of origination to the point of termination. No call may be transferred to another carrier by an operator service provider

which cannot or will not complete the call, unless the call can be billed in accordance with this subsection.

f. Not charge for incompleted calls.

g. Disclose their names on bills which include charges for services they provided.

History: Effective March 1, 1989; amended effective August 1, 1991; May 1, 1996; January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7, 49-21-07

69-09-05-10. ~~Certificate of registration~~ Registration - Procedure.

1. A reseller ~~applying for a certificate of registration~~ or competitive facilities based provider desiring authority to provide service in North Dakota shall ~~file an application~~ register on a form provided by the commission. The ~~application~~ registration shall include ~~evidence~~ identification of the applicant's authority to do business in North Dakota.

2. ~~An applicant for a certificate of registration as a~~ A reseller shall follow the procedure set forth in section 69-09-05-04.

3. When ~~the holder of a certificate of registration~~ a registered company intends to assign ~~the~~ its authority to provide telecommunications service in North Dakota to another entity, the

assignee must first ~~obtain a certificate of registration from~~ register with the commission.

4. A ~~reseller~~ registered company may voluntarily, without commission approval, surrender its ~~certificate of registration~~ authority by notifying the commission in writing and updating its registration to reflect this surrender.

5. A competitive local exchange company intending to surrender its authority to provide local exchange service must provide twenty days' prior written notice to the company's customers.

History: Effective January 1, 2001.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21

69-09-05-11. Certificate of public convenience and necessity for incumbent local telecommunications company - Procedure.

1. An applicant for a certificate of public convenience and necessity as an incumbent local exchange company shall file an application with the commission which includes evidence of the applicant's authority to do business in North Dakota, conforms to the commission's rules of practice and procedure under article 69-02, and which identifies:

   a. The type of service the applicant intends to provide.

b. The service area or areas in which the applicant intends to provide service.

c. How the applicant meets the issues to be considered in the application.

2. An applicant for a certificate of public convenience and necessity must also file consolidated financial statements for the most recent year available, including:

a. A balance sheet of the form and style usually followed in the industry.

b. An income statement of the form and style usually followed in the industry.

c. If available, an independent accountant's financial opinion.

d. Any other information requested by the commission.

3. In order to implement North Dakota Century Code chapter 49-03.1 consistent with the Telecommunications Act of 1996, issues to be considered in an application for a certificate of public convenience and necessity for a facilities-based provider of telecommunications services are:

a. Fitness and ability of the applicant to provide service.

b. Adequacy of the proposed service.

c. The technical, financial, and managerial ability of the applicant to provide service.

4. If the application is to be decided on a notice of opportunity for hearing, the applicant shall file affidavits sufficient to meet the applicant's burden of proof on the issues.

5. When the holder of a certificate of public convenience and necessity intends to assign the authority to provide telecommunications service in North Dakota to another entity, the assignee must first obtain a certificate of public convenience and necessity from the commission.

6. ~~Abandonment of a certificate of public convenience and necessity for a competitive local exchange company requires prior written notice to the commission and thirty days' prior written notice to the company's customers.~~ Abandonment of a certificate of public convenience and necessity for an incumbent local exchange company requires prior commission approval.

History: Effective January 1, 2001.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7(7)

Public Service Commission
Public Utilities – Siting
Rulemaking

Case No. PU-05-602

PROPOSED SITING RULES

69-06-08-01. Energy conversion facility siting criteria. The following criteria shall guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process.

4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits.

History: Amended effective August 1, 1979.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-05.1

69-06-08-02. Transmission facility corridor and route criteria. The following criteria shall guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process. Exclusion and avoidance areas may be located within a corridor, but at no given point shall such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following

policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits.

History: Amended effective August 1, 1979; January 1, 1982; February 1, 1995.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-05.1

Public Service Commission
Public Utilities – Electric
Rulemaking

Case No. PU-05-364

AMENDED PROPOSED RULES

69-09-08 Renewable electricity and recycled energy tracking system.

69-09-08-01. Purpose, application, and effective date. This chapter establishes a program to include tracking, recording and verifying the transactions associated with certificates and credits for electricity generated from renewable electricity sources as defined by North Dakota Century Code section 49-02-25 among electric generators, utilities, and other interested entities within this state and with similar entities in other states. This chapter applies to all public utilities, electric cooperatives and municipal electric utilities. The tracking program will be effective as specified in the commission's order that designates a program administrator and implements these rules.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-02. Definitions.

1. Designated representative — A responsible individual authorized by the owner or operator of a renewable energy facility or purchaser of energy produced from a renewable resource to register that resource with the program administrator. The designated representative must

have the authority to represent and legally bind the owner, operator, or purchaser in all matters pertaining to the renewable energy certificates tracking program.

2. Existing facilities — Renewable energy facilities placed in service before January 1, 2001.

3. New facilities — Renewable energy facilities placed in service on or after January 1, 2001.

4. Program administrator — The independent entity designated by commission order to carry out the administrative responsibilities related to the renewable energy certificates tracking program as set forth in this chapter.

5. Renewable energy certificate — A document recording one or more renewable energy credits that have been certified by the program administrator as representing electricity generated by a renewable energy facility registered with the tracking system or a certificate imported from a compatible certificates tracking system.

6. Renewable energy certificate account — An account maintained by the program administrator for the purpose of tracking renewable energy certificates.

7. Renewable energy certificates tracking program — The process of tracking renewable energy certificates as a means of meeting the requirements set forth in section 69-09-08-04.

8. Renewable energy credit — The intangible, generally perceived environmental benefits and attributes associated with generating one megawatt hour (MWh) of renewable electricity or recycled energy that is physically metered and meets the requirements set forth in Section 69-09-08-04.

9. Renewable energy facility – A facility generating electricity from one or more generating units that exclusively rely on an energy source or fuel included in North Dakota Century Code Section 49-02-25.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-03. Renewable energy certificates tracking program. Renewable energy certificates may be recorded, transferred, and retired as set forth in this chapter. Except where specifically stated, the provisions of this section apply uniformly to all participants in the tracking program.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-04. Facilities eligible for participation in the renewable energy certificates tracking program. For a renewable energy facility to be eligible to

participate in the tracking program, the facility must be either a new facility or existing facility as defined in section 69-09-08-02 and must also:

1. Register under North Dakota Administrative Code Section 69-09-08-07; and

2. Have output that is capable of being physically metered and verified by the program administrator. A renewable energy facility with more than one generating unit may be metered with a single meter.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-05. Responsibilities of program administrator. At a minimum, the program administrator shall perform the following functions:

1. Create accounts that track renewable energy certificates for each participant in the tracking program;

2. Award renewable energy certificates to registered renewable energy facilities based on verified meter reads;

3. Maintain public information on the program administrator's website that provides tracking program information to interested buyers and sellers of renewable energy certificates;

4. Facilitate private trading of renewable energy certificates;

5. Verify the accuracy of metered production data and other information identified in the renewable energy certificate;

6. Provide an annual report to the commission. Beginning in the year following commission designation of the program administrator, the program administrator shall submit a report to the commission on or before April 15 of each year. At a minimum, the report must contain the amount of registered existing and new generating capacity from a renewable energy facility installed in the state, (in megawatts) by technology type, the owner or operator of each facility or the facility's certificates, the date each facility began to produce electricity, and the total number of renewable energy credits certified by the program administrator during each month of the reporting period.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-06. Production and transfer of renewable energy certificates. The program administrator shall administer a tracking program for renewable energy certificates in accordance with the requirements of this chapter.

1. The transfer of renewable energy certificates between parties is effective only when the transfer is recorded by the program administrator.

2. The program administrator shall require that renewable energy certificates be adequately identified prior to recording a transfer and shall issue a confirmation of the transaction to parties when the transfer is recorded.

3. The program administrator shall establish a procedure to ensure that the award, transfer, and retirement of certificates are accurately recorded.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-07. Registration and certification of renewable energy facilities. To be awarded renewable energy certificates, a designated representative must complete the registration process described in this section.

1. The designated representative shall register with the program administrator each renewable energy generation unit. At a minimum, the registration must include the location, owner, technology, rated capacity of the facility, and evidence that the facility meets the resource eligibility criteria in North Dakota Century Code Section 49-02-25.

2. After verifying the information required in the registration process for renewable facilities, the program administrator shall create a

renewable energy certificate account for the designated representative of the renewable energy resource.

3. The commission or its program administrator may make on-site visits to any registered unit of a renewable energy resource and may revoke the registration of any unit not in compliance with applicable law and rules.

4. A renewable energy facility may not be awarded renewable energy certificates under this program if it is not registered.

5. Any disputes will be resolved using dispute resolution procedures established by the commission or its program administrator.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

Public Service Commission
Public Utilities – Telephone
Rulemaking

Case No. PU-05-575

Amended
Proposed Interconnection Agreement Filing Rules

69-09-05-14. Procedure for filing negotiated interconnection agreements. Carrier-to-carrier interconnection agreements adopted by negotiation must be filed for commission approval under 47 U.S.C. section 252(e), following the procedure set out in this section.

1. The requirements of this section apply to interconnection agreements negotiated under 47 U.S.C. section 251, assignments, assumptions or transfers of interconnection agreements, amendments to interconnection agreements, and agreements for Qwest Platform Plus (QPP) services. The requirements of this section do not apply to commercial line sharing agreements.

2. Each filing must include a completed cover sheet in a form prescribed by the commission.

3. Filed interconnection agreements will be listed on the commission Internet site for comment by interested parties. The Internet listing will include the date each agreement was filed, and links to the agreement itself.

4. The commission will accept written comments on a listed agreement for 60 days from the date filed.

5. Absent commission action within 90 days of filing to disapprove an agreement (or portion thereof), the agreement will be deemed approved under 47 U.S.C. section 252(e)(4).

6. Any assignment, assumption or transfer of an approved interconnection agreement requires notification to be filed with the commission within thirty days after the assignment, assumption or transfer occurs.

7. Any amendment to an interconnection agreement requires a new filing with a new 90-day review and comment period.

General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.7

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission **Public Utilities - Electric** **Rulemaking**	**Case No. PU-05-364**
Public Service Commission **Public Utilities - Telephone** **Rulemaking**	**Case No. PU-05-575**
Public Service Commission **Reclamation** **Rulemaking**	**Case No. RC-05-591**
Public Service Commission **Public Utilities – Siting** **Rulemaking**	**Case No. PU-05-602**

ORDER

April 12, 2006

Appearances

Commissioners Tony Clark, Susan Wefald, and Kevin Cramer.

Preliminary Statement

On November 17, 2005, the North Dakota Public Service Commission (Commission) issued its notice of proposed rulemaking, and on November 22, 2005, the Commission issued an amended notice of proposed rulemaking proposing to revise several sections of the Administrative Code including the following:

Public Utilities – Electric: Case No. PU-05-364

Proposed rules for establishing or participating in a program to track, record and verify the trading of credits for electricity generated from renewable electricity sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states as authorized and defined by newly-enacted North Dakota Century Code Sections 49-02-24 through 26.

Public Utilities – Siting: Case No. PU-05-602

Proposed changes to North Dakota Administrative Code Subsections 69-06-08-01(4) and 69-06-08-02(4) add to the policy criteria used in evaluating energy conversion and transmission facility siting applications an indication that the Commission may give preference to applicants that maximize the interstate benefits of proposed projects.

Public Utilities – Telephone: Case No. PU-05-575

Case No. PU-05-575 consists of proposals concerning telecommunications registration, eligible carrier applications and advertising, and interconnection agreement filings.

Proposed changes to North Dakota Administrative Code Section 69-09-05-02 implement new North Dakota Century Code Section 49-03.1-09 which was designed to streamline the regulatory process for telecommunications companies that are not incumbent local exchange companies. The proposed changes also clarify the definition of prepayment, and set forth the performance bond and escrow account requirements for resellers.

Proposed changes to North Dakota Administrative Code Section 69-09-05-12 concern the application requirements for a telecommunications company seeking designation as an eligible carrier for purposes of receiving federal universal service funding, annual reporting requirements of designated eligible carriers, and the criteria to be considered by the Commission in designating an eligible carrier. These proposed changes are not being addressed in this order but will be addressed at a later time.

New North Dakota Administrative Code Section 69-09-05-14 is being proposed for the purpose of adding a requirement for filing an informational cover sheet and formalizing existing Commission procedures for processing negotiated telecommunications carrier to carrier interconnection agreements filed for Commission approval under 47 USC Section 252(e).

Reclamation: Case No. RC-05-591

Several changes are proposed to rules that pertain to the coal mining and reclamation regulatory program. The changes will allow some lease documents to be deleted from a mining permit once mining is completed or when a lease is otherwise terminated; dropping the name of the United State Geological Survey map containing the permit area and not listing the names of subsurface owners who are not affected by mining activities in newspaper notices for permit applications; adding a cross reference to another rule for information that must be submitted with bond release applications; clarifying inspection requirements for sedimentation ponds and other impoundments; and modifying data requirements for proving reclamation success and adding new language to revegetation success standards on the counting of volunteer trees and shrubs. A cross reference error is also being corrected in the general requirements for

roads. These proposed rule changes are not expected to have an impact on the regulated community in excess of fifty thousand dollars.

Public Hearing

A public hearing on the proposed rule changes was noticed for and held at 1:00 p.m. January 4, 2006. The hearing was held in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The notice of rulemaking was published once in all official county newspapers as evidenced by the affidavit of publication on file with the Commission. The notice was also forwarded to the Legislative Council for publication at least 20 days in advance of the January hearing.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until January 17, 2006, during which data, views, or oral arguments concerning the proposed rulemaking could be received by the Commission and made a part of the rulemaking record to be considered by the Commission.

The following discusses the comments that were received in each case listed above:

Public Utilities – Electric – Case No. PU-05-364

Commission staff presented testimony at the hearing explaining changes proposed to the Commission's administrative rules to create Chapter 69-09-08 of the North Dakota Administrative Code pertaining to the establishment of a renewable electricity and recycled energy tracking system.

2005 House Bill 1314, now codified as North Dakota Century Code Sections 49-02-24 thru 49-02-26, authorizes that the Commission may by rule establish or participate in a program to track, record and verify the trading of credits for electricity generated from renewable and recycled heat sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states. The purpose of this rulemaking is to establish rules for participation in a renewable energy tracking system.

The proposed rules provide that the Commission may designate a tracking system administrator. The proposed rules set forth the responsibilities of the designated administrator and conditions under which the administrator would issue renewable energy certificates to certify renewable energy production by facilities registered in the program.

HB 1314 was enacted with recognition that a Midwest Renewable Energy Tracking System (M-RETS) is being developed in our region. The goal is for MRETS to be operational by year-end 2006. Voluntary participation in MRETS is expected to be substantial across several Midwestern states. It is expected that a new regional market

will emerge for the trading of renewable energy certificates that can be used to demonstrate the "use of green power," regardless whether physical delivery of renewable energy actually occurs. For example, Minnesota will require utilities to submit renewable energy certificates demonstrating commitment to a renewable energy objective that 10% of electricity used in Minnesota be from renewable sources by 2015. The proposed rules would enable Minnesota utilities to meet their Minnesota renewable energy objective with renewable energy certificates from North Dakota sources.

During the hearing, Montana-Dakota Utilities Co. recommended minor clarifying language changes and these are incorporated into the proposed rules. The hearing record was left open for further comment and on January 17, 2006 Missouri River Energy Services (MRES) filed written comments recommending: 1) Master metering should be allowed for multiple generating units to make reporting requirements easier; and 2) The definition of a Renewable Energy Credit in subsection 69-09-08-02(8) should specify the amount of energy equal to a credit. The Commission agrees with MRES' recommendation for allowing master metering, and relevant language is incorporated into the proposed rules. The proposed rules already include a definition of renewable energy credit with the amount of energy set at one megawatt hour so MRES' recommendation to define the amount of energy equal to a credit was not necessary and no changes regarding that suggestion were made. No other comments have been received.

Public Utilities – Telephone – Case No. PU-05-575

Commission staff testified that proposed new section 69-09-05-14 of the North Dakota Administrative Code would add a requirement for filing an informational cover sheet and formalize existing procedure for processing of negotiated interconnection agreements filed for Commission approval under 47 U.S.C section 252(e). This existing procedure is detailed on the Commission's web site and has been working well for several months. Under this existing procedure interconnection agreements are posted on the Commission's web page when filed. The Commission accepts written comments on interconnection agreements for sixty days. Absent Commission action within 90 days, the agreement is deemed approved under 47 U.S.C. section 252(e)(4).

Written comments on the proposed rules were received from a group of North Dakota wireless carriers (Wireless Partnerships) in response to the public notice issued by the Commission in this proceeding on November 22, 2005. The Wireless Partnerships propose that the proposed rules should be modified to exclude the assignment, assumption or transfer of agreements. They contend that Commission approval of the assignment or transfer of an interconnection agreement is not required or authorized under 47 U.S.C. section 252(e) or under N.D.C.C. section 49-21-01.7(9). They further contend that requiring such approval is unnecessary and an impediment to any transaction in which an interconnection agreement is assigned.

Staff did not object to eliminating the requirement for Commission approval of assumptions, assignments or transfer of previously approved interconnection agreements. Staff noted that this requirement has been Commission practice all along and believes there is value in maintaining the existing database of interconnection

agreements and parties to them. Therefore, staff recommended modifying proposed new subsection 6 to require that a notification be filed with the Commission within thirty days after the assignment, assumption or transfer occurs. No other comments have been received.

There were no objections to the staff proposal and the proposed rules are modified accordingly.

Staff testified that the proposed changes to North Dakota Administrative Code Section 69-09-05-02 implement new North Dakota Century Code Section 49-03.1-09 which was designed to streamline the regulatory process for telecommunications companies that are not incumbent local exchange companies. Telecommunications companies that are not incumbent local exchange companies are no longer required to obtain a certificate of registration from the Commission. The companies now provide the required information via the internet.

The proposed changes also clarify the definition of prepayment, and set forth the performance bond and escrow account requirements for resellers.

One written comment was received regarding these rules from the Rural Telephone Company Group, but that comment was directed at the need for an existing rule that was not proposed to be repealed. The comment noted no need for North Dakota Administrative Code section 69-06-05-04.1, concerning the identification of intraLATA interexchange carriers. However, the proposed rule package only proposed a change to that section to delete any reference to certificates of public convenience and necessity or registration certificates, since under the new statutory scheme, certificates will not be granted to any company except incumbent companies. The changes proposed to this section simply make this section consistent with the new law. The issue of the need for the section is not an issue before the Commission at this time. The Rural Telephone Company Group may petition the Commission for a repeal of this section at any time.

One comment was received at the hearing from Alltel requesting that a definition be included in these rules for the term "facilities-based." Although a follow-up written suggestion for such a definition was offered by Alltel, none was received. The Commission concludes that because the term "facilities-based" is used in the enabling legislation and has been used in the regulation of the industry for many years, no definition need be incorporated into the rules at this time. No other comments have been received.

Public Utilities – Siting – Case No. PU-05-602

Subsection 69-06-08-01(4) of the North Dakota Administrative Code sets forth policy criteria for the siting of energy conversion facilities and 69-06-08-02(4) sets forth policy criteria for the siting of energy transmission facilities. Both sections provide that the Commission may require, or give preference to an applicant that will maximize

benefits that result from, the policies and practices listed therein. The amendment being proposed is identical for both sections and states that the Commission may also give preference to an applicant that will maximize interstate benefits of proposed projects.

Commission staff testified that these amendments are being proposed to clarify the Commission's ability to consider interstate benefits of energy conversion and transmission facilities when determining whether to issue siting permits. This clarification is necessary to help ensure that the Commission's siting authority will not be federally pre-empted under the federal Energy Policies Act of 2005. Section 216 of that act provides that the U.S. Department of Energy is to designate national interest electric transmission corridors and authorizes the Department to issue construction permits within those designated corridors if, among other things, the state does not have authority to approve the siting of facilities or to consider the interstate benefits expected to be achieved form the facilities. No other comments have been received.

Reclamation – Case No. RC-05-591

The changes are proposed to North Dakota Administrative Code Article 69-05.2, rules for surface coal mining and reclamation operations. Some of the changes are based on suggestions from the Lignite Energy Council and others are staff initiatives.

Additional language is proposed to NDAC 69-05.2-06-03 containing right of entry requirements to allow a permittee to delete coal leases from the permit when mining on the tract covered by a lease is completed and the lease is no longer needed to show surface right of entry, or when a coal lease has been otherwise terminated. However, if the coal lease no longer provides the surface right of entry, other documents granting the permittee right of entry must be added to the permit.

One of the changes proposed to NDAC 69-05.2-10-01 deletes language that requires the newspaper notice for permit applications include a reference to the United States Geological Survey (USGS) map that contains the area and the other limits the listing of coal owners in the notice to those that will be affected by the mining activities.

A change to the bond release application requirements under NDAC 69-05.2-12-12 will require the filing of a copy of the newspaper advertisement within 30 days of submitting the application instead of requiring the submittal of affidavits of publication within 30 days of submittal of the application. This change is proposed since an affidavit cannot be provided until all publications (once a week for 4 consecutive weeks) are complete, which is almost always later than 30 days after the bond release application is filed. Another change adds a cross-reference to another rule that requires additional information if a final bond release application involves an area that contained a premine water supply that is not being replaced.

Changes proposed to NDAC 69-05.2-16-09 on sedimentation pond inspection requirements make a better distinction between inspections that must be conducted while a pond is being constructed versus annual inspection reports that must be

prepared by a registered professional engineer. The changes will also eliminate the requirement that inspection reports prepared during pond construction be submitted to the Commission. However, reports for each of these inspections will still have to be prepared and maintained at or near the mine site.

The proposed changes to the revegetation success standards under NDAC 69-05.2-22-07 are similar to those proposed by the Office of Surface Mining in March of 2005 to the counterpart federal rule. The changes will allow data collected from native grassland, tame pastureland and cropland in any two years after year six of the ten-year revegetation liability period to be used for final bond release purposes. Currently, data from the last two consecutive years of the liability period, or any three years starting no sooner than year six of the liability period (with one being the last year of the liability period), must be used to demonstrate reclamation success. In addition, only one year of vegetation data would be needed to prove reclamation success on reclaimed woodlands, shelterbelts, and fish and wildlife habitat. New language is also proposed for woodland and shelterbelt standards that allow certain volunteer trees and shrubs to count towards meeting the revegetation standards. These changes should result in some reclaimed tracts being bond released sooner. OSM expects to issue its final rule by early 2006.

Also, a minor change is proposed to the road performance standards under NDAC 69-05.2-24-01 to correct a cross reference error.

No comments were received as a result of the Commission's comment period ending January 17, 2006.

Order

The Commission orders that the proposed changes to several sections of the North Dakota Administrative Code, as attached to and made a part of this order, be submitted to the Attorney General for an opinion that the rules are in compliance with North Dakota Century Code Section 28-32-14, do not conflict with any provisions of existing state law or rule, and are approved as to their legality.

PUBLIC SERVICE COMMISSION

Susan E. Wefald **Commissioner**	**Tony Clark** **President**	**Kevin Cramer** **Commissioner**

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL
STATE CAPITOL
600 E BOULEVARD AVE DEPT 125
BISMARCK, ND 58505-0040
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Wayne Stenehjem
ATTORNEY GENERAL

RECEIVED
MAY 15 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

OPINION

May 15, 2006

Ms. Illona Jeffcoat-Sacco
Executive Secretary
Public Service Commission
600 East Boulevard Avenue, Dept 408
Bismarck, ND 58505-0480

Dear Ms. Jeffcoat-Sacco:

The Office of Attorney General has examined the proposed amendments to N.D.A.C. art. 69-05.2 concerning reclamation, N.D.A.C. art. 69-06 concerning facilities siting, and N.D.A.C. art. 69-09 concerning the renewable electricity and recycled energy tracking system, telephone interconnection agreement filing, and telecommunications registration, along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was issued, 3) a takings assessment was prepared, 4) a small entity regulatory analysis and economic impact statement were prepared, 5) a stringency justification was not prepared, and 6) the proposed rules are within the agency's statutory authority. Further, as required by federal law, the proposed reclamation rules in N.D.A.C. art. 69-05.2 do not conflict with any provisions of existing state law or rules.

These administrative rules are in substantial compliance with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

Wayne Stenehjem
Attorney General

46 **PU-05-364** Pages: 1
Opinion
by Attorney General
05/15/2006: Comm Legal, Illona Pat, Jerry, Annette . .

42 **PU-05-575** ✓ Pages: 1
Opinion
by Attorney General
05/15/2006: Comm Legal, Illona Pat, Jerry, Annette . .

26 **RC-05-591** Pages: 1

23 **PU-05-602** Pages: 1
Opinion
by Attorney General
05/15/2006: Comm Legal, Illona Pat, Jerry, Annette . .

APPROVED
DATE: 5-15-06

MOTION

May 15, 2006

Public Service Commission
Public Utilities - Electric
Rulemaking

Case No. PU-05-364

Public Service Commission
Public Utilities - Telephone
Rulemaking

Case No. PU-05-575

Public Service Commission
Public Utilities – Siting
Rulemaking

Case No. PU-05-602

Contingent on receiving approval from the Attorney General, I move the Commission adopt the proposed new and amendments to the following Chapters of the North Dakota Administrative Code, and forward them to the Legislative Council for publication, Case Nos. PU-05-364, PU-05-575 and PU-05-602.

Article 69-06	Amendments to Siting
Article 69-09	New and Amendments to Telecommunication and Electric

41 **PU-05-575** Pages: 1

Motion adopting proposed rules

by Public Service Commission
05/15/2006: Comm Legal, Illona Pat, Jerry, Annette . .

Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

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April 24, 2006

The Honorable Wayne Stenehjem
Attorney General
State Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0040

Re: Administrative Rule Making
Case Nos. PU-05-364, PU-05-575, RC-05-591 and PU-05-602

Dear Attorney General Stenehjem:

Enclosed please find the proposed new and amendments to N.D. Admin. Code articles 69-05.2, 69-06 and 69-09 by the North Dakota Public Service Commission. The proposed rules have been approved by the Public Service Commission. In accordance with N.D.C.C. § 28-32-14, Public Service Commission requests your examination of these rules as to their legality so they may be considered for formal adoption and publication in the North Dakota Administrative Code. In the case of Reclamation rule changes, as a requirement of the Federal program under which we operate, we also request that the opinion include a statement indicating that the rules do not conflict with any provisions of existing state law or rules. The time for review of these rules should be recorded under 03-31 and 03-106.

Copies of the following Commission documents are enclosed to assist your review:

1. Copy of Order Submitting Rules to Attorney General dated April 12, 2006. This order includes a discussion of the comments and the Commission's consideration of the comments;
2. Copy of proposed rules;
3. Copy of takings assessments, summaries and regulatory analyses, as applicable, and written comments;
4. Commission's Notice of Intent to Amend Administrative Rules and Notice of Public Hearing dated November 17, 2005, and abbreviated notice of intent to adopt;
5. Commission's Amended Notice of Intent to Amend Administrative Rules and Notice of Public Hearing dated November 22, 2005, and abbreviated notice of intent to adopt;
6. Proof of publication; and
7. Proof of filing with Legislative Council;

If you have any questions, do not hesitate to contact us.

Thank you.

Sincerely,

Illona A. Jeffcoat-Sacco
Executive Secretary

40 **PU-05-575** Pages: 1

Letter to Attorney General requesting opinion

by Public Service Commission
04/24/2006: Comm Legal, Illona Pat, Jerry, Annette . .

APPROVED
DATE: 4-12-06
KMF

MOTION

C-TC1

April 12, 2006

Public Service Commission
Public Utilities - Electric
Rulemaking

Case No. PU-05-364

Public Service Commission
Public Utilities - Telephone
Rulemaking

Case No. PU-05-575

Public Service Commission
Reclamation
Rulemaking

Case No. RC-05-591

Public Service Commission
Public Utilities – Siting
Rulemaking

Case No. PU-05-602

I move the Commission adopt the Order submitting rules to the Attorney General for an opinion as to legality and whether they conflict with any other state law or rule, Case Nos. PU-05-364, PU-05-575, RC-05-591, and PU-05-602.

Article 69-05.2	Amendments to Reclamation
Article 69-06	Amendments to Siting
Article 69-09	Amendments to Telecommunication and Electric

39 **PU-05-575** Pages: 1

Motion

by Public Service Commission
04/12/2006: Comm Legal, Illona Pat, Jerry, Annette

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission Public Utilities - Electric Rulemaking	**Case No. PU-05-364**
Public Service Commission Public Utilities - Telephone Rulemaking	**Case No. PU-05-575**
Public Service Commission Reclamation Rulemaking	**Case No. RC-05-591**
Public Service Commission Public Utilities – Siting Rulemaking	**Case No. PU-05-602**

ORDER

April 12, 2006

Appearances

Commissioners Tony Clark, Susan Wefald, and Kevin Cramer.

Preliminary Statement

On November 17, 2005, the North Dakota Public Service Commission (Commission) issued its notice of proposed rulemaking, and on November 22, 2005, the Commission issued an amended notice of proposed rulemaking proposing to revise several sections of the Administrative Code including the following:

Public Utilities – Electric: Case No. PU-05-364

Proposed rules for establishing or participating in a program to track, record and verify the trading of credits for electricity generated from renewable electricity sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states as authorized and defined by newly-enacted North Dakota Century Code Sections 49-02-24 through 26.

Public Utilities – Siting: Case No. PU-05-602

Proposed changes to North Dakota Administrative Code Subsections 69-06-08-01(4) and 69-06-08-02(4) add to the policy criteria used in evaluating energy conversion and transmission facility siting applications an indication that the Commission may give preference to applicants that maximize the interstate benefits of proposed projects.

Public Utilities – Telephone: Case No. PU-05-575

Case No. PU-05-575 consists of proposals concerning telecommunications registration, eligible carrier applications and advertising, and interconnection agreement filings.

Proposed changes to North Dakota Administrative Code Section 69-09-05-02 implement new North Dakota Century Code Section 49-03.1-09 which was designed to streamline the regulatory process for telecommunications companies that are not incumbent local exchange companies. The proposed changes also clarify the definition of prepayment, and set forth the performance bond and escrow account requirements for resellers.

Proposed changes to North Dakota Administrative Code Section 69-09-05-12 concern the application requirements for a telecommunications company seeking designation as an eligible carrier for purposes of receiving federal universal service funding, annual reporting requirements of designated eligible carriers, and the criteria to be considered by the Commission in designating an eligible carrier. These proposed changes are not being addressed in this order but will be addressed at a later time.

New North Dakota Administrative Code Section 69-09-05-14 is being proposed for the purpose of adding a requirement for filing an informational cover sheet and formalizing existing Commission procedures for processing negotiated telecommunications carrier to carrier interconnection agreements filed for Commission approval under 47 USC Section 252(e).

Reclamation: Case No. RC-05-591

Several changes are proposed to rules that pertain to the coal mining and reclamation regulatory program. The changes will allow some lease documents to be deleted from a mining permit once mining is completed or when a lease is otherwise terminated; dropping the name of the United State Geological Survey map containing the permit area and not listing the names of subsurface owners who are not affected by mining activities in newspaper notices for permit applications; adding a cross reference to another rule for information that must be submitted with bond release applications; clarifying inspection requirements for sedimentation ponds and other impoundments; and modifying data requirements for proving reclamation success and adding new language to revegetation success standards on the counting of volunteer trees and shrubs. A cross reference error is also being corrected in the general requirements for

roads. These proposed rule changes are not expected to have an impact on the regulated community in excess of fifty thousand dollars.

Public Hearing

A public hearing on the proposed rule changes was noticed for and held at 1:00 p.m. January 4, 2006. The hearing was held in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The notice of rulemaking was published once in all official county newspapers as evidenced by the affidavit of publication on file with the Commission. The notice was also forwarded to the Legislative Council for publication at least 20 days in advance of the January hearing.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until January 17, 2006, during which data, views, or oral arguments concerning the proposed rulemaking could be received by the Commission and made a part of the rulemaking record to be considered by the Commission.

The following discusses the comments that were received in each case listed above:

Public Utilities – Electric – Case No. PU-05-364

Commission staff presented testimony at the hearing explaining changes proposed to the Commission's administrative rules to create Chapter 69-09-08 of the North Dakota Administrative Code pertaining to the establishment of a renewable electricity and recycled energy tracking system.

2005 House Bill 1314, now codified as North Dakota Century Code Sections 49-02-24 thru 49-02-26, authorizes that the Commission may by rule establish or participate in a program to track, record and verify the trading of credits for electricity generated from renewable and recycled heat sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states. The purpose of this rulemaking is to establish rules for participation in a renewable energy tracking system.

The proposed rules provide that the Commission may designate a tracking system administrator. The proposed rules set forth the responsibilities of the designated administrator and conditions under which the administrator would issue renewable energy certificates to certify renewable energy production by facilities registered in the program.

HB 1314 was enacted with recognition that a Midwest Renewable Energy Tracking System (M-RETS) is being developed in our region. The goal is for MRETS to be operational by year-end 2006. Voluntary participation in MRETS is expected to be substantial across several Midwestern states. It is expected that a new regional market

will emerge for the trading of renewable energy certificates that can be used to demonstrate the "use of green power," regardless whether physical delivery of renewable energy actually occurs. For example, Minnesota will require utilities to submit renewable energy certificates demonstrating commitment to a renewable energy objective that 10% of electricity used in Minnesota be from renewable sources by 2015. The proposed rules would enable Minnesota utilities to meet their Minnesota renewable energy objective with renewable energy certificates from North Dakota sources.

During the hearing, Montana-Dakota Utilities Co. recommended minor clarifying language changes and these are incorporated into the proposed rules. The hearing record was left open for further comment and on January 17, 2006 Missouri River Energy Services (MRES) filed written comments recommending: 1) Master metering should be allowed for multiple generating units to make reporting requirements easier; and 2) The definition of a Renewable Energy Credit in subsection 69-09-08-02(8) should specify the amount of energy equal to a credit. The Commission agrees with MRES' recommendation for allowing master metering, and relevant language is incorporated into the proposed rules. The proposed rules already include a definition of renewable energy credit with the amount of energy set at one megawatt hour so MRES' recommendation to define the amount of energy equal to a credit was not necessary and no changes regarding that suggestion were made. No other comments have been received.

Public Utilities – Telephone – Case No. PU-05-575

Commission staff testified that proposed new section 69-09-05-14 of the North Dakota Administrative Code would add a requirement for filing an informational cover sheet and formalize existing procedure for processing of negotiated interconnection agreements filed for Commission approval under 47 U.S.C section 252(e). This existing procedure is detailed on the Commission's web site and has been working well for several months. Under this existing procedure interconnection agreements are posted on the Commission's web page when filed. The Commission accepts written comments on interconnection agreements for sixty days. Absent Commission action within 90 days, the agreement is deemed approved under 47 U.S.C. section 252(e)(4).

Written comments on the proposed rules were received from a group of North Dakota wireless carriers (Wireless Partnerships) in response to the public notice issued by the Commission in this proceeding on November 22, 2005. The Wireless Partnerships propose that the proposed rules should be modified to exclude the assignment, assumption or transfer of agreements. They contend that Commission approval of the assignment or transfer of an interconnection agreement is not required or authorized under 47 U.S.C. section 252(e) or under N.D.C.C. section 49-21-01.7(9). They further contend that requiring such approval is unnecessary and an impediment to any transaction in which an interconnection agreement is assigned.

Staff did not object to eliminating the requirement for Commission approval of assumptions, assignments or transfer of previously approved interconnection agreements. Staff noted that this requirement has been Commission practice all along and believes there is value in maintaining the existing database of interconnection

agreements and parties to them. Therefore, staff recommended modifying proposed new subsection 6 to require that a notification be filed with the Commission within thirty days after the assignment, assumption or transfer occurs. No other comments have been received.

There were no objections to the staff proposal and the proposed rules are modified accordingly.

Staff testified that the proposed changes to North Dakota Administrative Code Section 69-09-05-02 implement new North Dakota Century Code Section 49-03.1-09 which was designed to streamline the regulatory process for telecommunications companies that are not incumbent local exchange companies. Telecommunications companies that are not incumbent local exchange companies are no longer required to obtain a certificate of registration from the Commission. The companies now provide the required information via the internet.

The proposed changes also clarify the definition of prepayment, and set forth the performance bond and escrow account requirements for resellers.

One written comment was received regarding these rules from the Rural Telephone Company Group, but that comment was directed at the need for an existing rule that was not proposed to be repealed. The comment noted no need for North Dakota Administrative Code section 69-06-05-04.1, concerning the identification of intraLATA interexchange carriers. However, the proposed rule package only proposed a change to that section to delete any reference to certificates of public convenience and necessity or registration certificates, since under the new statutory scheme, certificates will not be granted to any company except incumbent companies. The changes proposed to this section simply make this section consistent with the new law. The issue of the need for the section is not an issue before the Commission at this time. The Rural Telephone Company Group may petition the Commission for a repeal of this section at any time.

One comment was received at the hearing from Alltel requesting that a definition be included in these rules for the term "facilities-based." Although a follow-up written suggestion for such a definition was offered by Alltel, none was received. The Commission concludes that because the term "facilities-based" is used in the enabling legislation and has been used in the regulation of the industry for many years, no definition need be incorporated into the rules at this time. No other comments have been received.

Public Utilities – Siting – Case No. PU-05-602

Subsection 69-06-08-01(4) of the North Dakota Administrative Code sets forth policy criteria for the siting of energy conversion facilities and 69-06-08-02(4) sets forth policy criteria for the siting of energy transmission facilities. Both sections provide that the Commission may require, or give preference to an applicant that will maximize

benefits that result from, the policies and practices listed therein. The amendment being proposed is identical for both sections and states that the Commission may also give preference to an applicant that will maximize interstate benefits of proposed projects.

Commission staff testified that these amendments are being proposed to clarify the Commission's ability to consider interstate benefits of energy conversion and transmission facilities when determining whether to issue siting permits. This clarification is necessary to help ensure that the Commission's siting authority will not be federally pre-empted under the federal Energy Policies Act of 2005. Section 216 of that act provides that the U.S. Department of Energy is to designate national interest electric transmission corridors and authorizes the Department to issue construction permits within those designated corridors if, among other things, the state does not have authority to approve the siting of facilities or to consider the interstate benefits expected to be achieved form the facilities. No other comments have been received.

Reclamation – Case No. RC-05-591

The changes are proposed to North Dakota Administrative Code Article 69-05.2, rules for surface coal mining and reclamation operations. Some of the changes are based on suggestions from the Lignite Energy Council and others are staff initiatives.

Additional language is proposed to NDAC 69-05.2-06-03 containing right of entry requirements to allow a permittee to delete coal leases from the permit when mining on the tract covered by a lease is completed and the lease is no longer needed to show surface right of entry, or when a coal lease has been otherwise terminated. However, if the coal lease no longer provides the surface right of entry, other documents granting the permittee right of entry must be added to the permit.

One of the changes proposed to NDAC 69-05.2-10-01 deletes language that requires the newspaper notice for permit applications include a reference to the United States Geological Survey (USGS) map that contains the area and the other limits the listing of coal owners in the notice to those that will be affected by the mining activities.

A change to the bond release application requirements under NDAC 69-05.2-12-12 will require the filing of a copy of the newspaper advertisement within 30 days of submitting the application instead of requiring the submittal of affidavits of publication within 30 days of submittal of the application. This change is proposed since an affidavit cannot be provided until all publications (once a week for 4 consecutive weeks) are complete, which is almost always later than 30 days after the bond release application is filed. Another change adds a cross-reference to another rule that requires additional information if a final bond release application involves an area that contained a premine water supply that is not being replaced.

Changes proposed to NDAC 69-05.2-16-09 on sedimentation pond inspection requirements make a better distinction between inspections that must be conducted while a pond is being constructed versus annual inspection reports that must be

prepared by a registered professional engineer. The changes will also eliminate the requirement that inspection reports prepared during pond construction be submitted to the Commission. However, reports for each of these inspections will still have to be prepared and maintained at or near the mine site.

The proposed changes to the revegetation success standards under NDAC 69-05.2-22-07 are similar to those proposed by the Office of Surface Mining in March of 2005 to the counterpart federal rule. The changes will allow data collected from native grassland, tame pastureland and cropland in any two years after year six of the ten-year revegetation liability period to be used for final bond release purposes. Currently, data from the last two consecutive years of the liability period, or any three years starting no sooner than year six of the liability period (with one being the last year of the liability period), must be used to demonstrate reclamation success. In addition, only one year of vegetation data would be needed to prove reclamation success on reclaimed woodlands, shelterbelts, and fish and wildlife habitat. New language is also proposed for woodland and shelterbelt standards that allow certain volunteer trees and shrubs to count towards meeting the revegetation standards. These changes should result in some reclaimed tracts being bond released sooner. OSM expects to issue its final rule by early 2006.

Also, a minor change is proposed to the road performance standards under NDAC 69-05.2-24-01 to correct a cross reference error.

No comments were received as a result of the Commission's comment period ending January 17, 2006.

Order

The Commission orders that the proposed changes to several sections of the North Dakota Administrative Code, as attached to and made a part of this order, be submitted to the Attorney General for an opinion that the rules are in compliance with North Dakota Century Code Section 28-32-14, do not conflict with any provisions of existing state law or rule, and are approved as to their legality.

PUBLIC SERVICE COMMISSION

Susan E. Wefald **Commissioner**	**Tony Clark** **President**	**Kevin Cramer** **Commissioner**

PROPOSED RECLAMATION RULES

69-05.2-06-03. Permit applications - Right of entry and operation information.

1. In addition to satisfying subdivision k of subsection 1 of North Dakota Century Code section 38-14.1-14, the application must also contain a narrative and supporting certified copies of the appropriate documents which demonstrate that the applicant has complied with North Dakota Century Code section 38-18-06.

2. Following completion of coal removal operations on the lands covered by a coal lease, the copy of the lease may be deleted from an approved permit if:

   a. The lease is no longer needed to show the surface right of entry for carrying out reclamation operations; or

   b. The lease has expired or has been terminated.

   If a coal lease is no longer provided for surface right of entry, other documents granting the permittee surface right of entry must be added to the permit.

69-05.2-10-01. Permit applications - Public notices of filing.

1. The advertisement required by North Dakota Century Code section 38-14.1-18 must also include:

   a. The applicant's name and business address.

   b. A map or description which must:

      (1) Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the permit area.

      (2) Clearly show or describe the exact location and boundaries of the permit area.

      (3) ~~Name the United States geological survey 7.5-minute quadrangle map which contains the area shown or described.~~

      ~~(4)~~ Show the north point (if a map).

(~~5~~ 4) State the name of each owner of record of surface rights and, if the applicant proposes to mine coal or conduct activities that may impact future coal recovery, the names of each owner of record of coal rights within the permit boundaries.

69-05.2-12-12. Release of performance bond - Bond release application.

3. Within thirty days after filing a request for bond release, the permittee shall submit ~~proof of the publication~~ a copy of the newspaper advertisement that was published as required by North Dakota Century Code section 38-14.1-17. The advertisement published must include the permittee's name.

8. When the permittee requests final bond release under subdivision d of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must include:

   a. The data collected, analyses conducted, and a narrative detailing compliance with subsection 4 of section 69-05.2-22-07.

   b. The history of initial and subsequent seedings and fertilization, including mixtures and rates, appropriate soil tests, supplemental irrigation, or other management practices employed.

   c. Documentation showing the reestablishment of essential hydrologic functions of alluvial valley floors.

   d. If a premine water delivery system will not be replaced, the bond release application must address the requirements of subdivision b of subsection 90 of section 69-05.2-01-02.

69-05.2-16-09. Performance standards - Hydrologic balance -Sedimentation ponds.

19. Impoundment inspections.

   a. A registered professional engineer, or other specialist under the direction of a registered professional engineer, shall inspect each impoundment as required under subdivision b, c and d. The registered professional engineer and specialist must be experienced in the construction of impoundments.

   b. Inspections must be made regularly during construction~~, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond~~. Reports for each inspection during construction must be prepared and maintained at or near the minesite.

   c. After ~~each inspection~~ impoundment construction is complete, the registered professional engineer shall promptly provide the commission a certified report that the impoundment has been inspected during construction on a regular basis and it has been constructed ~~or maintained~~ as designed and according to the approved plan and this chapter. The report must include ~~discussion of any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting~~

~~stability~~ a summary of the construction inspections, final storage capacity, and if applicable, a discussion of any deviations from the approved plan.

d. After impoundments are operational, they shall be inspected at least yearly until removal of the structure or release of the performance bond. A registered professional engineer shall promptly provide the commission with an annual impoundment inspection report addressing any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability. A single report can address more than one impoundment; however, the condition of each impoundment must be noted separately.

e. A copy of the inspection reports must be maintained at or near the minesite.

69-05.2-22-07. Performance standards - Revegetation - Standards for success.

4. The success of revegetation on the permit area at the time of final bond release must be determined for each postmining land use according to the following:

   a. For native grassland, the following must be achieved for ~~the last two consecutive~~ any two years after year six of the responsibility period:

      (1) Ground cover and productivity of the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence; and

      (2) Diversity, seasonality, and permanence of the vegetation of the permit area must equal or exceed the approved standard.

   b. For tame pastureland, ground cover and productivity of the permit area must be equal to or greater than that of the approved standard with ninety percent statistical confidence for ~~the last two consecutive~~ any two years after year six of the responsibility period.

   c. For cropland, crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for ~~the last two consecutive~~ any two years after year six of the responsibility period.

   d. For prime farmlands, a showing that the requirements for the restoration of productivity as specified in subdivision c of subsection 3 have been met and that the ten-year period of responsibility has elapsed.

   e. For woodlands and fish and wildlife habitat where the vegetation type is woodland, the following must be achieved during the ~~last two consecutive years~~ growing season of the last year of the responsibility period:

      (1) The number of woody plants established on the permit area must be equal to or greater than the number of live woody plants of the same life form of the approved

standard with ninety percent statistical confidence. Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:

(a) Be healthy;

(b) Be in place for at least two growing seasons; ~~and~~

(c) ~~At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that no tree, shrub, or half-shrub replanting has occurred during the last six years of the revegetation responsibility period.~~ If any replanting of woody plants took place took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; and

(d) Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted towards meeting success standards; however, volunteer trees must be at least thirty inches (76 centimeters) in height to be included in the count. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.

(2) The ground cover must be equal to or greater than ninety percent of the ground cover of the approved standard with ninety percent statistical confidence and must be adequate to control erosion; and

(3) Species diversity, seasonal variety, and regenerative capacity of the vegetation on the permit area must be evaluated on the basis of species stocked and expected survival and reproduction rates.

f. For shelterbelts, the following must be achieved during the ~~last two consecutive years~~ growing season of the last year of the responsibility period:

(1) Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:

(a) Be healthy;

(b) Be in place for at least two growing seasons; ~~and~~

(c) ~~At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that no tree, shrub, or half-shrub replanting has occurred during the last six years of the revegetation responsibility period.~~ If any replanting of woody plants took place took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the

total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; and

(d) Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted towards meeting success standards; however, volunteer trees must be at least thirty inches (76 centimeters) in height to be included in the count. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.

(2) Shelterbelt density and vigor must be equal to or greater than that of the approved standard; and

(3) Erosion must be adequately controlled.

g. For fish and wildlife habitat, where the vegetation type is wetland, vegetation zones and dominant species must be equal to those of the approved standard during the ~~last two consecutive years~~ growing season of the last year of the responsibility period. In addition, wetland permanence and water quality must meet approved standards.

h. For fish and wildlife habitat, where the vegetation type is grassland, the following must be achieved during the ~~last two consecutive years~~ growing season of the last year of the responsibility period:

(1) Ground cover must be equal to or greater than that of the approved standard with ninety percent statistical confidence and must be adequate to control erosion.

(2) Species diversity, seasonal variety, and regenerative capacity of the vegetation must meet or exceed the approved standard.

i. For previously mined areas that were not reclaimed to the requirements of this chapter, any reclamation requirements in effect when the areas were mined must be met. In addition, the ground cover may not be less than can be supported by the best available plant growth material in the reaffected area, nor less than the ground cover existing before redisturbance. Adequate measures must be in place to control erosion as approved by the commission.

j. For areas to be developed for water, residential, or industrial and commercial uses within two years after the completion of grading or soil replacement, the ground cover on these areas may not be less than required to control erosion.

k. For areas to be developed for recreation, woody plants must meet or exceed the stocking and plant establishment standards for woodlands or shelterbelts found in paragraph 1 of subdivision e or in subdivision f as applicable. In addition, ground cover must not be less than required to achieve the approved postmining land use.

l. ~~As an alternative to meeting revegetation success standards for the last two consecutive growing seasons of the responsibility period, an operator may demonstrate that the applicable standards have been achieved for any three years starting no sooner than the sixth year of the responsibility period and with one year being the last~~

~~year of the responsibility period. This alternative does not pertain to success standards for prime farmlands unless a reclaimed tract contains both prime and nonprime farmlands.~~ If a reclaimed tract contains a mixture of prime and nonprime farmlands, the commission may approve a single yield standard for the entire tract based on the soil types that occurred on the prime and nonprime areas prior to mining. The operator must provide a detailed description and comparison of the soil mapping units, acreages, and yield calculations in the reclamation plan as required by subsection 8 of section 69-05.2-09-15. When a single yield standard is approved, the operator must demonstrate that the standard has been achieved for any three years starting no sooner than the sixth year of the responsibility period ~~and with one year being the last year of the responsibility period~~. If this option is approved, the operator must also meet the applicable requirements of section 69-05.2-26-05 for the entire tract.

69-05.2-24-01. Performance standards - Roads - General requirements.

1. Each road, as defined in subsection ~~92~~ 93 of section 69-05.2-01-02, must be classified as either a primary or ancillary road.

Public Service Commission
Public Utilities – Siting
Rulemaking

Case No. PU-05-602

PROPOSED SITING RULES

69-06-08-01. Energy conversion facility siting criteria. The following criteria shall guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process.

4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits.

History: Amended effective August 1, 1979.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-05.1

69-06-08-02. Transmission facility corridor and route criteria. The following criteria shall guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process. Exclusion and avoidance areas may be located within a corridor, but at no given point shall such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following

policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits.

History: Amended effective August 1, 1979; January 1, 1982; February 1, 1995.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-05.1

Public Service Commission
Public Utilities – Electric
Rulemaking

Case No. PU-05-364

AMENDED PROPOSED RULES

69-09-08 Renewable electricity and recycled energy tracking system.

69-09-08-01. Purpose, application, and effective date. This chapter establishes a program to include tracking, recording and verifying the transactions associated with certificates and credits for electricity generated from renewable electricity sources as defined by North Dakota Century Code section 49-02-25 among electric generators, utilities, and other interested entities within this state and with similar entities in other states. This chapter applies to all public utilities, electric cooperatives and municipal electric utilities. The tracking program will be effective as specified in the commission's order that designates a program administrator and implements these rules.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-02. Definitions.

1. Designated representative — A responsible individual authorized by the owner or operator of a renewable energy facility or purchaser of energy produced from a renewable resource to register that resource with the program administrator. The designated representative must

have the authority to represent and legally bind the owner, operator, or purchaser in all matters pertaining to the renewable energy certificates tracking program.

2. Existing facilities — Renewable energy facilities placed in service before January 1, 2001.

3. New facilities — Renewable energy facilities placed in service on or after January 1, 2001.

4. Program administrator — The independent entity designated by commission order to carry out the administrative responsibilities related to the renewable energy certificates tracking program as set forth in this chapter.

5. Renewable energy certificate — A document recording one or more renewable energy credits that have been certified by the program administrator as representing electricity generated by a renewable energy facility registered with the tracking system or a certificate imported from a compatible certificates tracking system.

6. Renewable energy certificate account — An account maintained by the program administrator for the purpose of tracking renewable energy certificates.

7. Renewable energy certificates tracking program — The process of tracking renewable energy certificates as a means of meeting the requirements set forth in section 69-09-08-04.

8. Renewable energy credit — The intangible, generally perceived environmental benefits and attributes associated with generating one megawatt hour (MWh) of renewable electricity or recycled energy that is physically metered and meets the requirements set forth in Section 69-09-08-04.

9. Renewable energy facility – A facility generating electricity from one or more generating units that exclusively rely on an energy source or fuel included in North Dakota Century Code Section 49-02-25.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-03. Renewable energy certificates tracking program. Renewable energy certificates may be recorded, transferred, and retired as set forth in this chapter. Except where specifically stated, the provisions of this section apply uniformly to all participants in the tracking program.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-04. Facilities eligible for participation in the renewable energy certificates tracking program. For a renewable energy facility to be eligible to

participate in the tracking program, the facility must be either a new facility or existing facility as defined in section 69-09-08-02 and must also:

1. Register under North Dakota Administrative Code Section 69-09-08-07; and

2. Have output that is capable of being physically metered and verified by the program administrator. A renewable energy facility with more than one generating unit may be metered with a single meter.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-05. Responsibilities of program administrator. At a minimum, the program administrator shall perform the following functions:

1. Create accounts that track renewable energy certificates for each participant in the tracking program;

2. Award renewable energy certificates to registered renewable energy facilities based on verified meter reads;

3. Maintain public information on the program administrator's website that provides tracking program information to interested buyers and sellers of renewable energy certificates;

4. Facilitate private trading of renewable energy certificates;

5. Verify the accuracy of metered production data and other information identified in the renewable energy certificate;

6. Provide an annual report to the commission. Beginning in the year following commission designation of the program administrator, the program administrator shall submit a report to the commission on or before April 15 of each year. At a minimum, the report must contain the amount of registered existing and new generating capacity from a renewable energy facility installed in the state, (in megawatts) by technology type, the owner or operator of each facility or the facility's certificates, the date each facility began to produce electricity, and the total number of renewable energy credits certified by the program administrator during each month of the reporting period.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-06. Production and transfer of renewable energy certificates. The program administrator shall administer a tracking program for renewable energy certificates in accordance with the requirements of this chapter.

1. The transfer of renewable energy certificates between parties is effective only when the transfer is recorded by the program administrator.

2. The program administrator shall require that renewable energy certificates be adequately identified prior to recording a transfer and shall issue a confirmation of the transaction to parties when the transfer is recorded.

3. The program administrator shall establish a procedure to ensure that the award, transfer, and retirement of certificates are accurately recorded.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-07. Registration and certification of renewable energy facilities. To be awarded renewable energy certificates, a designated representative must complete the registration process described in this section.

1. The designated representative shall register with the program administrator each renewable energy generation unit. At a minimum, the registration must include the location, owner, technology, rated capacity of the facility, and evidence that the facility meets the resource eligibility criteria in North Dakota Century Code Section 49-02-25.

2. After verifying the information required in the registration process for renewable facilities, the program administrator shall create a

renewable energy certificate account for the designated representative of the renewable energy resource.

3. The commission or its program administrator may make on-site visits to any registered unit of a renewable energy resource and may revoke the registration of any unit not in compliance with applicable law and rules.

4. A renewable energy facility may not be awarded renewable energy certificates under this program if it is not registered.

5. Any disputes will be resolved using dispute resolution procedures established by the commission or its program administrator.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

Public Service Commission
Public Utilities – Telephone
Rulemaking

Case No. PU-05-575

Amended
Proposed Interconnection Agreement Filing Rules

69-09-05-14. Procedure for filing negotiated interconnection agreements. Carrier-to-carrier interconnection agreements adopted by negotiation must be filed for commission approval under 47 U.S.C. section 252(e), following the procedure set out in this section.

1. The requirements of this section apply to interconnection agreements negotiated under 47 U.S.C. section 251, assignments, assumptions or transfers of interconnection agreements, amendments to interconnection agreements, and agreements for Qwest Platform Plus (QPP) services. The requirements of this section do not apply to commercial line sharing agreements.

2. Each filing must include a completed cover sheet in a form prescribed by the commission.

3. Filed interconnection agreements will be listed on the commission Internet site for comment by interested parties. The Internet listing will include the date each agreement was filed, and links to the agreement itself.

4. The commission will accept written comments on a listed agreement for 60 days from the date filed.

5. Absent commission action within 90 days of filing to disapprove an agreement (or portion thereof), the agreement will be deemed approved under 47 U.S.C. section 252(e)(4).

6. Any assignment, assumption or transfer of an approved interconnection agreement requires notification to be filed with the commission within thirty days after the assignment, assumption or transfer occurs.

7. Any amendment to an interconnection agreement requires a new filing with a new 90-day review and comment period.

General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-21, 49-21-01.7

Public Service Commission
Public Utilities – Telephone Rulemaking

Case No. PU-05-575

Proposed Telecommunications Registration Rulemaking

69-09-05-02. Discontinuance of telecommunications services. A utility may not discontinue telecommunications services, except as provided in this section.

1. A utility may discontinue the essential services it provides:

   a. If the customer is delinquent in payment for essential services, then essential services may be discontinued even though discontinuing the services results in the discontinuance of all telecommunications services.

   b. If the customer is delinquent in payment for long-distance services rendered by a local exchange company or another company and billed by the local exchange company, but is not delinquent in payment for essential services rendered by the local exchange company, the local exchange company may discontinue the customer's local exchange services only at central offices lacking the technical ability to discontinue long-distance services while continuing to provide local exchange services.

2. A utility may discontinue nonessential services:

a. If the customer is delinquent in payment for nonessential services.

b. If the customer is delinquent in payment for long-distance telecommunications services rendered by another company and billed by the local exchange company, then the local exchange company may deny the customer all forms of access to the network of the telecommunications company to which the customer is delinquent in payment. However, if due to technical limitations, a local exchange company must also deny the customer all forms of access to the long-distance networks of all telecommunications companies, including its own, in order to deny the customer access to the network of the company to which the customer is delinquent, the local exchange company may do so.

3. A utility may discontinue service to a customer for failure to comply with regulations of the utility on file with the commission pertaining to installation and use of equipment, or for use of equipment which interferes with or adversely affects the service to other customers, provided the customer has first been notified and afforded reasonable opportunity to change or disconnect such equipment.

4. A utility may not discontinue service to a customer for failure of the customer to pay for merchandise purchased from the utility, to pay

for a different class of service furnished by the utility, to pay for service rendered to a previous occupant of the premises, or to pay the bill of another customer as guarantor thereof.

5. A utility may not discontinue service to a customer for failure to pay for service until the utility first gives the customer notice of its intention to discontinue such service on account of delinquency. The notice must:

   a. Be sent by first-class mail addressed to the billing name and address of the affected account.

   b. Show the amount of the delinquency.

   c. Include the telephone number of the public service commission.

   d. Advise the customer of the customer's rights and remedies, including the customer's right to work out a satisfactory deferred installment agreement for delinquent accounts.

   e. Inform the customer that service will be discontinued if the delinquent account is not paid within ten calendar days from the date of mailing or personal delivery of the notice, or if a satisfactory installment agreement is not made with the utility for payment of the delinquent bill. The utility may discontinue service without further notice if the customer fails to pay the delinquent account by the due date.

6. a. A deferred installment agreement for essential services may not be combined with a deferred installment agreement for any other services.

b. A utility may not discontinue essential services if the utility and the customer make a mutually agreed upon deferred installment agreement for essential services. A utility may discontinue essential services without further notice if the customer fails to pay the delinquent account in accordance with the deferred installment agreement.

c. A utility may not discontinue nonessential services if the utility and the customer make a mutually agreed upon deferred installment agreement for nonessential services. A utility may discontinue nonessential services without further notice if the customer fails to pay the delinquent account in accordance with the deferred installment agreement.

7. The customer may pay the delinquent account at any time prior to the actual discontinuance of service.

8. Whenever service has been discontinued for nonpayment of a bill, service must be resumed if the customer:

a. Pays the fee for resuming service established in the utility's rate schedules;

b. Makes a deposit under section 69-09-05-03 (if required by the company); and

c. Makes a satisfactory settlement for the delinquent bill and for the service rendered to the date the service was discontinued. Interexchange carriers are not required to resume long-distance service if local service is not connected.

9. If the customer disputes the amount of a bill for service, the customer may, to prevent discontinuance for nonpayment, pay the disputed bill under protest to the utility. Alternatively, the customer may request a formal hearing pursuant to section 69-02-02-02 in which case the utility may not discontinue service for nonpayment of the disputed bill until a final decision has been issued by the commission. The utility shall immediately give the commission notice of the dispute and the commission may investigate the dispute. The utility shall refund to the customer any part of such payment made under protest found by the commission to be excessive.

10. The commission may order the discontinuance of services where a reseller or operator services provider violates commission rules. The commission will provide ten days' notice of a deficiency or violation and provide an opportunity for the noncomplying reseller

or operator services provider to respond or correct the deficiency. A reseller or operator services provider disputing the alleged violation or discontinuance may request a formal hearing under section 69-02-02-02, in which case the discontinuance will be stayed until final decision by the commission.

11. a. Except for discontinuance due to delinquency, a competitive local exchange company may not discontinue service to a customer without first providing the customer with twenty days' written notice of the intent to discontinue service. The notice of intent to discontinue service shall inform the customer of its right to choose between local exchange companies, if more than one local exchange company is providing essential services.

b. A telecommunications company may not interfere with a competitive local exchange company's obligation to provide notice to a customer; provided that a telecommunications company may disconnect service to a competitive local exchange company under the terms of a resale or interconnection agreement so long as the interconnection agreement is consistent with law and rules.

12. Except in the case of discontinuance for nonpayment, if a telecommunications company providing interexchange service

intends to discontinue service or is forced to discontinue service due to abandonment, acquisition, bankruptcy, or for other reasons, the company must provide reasonable advance notice of the discontinuance to each customer. The notice must inform the customer that the customer must choose another primary interexchange carrier or use an alternative service.

History: Effective April 1, 1985; amended effective January 1, 1993; May 1,1996; July 1, 1997, amendments voided by the Administrative Rules Committee effective, August 16, 1997; January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-21, 49-21-01.4,49-21-01.7, 49-21-07

69-09-05-04. Rules for resale of telecommunications services.

1. Definitions.

   a. "Premise cable" means telecommunications cable or channels on the reseller's side of the point of connection to the local exchange company (demarcation point).

   b. "Prepayment" means payments made by customers of a reseller in advance of receiving service. Prepayment includes a deposit and any customer payment for telecommunications service in advance of receiving the full amount of service for which payment is made.

   c. "Resale" means the subscription to local or long-distance telecommunications services and facilities by one entity, and

reoffered for profit or with markup to others with or without enhancements. Where reoffered service is part of a package, and the package is offered for profit or markup, it is resale.

d. "Reseller" means a person reselling local or long-distance telecommunications services. The definition does not include pay telephone providers, but does include a cellular and personal communication service ~~providers~~ provider who ~~resell wireline~~ resells cellular or other wireless service ~~as part of their celluar or personal communication service~~.

e. "Same continuous property" is contiguous real estate owned by the same individual, group of individuals, or other legal entity having title to the property. The property may be traversed by streets, ditches, or other similar manmade or natural terrain features provided that, but for terrain features, the property would be contiguous and provided that such terrain features are of a nature and dimension that it is reasonable to treat the property as contiguous.

f. "Shared tenant service provider" means a person reselling telecommunications services to the tenants of a building complex on the same continuous property or to parties with a community of interest.

2. A reseller may not operate in North Dakota except in compliance with applicable laws and rules. A reseller shall:

a. ~~Obtain a certificate of registration from~~ Register with the commission, on a form provided by the commission, ~~authorizing~~ indicating the provision of local resale or long-distance resale services in the state of North Dakota.

b. If a reseller requires prepayment for service, it shall:

(1) Submit a performance bond in an amount specified by the commission; or

(2) Establish an escrow account in a North Dakota bank containing an amount equal to the prepayments collected at any given time, and file monthly reports showing escrow account activities and call completion data.

(3) ~~The requirements of paragraphs 1 and 2 are waived for any company that has provided cellular or personal communication service in North Dakota for one year without a formal complaint having been filed against it. The commission may revoke the waiver after notice and opportunity for hearing if necessary to protect the public interest.~~ Under North Dakota Century Code section 49-03.7-09(7) the bonding

requirement does not apply to a facility based company providing commercial mobile radio service, as defined in title 47, Code of Federal Regulations, part 20, section 20.3.

4. The requirements of paragraphs 1 and 2 are subject to a twenty-five thousand dollar minimum for resellers of local service other than by means of a prepaid calling card. The required amount of a performance bond is the product of the estimated level of customers after three years of operation, times the amount of required customer prepayments, or twenty-five thousand dollars, whichever is greater. The required amount of an escrow account is an amount equal to the prepayments at any given time but no less than twenty-five thousand dollars.

(5) The requirements of paragraphs 1 and 2 are subject to a two thousand five hundred dollar minimum for resellers of any service other than the local service subject to paragraph 4. The amount of a performance bond is the product of the estimated level of customers after three years of operation, times the amount of required customer prepayments, or two thousand five hundred dollars, whichever is greater.

The amount of an escrow account is an amount equal to the prepayments (including prepaid calling cards) at any given time.

~~c. Forfeit its registration if it is voluntarily dissolved or involuntarily dissolved under North Dakota law. A reseller may not operate and its registration certificate is void on the effective date of involuntary dissolution [redacted]kota Century Code section 10-23-02.2.~~

3. A reseller may not be identified as an optional intrastate interexchange carrier ~~without a certificate of registration from~~ unless it is registered with the commission.

4. Except for residents of dormitories or residence halls of schools, colleges, or universities, the end user has the unrestricted right to choose service from the incumbent local exchange company.

5. A shared tenant service provider shall allow the tenant to use the shared tenant service provider's premise cable and wire in the event an end user wants to receive service from the local exchange company.

6. The reseller is responsible for the charges incurred for telecommunications services to which it subscribes for serving its end users.

7. A reseller is subject to ~~reregulation by the commission,~~ revocation of its ~~certificate~~ authority, and the penalties provided in North Dakota Century Code ~~chapter~~ chapters 49-03.1 and 49-07 for violation of any applicable law or rule.

History: Effective March 1, 1989; amended effective August 1, 1991; December 1, 1993; February 1, 1995; July 1, 1997; January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-03.1-01, 49-03.1-03,49-21, 49-21-01.7, 49-21-07

69-09-05-04.1. Identification of intraLATA interexchange carriers.

1. A local exchange carrier shall not identify a telecommunications company as an optional intrastate interexchange carrier unless the telecommunications company provides the local exchange company with evidence of an effective ~~certificate of public convenience and necessity or a current certificate of~~ registration authorizing the provision of intrastate interexchange service.

2. A telecommunications company shall immediately notify in writing all local exchange companies for which it has requested identification as an optional intrastate interexchange carrier if the telecommunications company's authority to provide interexchange service is revoked or abandoned. A local exchange company shall cease to identify a telecommunications company as an optional intrastate interexchange carrier upon receipt of a written notice that

the telecommunications company's authority to provide interexchange service has been revoked or abandoned.

History: Effective February 1, 1995; amended effective January 1, 2001.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21

69-09-05-05. Rules for the provision of operator services.

1. Definitions.

   a. "End user" means the person to whom operator service is provided.

   b. "Operator service" means service provided to assist in the completion or billing of telephone calls through the use of a live operator or automated equipment. "Operator service" does not include completion of calls through an 800 number or an access code when billed to an account previously established with the carrier by the end user, or the automated operator services provided by pay telephone sets with built-in automated operator messages.

   c. "Operator service provider" means the person providing operator service.

2. Operator service providers shall:

a. ~~Obtain a certificate of registration from~~ Register with the commission authorizing the provision of operator services in the state of North Dakota.

b. Provide written material for use in disclosing to the end user the name and toll free telephone number of the operator service provider. This material must be provided to all coin telephone operators, motels, hospitals, and any other locations where end users may use telephone service not billable to their home or business telephones without operator service.

c. Require operators to clearly identify the operator service provider to all end users and when requested, provide rate information.

d. Provide emergency call service that is equal to that provided by the local exchange telephone company and, if unable to meet this requirement, provide emergency call service by immediate transfer of such calls to the local exchange company.

e. For billing purposes, itemize, identify, and rate calls from the point of origination to the point of termination. No call may be transferred to another carrier by an operator service provider

which cannot or will not complete the call, unless the call can be billed in accordance with this subsection.

f. Not charge for incompleted calls.

g. Disclose their names on bills which include charges for services they provided.

History: Effective March 1, 1989; amended effective August 1, 1991; May 1, 1996; January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7, 49-21-07

69-09-05-10. ~~Certificate of registration~~ Registration - Procedure.

1. A reseller ~~applying for a certificate of registration~~ or competitive facilities based provider desiring authority to provide service in North Dakota shall ~~file an application~~ register on a form provided by the commission. The ~~application~~ registration shall include ~~evidence~~ identification of the applicant's authority to do business in North Dakota.

2. ~~An applicant for a certificate of registration as a~~ A reseller shall follow the procedure set forth in section 69-09-05-04.

3. When ~~the holder of a certificate of registration~~ a registered company intends to assign ~~the~~ its authority to provide telecommunications service in North Dakota to another entity, the

assignee must first ~~obtain a certificate of registration from~~ register with the commission.

4. A ~~reseller~~ registered company may voluntarily, without commission approval, surrender its ~~certificate of registration~~ authority by notifying the commission in writing and updating its registration to reflect this surrender.

5. A competitive local exchange company intending to surrender its authority to provide local exchange service must provide twenty days' prior written notice to the company's customers.

History: Effective January 1, 2001.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21

69-09-05-11. Certificate of public convenience and necessity for incumbent local telecommunications company - Procedure.

1. An applicant for a certificate of public convenience and necessity as an incumbent local exchange company shall file an application with the commission which includes evidence of the applicant's authority to do business in North Dakota, conforms to the commission's rules of practice and procedure under article 69-02, and which identifies:

   a. The type of service the applicant intends to provide.

b. The service area or areas in which the applicant intends to provide service.

c. How the applicant meets the issues to be considered in the application.

2. An applicant for a certificate of public convenience and necessity must also file consolidated financial statements for the most recent year available, including:

a. A balance sheet of the form and style usually followed in the industry.

b. An income statement of the form and style usually followed in the industry.

c. If available, an independent accountant's financial opinion.

d. Any other information requested by the commission.

3. In order to implement North Dakota Century Code chapter 49-03.1 consistent with the Telecommunications Act of 1996, issues to be considered in an application for a certificate of public convenience and necessity for a facilities-based provider of telecommunications services are:

a. Fitness and ability of the applicant to provide service.

b. Adequacy of the proposed service.

c. The technical, financial, and managerial ability of the applicant to provide service.

4. If the application is to be decided on a notice of opportunity for hearing, the applicant shall file affidavits sufficient to meet the applicant's burden of proof on the issues.

5. When the holder of a certificate of public convenience and necessity intends to assign the authority to provide telecommunications service in North Dakota to another entity, the assignee must first obtain a certificate of public convenience and necessity from the commission.

6. ~~Abandonment of a certificate of public convenience and necessity for a competitive local exchange company requires prior written notice to the commission and thirty days' prior written notice to the company's customers.~~ Abandonment of a certificate of public convenience and necessity for an incumbent local exchange company requires prior commission approval.

History: Effective January 1, 2001.
General Authority: NDCC 28-32-02, 49-21-01.7
Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7(7)

PUBLIC SERVICE COMMISSION
Reclamation Division
****

Memorandum

TO: Case No. RC-05-591

FROM: Jim Deutsch, Reclamation Division

DATE: November 14, 2005

SUBJECT: Regulatory and Takings Assessment for mining and reclamation rule changes proposed in Case No. RC-05-591

The Reclamation Division has prepared Regulatory and Takings Assessments as required by North Dakota Century Code (NDCC) Sections 28-32-08.1 and 28-32-09 for the mining and reclamation rule changes proposed in Case No. RC-05-591. NDCC Section 28-32-08.1 requires an agency to prepare a regulatory analysis with regard to the impact of the proposed rules on small entities. NDCC Section 28-32-09 requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property.

NDAC 28-32-08.1 requires a regulatory analysis which considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. The following addresses the provisions of subsection 2 of NDAC 28-32-08.1 with regard to the rule changes proposed in Case No. RC-05-591:

NDCC 28-32-08.1(2)(a) – Establishment of less stringent compliance or reporting requirements for small entities.

No additional compliance standards or reporting requirements are proposed by the rule changes.

NDCC 28-32-08.1(2)(b) – Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities.

No additional compliance standards or reporting requirements are proposed by the rule changes.

NDCC 28-32-08.1(2)(c) – Consolidation or simplification of compliance or reporting requirements for small entities.

As previously noted, no additional compliance standards or reporting requirements are proposed by these rule changes. However, since the Commission's mining and reclamation rules must be consistent with and as effective as counterpart federal rules. we cannot

consolidate or simplify the requirements for small entities and maintain an approved state regulatory program for surface coal mining and reclamation operations.

NDCC 28-32-08.1(2)(d) – Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule.

No additional performance standards are proposed by these rule changes. Since the Commission's mining and reclamation rules must be consistent with and as effective as counterpart federal rules, we cannot adopt special performance standards for small entities and maintain an approved state regulatory program for surface coal mining and reclamation operations.

NDCC 28-32-08.1(2)(e) – Exemption of small entities from all or any part of the requirements contained in the proposed rule.

No additional compliance standards or reporting requirements are proposed by these rule changes. Since the Commission's mining and reclamation rules must be consistent with and as effective as counterpart federal rules, we cannot exempt small entities from the rules that are being modified and maintain an approved state regulatory program for surface coal mining and reclamation operations.

While the proposed rule changes in Case No. RC-05-591 will not limit the use of private real property, the six items listed in NDCC 28-32-09 are addressed below:

NDCC 28-32-09(1)(a) – Assess the likelihood that the proposed rule may result in a taking or regulatory taking.

None of these proposed rule changes affect the use of private real property so they will not result in any taking.

NDCC 28-32-09(1)(b) - Clearly and specifically identify the purpose of the proposed rule.

The purpose of the proposed rule is to reduce some information that is currently required for permit and bond release applications, clarify impoundment inspection requirements, reduce some of the vegetation data needed for final bond release and to otherwise revise some for revegetation success standards to be consistent with changes to counterpart federal rules, and correct a cross reference.

NDCC 28-32-09(1)(c) - Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.

We do not expect any impact on private property owners as a result of the proposed rule changes. The changes involve information that must be provided in permit and bond release applications, modify the requirements for impoundment inspections, and revise revegetation success standards for final bond release. The changes may result in some reclaimed lands receiving final bond release a year or two sooner which will also allow the return of these lands to the full control of private property owners somewhat sooner as well.

NDCC 28-32-09(1)(d) - Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.

We do not expect the proposed rules to constitute a taking; therefore, there should be no cost to the state.

NDCC 28-32-09(1)(e) - Identify the source of payment within the agency's budget for any compensation that may be ordered.

Not applicable, the proposed rule changes will not limit the use of private real property.

NDCC 28-32-09(1)(f) - Certify that the benefits of the proposed rule exceed the estimated compensation costs.

Not applicable, the proposed rule changes will not limit the use of private real property.

jrd\2005 rule changes\Regulatory&Takings Assessment.doc

Testimony for Case No. RC-05-591

Proposed Changes to NDAC Article 69-05.2
Surface Coal Mining and Reclamation Operations

January 4, 2006

I am Jim Deutsch, Director of the Public Service Commission's Reclamation Division. I will explain the rule changes in Case No. RC-05-591. The changes are proposed to North Dakota Administrative Code Article 69-05.2, rules for surface coal mining and reclamation operations. Some of the changes are based on suggestions from the Lignite Energy Council and others are staff initiatives.

Additional language is proposed to NDAC 69-05.2-06-03 containing right of entry requirements to allow a permittee to delete coal leases from the permit when mining on the tract covered by a lease is completed and the lease is no longer needed to show surface right of entry, or when a coal lease has been otherwise terminated. However, if the coal lease no longer provides the surface right of entry, other documents granting the permittee right of entry must be added to the permit.

One of the changes proposed to NDAC 69-05.2-10-01 deletes language that requires the newspaper notice for permit applications include a reference to the United States Geological Survey (USGS) map that contains the area and the other limits the listing of coal owners in the notice to those that will be affected by the mining activities.

A change to the bond release application requirements under NDAC 69-05.2-12-12 will require the filing of a copy of the newspaper advertisement within 30 days of submitting the application instead of requiring the submittal of affidavits of publication within 30 days of submittal of the application. This change is proposed since an affidavit cannot be provided until all publications (once a week for 4 consecutive weeks) are complete, which is almost always later than 30 days after the bond release application is filed. Another change adds a cross-reference to another rule that requires additional information if a final bond release application involves an area that contained a premine water supply that is not being replaced.

Changes are proposed to NDAC 69-05.2-16-09 on sedimentation pond inspection requirements to make a better distinction between inspections that must be conducted while a pond is being constructed versus annual inspection reports that must be prepared by a registered professional engineer. The changes will also eliminate the requirement that inspection reports prepared during pond construction be submitted to the Commission. However, reports for each of these inspections will still have to be prepared and maintained at or near the mine site.

The proposed changes to the revegetation success standards under NDAC 69-05.2-22-07 are similar to those proposed by the Office of Surface Mining in March of 2005 to the counterpart federal rule. The changes will allow data collected from native grassland, tame pastureland and cropland in any two years after year six of the ten-year revegetation liability period to be used for final bond release purposes. Currently, data from the last two consecutive years of the liability period, or any three years starting no sooner than year six of the liability period (with one being the last year of the liability period), must be used to demonstrate reclamation success. In addition, only one year of vegetation data would be needed to prove reclamation success on reclaimed woodlands, shelterbelts, and fish and wildlife habitat. New language is also proposed for woodland and shelterbelt standards that allow certain volunteer trees and shrubs to count towards meeting the revegetation standards. These changes should result in some reclaimed tracts being bond released sooner. OSM expects to issue its final rule in early 2006.

Also, a minor change is proposed to the road performance standards under NDAC 69-05.2-24-01 to correct a cross reference error.

Regulatory and takings assessments for these rule changes have been prepared and copies are available for review. This concludes my testimony on the mining and reclamation rule changes proposed in Case No. RC-05-591.

LIGNITE Energy COUNCIL

JOHN W. DWYER, *President*
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ND PUBLIC SERVICE COMMISSION
RECLAMATION DIVISION

October 27, 2005

Mr. James R. Deutsch
Director, Reclamation Division
North Dakota Public Service Commission
State Capitol - 13th Floor
600 E. Boulevard Avenue - Dept. 408
Bismarck, ND 58505-0480

FROM: RECEIVED
Date: 10-28-05
Action:
Initial by:
Initial:

SERVING:

MINNESOTA
Great River Energy
Minnesota Power
Minnkota Power Cooperative
Otter Tail Power Co.
Xcel Energy

NORTH DAKOTA
Basin Electric Power Cooperative
BNI Coal, Ltd.
Coteau Properties Company
Dakota Gasification Company
Dakota Westmoreland Corporation
Falkirk Mining Co.
Minnkota Power Cooperative
Montana-Dakota Utilities Co.
Otter Tail Power Co.
Xcel Energy

SOUTH DAKOTA
Basin Electric Power Cooperative
Montana-Dakota Utilities Co.
Otter Tail Power Co.
Xcel Energy

MONTANA
Basin Electric Power Cooperative
Dakota Westmoreland Corporation
Montana-Dakota Utilities Co.

CANADA
Luscar Ltd.
SaskPower

Dear Mr. Deutsch:

The Lignite Energy Council is providing comments to proposed draft regulations the Public Service Commission may be considering in the near future. This is a follow-up to the several meetings and discussions between your staff and LEC task force members over the past several months. Our comments address specific proposed rule changes.

Lignite Energy Council proposed changes (see Attachment 1):

1. NDAC 69-05.2-10-01. Permit applications – Public notices of filing.
   The proposed rule changes would reduce unnecessary information in public notices. Based on our discussions, we understand our suggested rule changes would be acceptable to the PSC, and we submit them as is.

2. NDAC 69-05.2-12-12. Release of performance bond – Bond release information.
   The current rule requires proof of publication within 30 days from filing a bond release application. Such proof of publication (affidavit of publication) is not created until all publications have been conducted, which is beyond the 30-day time limit in the rule. This makes compliance with the current rule virtually impossible. The proposed change is consistent with Federal rules, and fulfills the intent of the regulations. We understand the PSC will accept this change. Based on our discussions, we are not proposing a change to NDAC 69-05.2-12-12 (5), regarding topographic maps at this time.

3. NDAC 69-05.2-16-09. Performance standards – Hydrologic balance – Sedimentation ponds.
   We are proposing a restructuring of these rules simply to clarify them. We understand the PSC will accept these, based on our previous discussions.

4. NDAC 69-05.2-16-14. Performance standards – Hydrologic balance – Groundwater monitoring.
   Based on our discussions with you and your staff, we understand you will accept a reduced frequency of groundwater summary report submittals, from annual to biennial. We prefer the simple change that we've proposed. Your office has also recommended a change in reporting frequency. Our review of your proposed change to the same rule indicates there is no substantive difference between our two proposals. While we are not opposed to your proposed language, if the meaning and intent is the same as ours, we suggest the simplest, briefest change possible, as described by our submittal.

Public Service Commission proposed changes from July 7, 2005 (see Attachment 2):

1. NDAC 69-05.2-06-03 Permit applications – Right of entry and operation information.
   Based on discussions between individual LEC task force members and you, we will agree with the change your office has proposed. This will eliminate the inclusion of expired or terminated leases from permits.

2. NDAC 69-05.2-12-12. Release of performance bond – Bond release application.
   The PSC's proposal to add a clarifying paragraph to NDAC 69-05.2-16-05 (8) is acceptable to the LEC. This does not change current requirements.

3. NDAC 69-05.2-16-05. Performance standards – Hydrologic balance – Surface water monitoring
   In a July 7 draft, your office proposed a rule to require a biennial summary report reviewing surface water conditions, in a manner similar to the current annual groundwater summary report. We do not support a regulation requiring submittal of a new report. While this may be useful information during bond release, and some companies may choose to conduct such a review and prepare a report, the LEC does not believe this should be mandated as a new requirement for all companies.

4. NDAC 69-05.2-24-01. Performance standards – Roads – General requirements
   Your proposed change is for editing purposes and we support this change.

The Lignite Energy Council thanks you for your consideration of changes that would streamline the regulatory process while maintaining the nation's highest standards of environmental protection and land reclamation during surface mining operations. We look forward to your formal rulemaking.

Sincerely,

LIGNITE ENERGY COUNCIL

John W. Dwyer
President

Enclosures: Attachment 1 – LEC proposed changes
Attachment 2 – PSC proposed changes from July 7, 2005

cc: Joe Friedlander
Jim Melchior
Troy Leingang
Mike Altavilla
Dave Schouweiler

1.

NDAC 69-05.2-10-01. Permit applications - Public notices of filing.

1. The advertisement required by North Dakota Century Code section 38-14.1-18 must also include:

a. The applicant's name and business address.

b. A map or description which must:

(1) Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the permit area.

(2) Clearly show or describe the exact location and boundaries of the permit area.

(3) Show the north point (if a map).

(4) State the name of each owner of record of surface rights and, if the applicant proposes to mine coal or conduct activities that may impact future coal recovery, the names of each owner of record of coal rights within the permit boundaries.

Deleted: (3) Name the United States geological survey 7.5-minute¶ quadrangle map which contains the area shown or described.¶

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2.

NDAC 69-05.2-12-12. Release of performance bond - Bond release application.

1. The permittee may request the commission release all or part of a bond for lands disturbed after July 1, 1975, as follows:

   a. For lands disturbed between July 1, 1975, and June 30, 1979, the application must comply with subsection 1 of North Dakota Century Code section 38-14.1-17 and subsections 3 and 4. The criteria for release of all or part of the bond will be according to the reclamation requirements in effect at the time of the disturbance.

   b. For lands disturbed after June 30, 1979, the application must comply with the requirements of this section and section 69-05.2-12-11.

2. The permittee may file bond release applications only at times and seasons that allow the commission to properly evaluate the completed reclamation operations. Each application for bond release shall include a notarized statement by the permittee which certifies that all applicable reclamation activities have been accomplished in accordance with this article, North Dakota Century Code chapter 38-14.1, and the approved reclamation plan.

3. Within thirty days after filing a request for bond release, the permittee shall submit a copy of the advertisement that was published as required by North Dakota Century Code section 38-14.1-17. The advertisement published must include the permittee's name.

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3.

NDAC 69-05.2-16-09. Performance standards - Hydrologic balance - Sedimentation ponds.

19. Impoundment inspections.

a. A registered professional engineer, or other specialist under the direction of a registered professional engineer, shall inspect each impoundment as required under subdivision b, c and d. The registered professional engineer and specialist must be experienced in the construction of impoundments.

b. Inspections must be made regularly during construction. Inspection records during construction shall be maintained at or near the minesite.

c. After impoundment construction is complete, the registered professional engineer shall promptly provide the commission a certified report that the impoundment has been inspected during construction on a regular basis and has been constructed as designed and according to the approved plan and this chapter. The report must include a summary of construction inspections, a statement of final storage capacity, and, if applicable, a discussion of any deviations from the approved plan.

d. After impoundments are operational, they shall be inspected at least yearly until removal of the structure or release of the performance bond. A registered professional engineer shall provide the commission with an annual impoundment inspection report addressing any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability. A single report can address more than one impoundment; however, the condition of each impoundment shall be noted separately.

e. A copy of the inspection reports must be maintained at or near the minesite.

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Deleted: , any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability

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4.

(LEC Proposal)
NDAC 69-05.2-16-14. Performance standards - Hydrologic balance – Ground water monitoring.

3. Ground water monitoring data must be submitted to the commission every three months or more frequently as prescribed by the commission. Monitoring reports must include analytical results from each sample taken during the reporting period. The operator shall review the data biennially or more frequently if required by the commission. Changes observed in the monitored aquifers in the permit or adjacent areas must be described and interpreted in the monitoring report as to their significance and possible effect on any water supplies. When the analysis of any ground water sample indicates noncompliance with the permit conditions, the operator shall promptly notify the commission and immediately take the actions provided for in subdivision a of subsection 3 of section 69-05.2-10-05 and subsection 2 of section 69-05.2-09-12.

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(PSC Proposal)
NDAC 69-05.2-16-14. Performance standards - Hydrologic balance - Ground water monitoring.

3. Ground water monitoring data must be submitted to the commission every three months or more frequently as prescribed by the commission. Monitoring reports must include analytical results from each sample taken during the reporting period. The operator shall review the data regularly ~~annually or more frequently if required by the commission~~. When ~~the analysis of~~ any ground water elevation or quality sample indicates noncompliance with the permit conditions, the operator shall promptly notify the commission and immediately take the actions provided for in subdivision a of subsection 3 of section 69-05.2-10-05 and subsection 2 of section 69-05.2-09-12. The operator shall also submit a report biennially ~~shall review the data annually~~ or more frequently if required by the commission that reviews the condition of water resources in the permitted and adjacent areas. Changes observed in the potentiometric surfaces and quality of the monitored aquifers in the permitted or adjacent areas must be described and interpreted in the ~~monitoring~~ report as to their significance and possible effect on any water supplies.

DRAFT – JULY 7, 2005

1. (Revised 10/05)

NDAC 69-05.2-06-03. Permit applications – Right of entry and operation information.

2. Following completion of coal removal operations on the lands covered by a lease, the copy of the coal lease may be deleted from an approved permit if:

a. The lease is no longer needed to show the surface right of entry for carrying out reclamation operations; or

b. The lease has expired or has been terminated.

If a coal lease is no longer provided for surface right of entry, other documents granting the permittee surface right of entry must be added to the permit.

2. NDAC 69-05.2-12-12. Release of performance bond - Bond release application.

8. When the permittee requests final bond release under subdivision d of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must include:

a. The data collected, analyses conducted, and a narrative detailing compliance with subsection 4 of section 69-05.2-22-07.

b. The history of initial and subsequent seedings and fertilization, including mixtures and rates, appropriate soil tests, supplemental irrigation, or other management practices employed.

c. Documentation showing the reestablishment of essential hydrologic functions of alluvial valley floors.

d. If a premine water delivery system will not be replaced, the bond release application must address the requirements of subdivision b of subsection 90 of section 69-05.2-01-02.

3.

NDAC 69-05.2-16-05. Performance standards - Hydrologic balance - Surface water monitoring.

1. Surface water monitoring must be conducted in accordance with the monitoring program and based on the probable hydrologic consequences determination submitted under section 69-05.2-08-04. The commission will approve the nature of data that relate to the hydrologic reclamation plan in section 69-05.2-09-12, frequency of collection, and determine reporting requirements. The operator shall also submit a report biennially or more frequently if required by the commission that reviews the condition of water resources in the permitted and adjacent areas. Changes observed in the flow, water levels and quality of the monitored streams, lakes and impoundments in the permitted or adjacent areas must be described and interpreted in the report as to their significance and possible effect on any water supplies.

    a. For locations in surface water bodies, such as streams, lakes, and impoundments, monitoring must:

        (1) Be adequate to measure accurately and record quantity and quality of discharges from the permit area and identify the extent to which mining affects water quality and quantity in the adjacent area. Water samples taken from all monitoring sites must be analyzed for the parameters specified in subdivision b of subsection 3 of section 69-05.2-08-07. Results must be submitted quarterly to the commission.

        (2) Be conducted to assure reliable test data according to existing standard procedures and analytical methods.

4.

NDAC 69-05.2-24-01. Performance standards - Roads - General requirements.

1. Each road, as defined in subsection ~~92~~ 93 of section 69-05.2-01-02, must be classified as either a primary or ancillary road.

PUBLIC SERVICE COMMISSION
Reclamation Division
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Memorandum

TO: Commissioners Clark, Wefald and Cramer
Illona A. Jeffcoat-Sacco
Bill Binek

FROM: Jim Deutsch

DATE: October 31, 2005

SUBJECT: Proposed reclamation rule changes

Attached are the proposed changes that the Reclamation Division recommends be included as part of the Commission's next rulemaking proceeding. Some of the changes are based on suggestions from the Lignite Energy Council (see the LEC's October 27th letter that is also attached) and others are staff initiatives. We have had several discussions with LEC task members on these proposals over the past several months. The following is a summary of the proposed changes:

NDAC 69-05.2-06-03 – Additional language is being proposed that would allow a permittee to delete a coal lease from the permit when mining on the tract covered by the lease is completed and the lease is no longer needed to show surface right of entry or the lease has been terminated. However, if the coal lease no longer provides surface right of entry, other documents granting the permittee right of entry must be added to the permit. This change is being proposed due to concerns raised by Coteau and Falkirk on the time and cost of recordkeeping associated with outdated lease documents.

NDAC 69-05.2-10-01 – Changes recommended by the LEC are included that propose 1) to delete a provision that requires the newspaper notice for permit applications include a reference to the United States Geological Survey (USGS) map that contains the area and 2) limit the listing of coal owners in the notice to those that will be affected by the mining activities. The corresponding OSM rule has been revised to delete the reference to the USGS map. We believe the proposed change on the listing of coal owners is reasonable.

NDAC 69-05.2-12-12 – Changes to information required for bond release applications include a LEC proposal to change the requirement that the permittee submit proof (an affidavit) of publication within 30 days of submitting the application to submitting a copy of the advertisement that was published. This change is reasonable since an affidavit cannot be provided until all publications (once a week for 4 consecutive weeks) are complete. The change is also consistent with OSM rules. The Reclamation Division also recommends adding a cross-reference to information that is required by the "replacement of water supply" definition in another section of the rules.

Memo sent to Commission w/draft rule changes
by Public Service Commission
10/31/2005

NDAC 69-05.2-16-09 – Changes to sedimentation pond inspection requirements are based on the LEC proposal. The proposed changes made better distinction between inspections that must be conducted while a pond is being constructed versus annual inspection reports that must be prepared by registered professional engineer. The changes also eliminate the requirement that inspection reports prepared during pond construction be submitted to the Commission. However, reports for each of these inspections would have to be prepared and maintained at or near the mine site.

NDAC 69-05.2-22-07 – Changes to revegetation success standards are recommended by the Reclamation Division that are similar to those proposed by OSM earlier this year. The changes will allow the use of data collected in any two years following year six of the ten-year revegetation liability period for native grassland, tame pastureland and cropland uses. Currently, data from the last two consecutive years of the liability period or any three years starting no sooner than year six of the liability period (with one being the last year of the liability period) must be provided to demonstrate reclamation success. Also, for woodlands, shelterbelts and fish and wildlife habitat, only one year of data would be needed to prove reclamation success on these land uses. Additional language is proposed for woodland and shelterbelt standards that clearly allow the counting of volunteer trees and shrubs for meeting the standards. Similar changes should be approved by OSM within the next couple of months. These changes may result in some reclaimed tracts being bond released sooner.

NDAC 69-05.2-24-01 – A change to the road performance standards is proposed by the Reclamation Division to correct a cross reference error.

The LEC also recommended that we propose a change to NDAC 69-05.2-16-14 to change the annual ground water monitoring report to a biennial report. The LEC letter indicated the Reclamation Division would accept this proposal; however, this was tied to adding a similar requirement for a biennial surface water report. Industry opposes that requirement and we do not recommend any change to the ground water rule at this time. This matter will be discussed further with LEC task force members in the future.

An item will be added to the administrative agenda for the November 2 Commission meeting to discuss these proposed rule changes.

Attachments

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State of North Dakota
Public Service Commission

Public Service Commission
Public Utilities - Siting
Rulemaking

Case No. PU-05-602

Regulatory Analysis, Takings Assessment, and Small Entity Analysis

November 21, 2005

The siting rule amendments propose changes to North Dakota Administrative Code Subsections 69-06-08-01(4) and 69-06-08-02(4) to add to the policy criteria used in evaluating energy conversion and transmission facility siting applications an indication that the Commission may give preference to applicants that maximize the interstate benefits of proposed projects.

Regulatory Analysis

The proposed changes merely add another factor that the Commission may use in evaluation energy conversion and transmission facility siting applications and are not expected to have an impact on the regulated community in excess of fifty thousand dollars.

Takings Assessment

North Dakota Century Code Section 28-32-09(1) requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private property. The assessment must:

a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
b. Clearly and specifically identify the purpose of the proposed rule.
c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
e. Identify the source of payment within the agency's budget for any compensation that may be ordered.
f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

None of these proposed rule changes affect the use of private real property so they will not result in any taking.

The purpose of the proposed rule is to add to the policy criteria used in evaluating energy conversion and transmission facility siting applications an indication that the Commission may give preference to applicants that maximize the interstate benefits of proposed projects.

We do not expect any impact on private property owners as a result of the proposed rule changes.

We do not expect the proposed rules to constitute a taking; therefore, there should be no cost to the state.

Subsection e is not applicable because the proposed rule changes will not limit the use of private real property.

Subsection f is not applicable because the proposed rule changes will not limit the use of private real property.

Small Entity Regulatory Analysis

An economic impact analysis under North Dakota Century Code Section 28-32-08.1 requires a regulatory analysis which considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. Subsection 2 states that the agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:

a. Establishment of less stringent compliance or reporting requirements for small entities.
b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities.
c. Consolidation or simplification of compliance or reporting requirements for small entities.
d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule.
e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

No additional compliance standards or reporting requirements are proposed by the rule changes.

No additional performance standards are proposed by these rule changes.

Small entities will not be exempt from any part of the requirements contained in the proposed rule.

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Public Utilities – Siting
Rulemaking

Case No. PU-05-602

STAFF TESTIMONY
January 4, 2006

My name is Jerry Lein. I am a Public Utility Analyst in the Public Utility Division of the Public Service Commission. The purpose of my testimony is to explain changes proposed to the Commission's administrative rules to amend subsections 69-06-08-01(4) and 69-06-08-02(4) of the North Dakota Administrative Code pertaining to the siting of energy conversion and transmission facilities.

Subsection 69-06-08-01(4) sets forth policy criteria for the siting of energy conversion facilities and 69-06-08-02 sets forth policy criteria for the siting of energy transmission facilities. Both sections provide that the Commission may require, or give preference to an applicant that will maximize benefits that result from, the policies and practices listed therein. The amendment being proposed is identical for both sections and states that the Commission may also give preference to an applicant that will maximize interstate benefits of proposed projects.

These amendments are being proposed to clarify the Commission's ability to consider interstate benefits of transmission facilities when determining whether to issue siting permits. This clarification is necessary to help ensure that the Commission's siting authority will not be federally pre-empted under the federal Energy Policies Act of 2005. Section 216 of the Act provides that the U.S. Department of Energy is to designate national interest electric transmission corridors and authorizes the Department to issue construction permits within those designated corridors if, among other things, the state does not have authority to approve the siting of facilities or to consider the interstate benefits expected to be achieved form the facilities.

That concludes my testimony in Case No. PU-05-602. Thank you.

State of North Dakota
Public service Commission

Public Service Commission **Case No. PU-05-364**
Public Utilities
Rulemaking

Regulatory Analysis, Takings Assessment and Small Entities Analysis

November 21, 2005

2005 House Bill 1314, now codified as North Dakota Century Code Sections 49-02- 24 thru 26, authorizes that the Commission may by rule establish or participate in a program to track, record and verify the trading of credits for electricity generated from renewable and recycled heat sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states. The purpose of this rulemaking is to establish rules for participation in a renewable energy tracking system.

A tracking system administrator would issue renewable energy certificates to certify renewable energy production by facilities registered in the program. It is expected that a new regional market will emerge for trading of the certificates, which will be used to demonstrate the use of "green power." For example, Minnesota will require utilities to submit renewable energy certificates demonstrating commitment to an objective that 10% of electricity be from renewable sources by 2015.

North Dakota Century Code Section 28-32-08(2) sets forth the requirements of a regulatory analysis.

Subsection a states: "A description of the classes of persons who will likely be affected by the proposed rule, including classes that will bear the cost of the proposed rule and classes that will benefit from the proposed rule."

Analysis: The classes affected will be producers of renewable and recycled waste energy that choose to participate in the tracking program and their customers that purchase renewable energy certificates. Customers in North Dakota will not be required to purchase the certificates, but may if they wish to demonstrate use of such energy.

Subsection b states: "A description of the probable impact, including the economic impact of the proposed rule."

Analysis: Renewable energy certificates are expected to have monetary value, with some estimates now ranging around $2.00 per MWH. There is a Midwest Renewable Energy Tracking System (M-RETS) being developed in our region. Voluntary participation is expected to be substantial across several Midwestern states. M-RETS expects an initial annual operating budget of approximately $300,000 or less. M-RETS anticipates funding entirely from user fees, but has not yet determined a

rate structure. For this analysis it is assumed that the MRETS rate structure will be a flat fee paid by the producer for each MWH tracked:

Assume: Total initial generating capacity enrolled in program = 3,000 MW with an average generating capacity factor of 25%. (Generators produce at rated output an average of 25% of the time)

Then: Total annual MWH tracked would be:
3,000 MW *.25 * 365 days/year * 24 hours/day
= 6,570,000 MWH per year.

The resulting administrative cost to program participants would be:
$300,000/6,570,000=$0.0457 or 4.6 cents per MWH.

Subtracting these administrative costs from the expected value of the renewable energy certificates yields:
$2.00-$0.046=$1.934 per MWH gain for participating producers.

Thus a 20 MW wind farm with an average 25% capacity factor that chooses to participate in the tracking program could experience additional revenue of:
20 MW*.25*24*365*$1.934= $84,709.20 per year.

For ND customers choosing to purchase renewable energy certificates, the impact would be the market price of the certificates, estimated in this analysis to be $2.00 per MWH. There would be no impact to ND customers choosing not to purchase renewable energy certificates.

Subsection c states: "The estimated cost to the agency of implementation and enforcement of the proposed rule and any anticipated effect on state revenues."

Analysis: There is no cost to the agency or the state expected. See fiscal note for House Bill 1314.

Subsection d states: "A description of any alternative methods of achieving the purpose of the proposed rule that were seriously considered by the agency and the reason why the methods were rejected in favor of the proposed rule."

Analysis: No alternative has been considered.

A takings assessment under North Dakota Century Code Section 28-32-09 is not required because the proposed rules will not limit the use of private real property.

An economic impact analysis under North Dakota Century Code Section 28-32-08.1 is not required because the proposed rules will not have an adverse effect on small entities.

JRL

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ND PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Public Utilities - Electric
Rulemaking

Case No. PU-05-364

STAFF MEMORANDUM

January 26, 2006

2005 House Bill 1314, now codified as North Dakota Century Code Sections 49-02-24 thru 49-02-26, authorizes that the Commission may by rule establish or participate in a program to track, record and verify the trading of credits for electricity generated from renewable and recycled heat sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states. The purpose of this rulemaking is to establish rules for participation in a renewable energy tracking system.

The proposed rules provide that the Commission may designate a tracking system administrator. The proposed rules set forth the responsibilities of the designated administrator and conditions under which the administrator would issue renewable energy certificates to certify renewable energy production by facilities registered in the program.

SUMMARY OF COMMENTS:

Montana-Dakota Utilities Co.

During the Hearing on January 4, 2006, MDU provided a handout with several recommended minor clarifying language changes. MDU's recommended changes were self-explanatory in nature and staff recommends they be incorporated into the proposed rules. There was one change recommended to proposed section 69-09-08-07 that may need further discussion to determine language changes to identify or narrow which law and rules generating units must comply with to avoid deregistration.

Missouri River Energy Services:

On January 17 MRES filed written comments recommending two changes:

1. The definition of a Renewable Energy Credit in subsection 69-09-08-02(8) should specify the amount of energy equal to a credit. The proposed definition states:

   8. Renewable energy credit — The intangible, generally perceived environmental benefits and attributes associated with generating one megawatt hour (MWh) of renewable electricity or recycled energy that is physically metered and meets the requirements set forth in Section 69-09-08-04.

2. The proposed rules should allow facilities with multiple generating units to be be master metered to make reporting requirements easier. For example, 69-09-08-04 could be expanded to accommodate master metering.

JRL

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Public Utilities – Electric
Rulemaking

Case No. PU-05-364

STAFF TESTIMONY
January 4, 2006

My name is Jerry Lein. I am a Public Utility Analyst in the Public Utility Division of the Public Service Commission. The purpose of my testimony is to explain changes proposed to the Commission's administrative rules to establish a new Chapter 69-09-08 of the North Dakota Administrative Code pertaining to the establishment of a renewable electricity and recycled energy tracking system.

2005 House Bill 1314, now codified as North Dakota Century Code Sections 49-02-24 thru 49-02-26, authorizes that the Commission may by rule establish or participate in a program to track, record and verify the trading of credits for electricity generated from renewable and recycled heat sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states. The purpose of this rulemaking is to establish rules for participation in a renewable energy tracking system.

The proposed rules provide that the Commission may designate a tracking system administrator. The proposed rules set forth the responsibilities of the designated administrator and conditions under which the administrator would issue renewable energy certificates to certify renewable energy production by facilities registered in the program.

HB 1314 was enacted with recognition that a Midwest Renewable Energy Tracking System (M-RETS) is being developed in our region. The goal is for MRETS to be operational by year-end 2006. Voluntary participation in MRETS is expected to be substantial across several Midwestern states. It is expected that a new regional market will emerge for the trading of renewable energy certificates that can be used to demonstrate the "use of green power," regardless whether physical delivery of renewable energy actually occurs. For example, Minnesota will require utilities to submit renewable energy certificates demonstrating commitment to a renewable energy objective that 10% of electricity used in Minnesota be from renewable sources by 2015. The proposed rules would enable Minnesota utilities to meet their Minnesota renewable energy objective with renewable energy certificates from North Dakota sources.

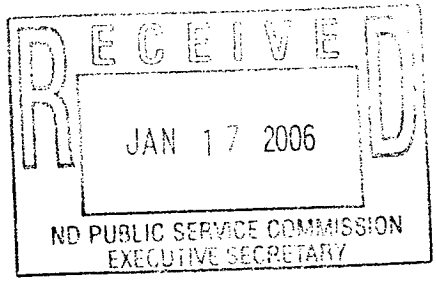
That concludes my testimony in Case No. PU-05-364. Thank You.

MISSOURI RIVER ENERGY SERVICES®

3724 West Avera Drive
PO Box 88920
Sioux Falls, SD 57109-8920
Telephone: 605.338.4042
Fax: 605.978.9360
www.mrenergy.com

January 16, 2006

Via Overnight Mail



Illona A. Jeffcoat-Sacco
Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Department 408
Bismarck ND 58505-0480

Dear Ms. Jeffcoat-Sacco:

Please find enclosed for filing the Comments of Missouri River Energy Services (MRES) regarding the rulemaking docket PU-05-364. MRES appreciates the opportunity to comment on this matter.

If there are any questions or concerns, please feel free to contact me at 800.678.4042. Thank you.

Sincerely,

Deborah Birgen
Legislative Associate

enclosure

c: Thomas F. Kelsch

27 PU-05-364 Pages: 3

Comments

by Missouri River Energy Services
01/17/2006 CC: Comm Legal Illona . .

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BEFORE THE NORTH DAKOTA PUBLIC SERVICE COMMISSION

In Re: Proposed Rules 69-69-08 Renewable Electricity and Recycled Energy Tracking System	CASE NO. PU-05-364 COMMENTS OF MISSOURI RIVER ENERGY SERVICES

COMES NOW, Missouri River Energy Services (MRES) and hereby submits the following comments in response to the Amended Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing issued on November 22, 2005.

I. PROPOSED RULE 69-09-08-02(8) SHOULD DEFINE THE AMOUNT OF ENERGY EQUAL TO A CREDIT

Proposed rule 69-09-08-02(8) does appropriately define a renewable energy credit. However, this section does not define the amount of generation that is equal to a single renewable energy credit. For example, one renewable energy credit could be assigned to one megawatt-hour (MWh) of renewable energy generated. By clearly defining what constitutes a credit, there can be no dispute or misinterpretation of the rules by the Program Administrator, by the utilities, nor by independent renewable energy producers. Therefore, MRES would ask that the Public Service Commission (Commission) consider revising the proposed rules to include a clear definition as to what amount of generation or energy from a renewable facility would constitute a renewable energy credit.

II. PROPOSED RULES SHOULD ADDRESS MULTIPLE UNITS

While proposed rules 69-09-08-02 and 69-09-08-04 define renewable energy facilities and the related requirements to participate in the tracking program, the rules do not address renewable energy facilities consisting of more than one generating unit. MRES would ask the Commission to consider addressing multiple units, in particular, addressing the metering of the output. For example, 69-09-08-04 could be expanded to state that if an energy facility consists of more than one generating unit, the output can be master metered. Reporting generation from each individual turbine would be time consuming. Master metering is a more efficient method for the applicant plus it would reduce the amount of database administration for the administrator.

III. CONCLUSIONS

MRES appreciates the opportunity to file its comments with the Commission. The submission of these comments does not preclude any MRES members from filing their own comments.

Respectfully submitted,

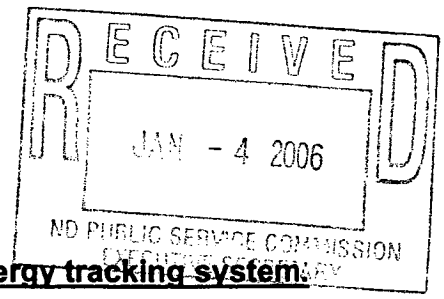
Missouri River Energy Services
January 16, 2006

By: _____
Deborah Birgen

Montana-Dakota's Comments 1-4-06

Public Service Commission
Public Utilities – Electric
Rulemaking

Case No. PU-05-364



PROPOSED RULES

69-09-08 Renewable electricity and recycled energy tracking system.

69-09-08-01. Purpose, application, and effective date. This chapter establishes a program to include tracking, recording and verifying the transactions associated with certificates and credits for electricity generated from renewable electricity sources as defined by North Dakota Century Code section 49-02-25 among electric generators, utilities, and other interested entities within this state and with similar entities in other states. This chapter applies to all public utilities, electric cooperatives and municipal electric utilities. The tracking program will be effective as specified in the commission's order that designates a program administrator and implements these rules.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-02. Definitions.

1. Designated representative — A responsible individual authorized by the owner or operator of a renewable energy facility or purchaser of energy produced from a renewable resource to register that resource with the program administrator. The designated representative must

have the authority to represent and legally bind the owner, operator, or purchaser in all matters pertaining to the renewable energy certificates tracking program.

2. Existing facilities — Renewable energy facilities placed in service before January 1, 2001.

3. New facilities — Renewable energy facilities placed in service on or after January 1, 2001.

4. Program administrator — The independent entity designated by commission order to carry out the administrative responsibilities related to the renewable energy certificates tracking program as set forth in this chapter.

5. Renewable energy certificate — A document recording one or more renewable energy credits that have been certified by the program administrator as representing electricity generated by a renewable energy facility registered with the tracking system or a certificate imported from a compatible certificates tracking system.

6. Renewable energy certificate account — An account maintained by the program administrator for the purpose of tracking renewable energy certificates ~~by a program participant.~~

7. Renewable energy certificates tracking program — The process of tracking renewable energy certificates as a means of meeting the requirements set forth in section 69-09-08-04.

8. Renewable energy credit — The intangible, generally perceived environmental benefits and attributes associated with generating one megawatt hour (MWh) of renewable electricity or recycled energy that is physically metered and meets the requirements set forth in Section 69-09-08-04.

9. Renewable energy facility – A facility generating electricity that exclusively relies on an energy source or fuel included in North Dakota Century Code Section 49-02-25.

~~10. Renewable energy resource — A resource that generates electricity derived from a renewable energy facility.~~

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-03. Renewable energy certificates tracking program. Renewable energy certificates may be recorded, transferred, and retired as set forth in this chapter. Except where specifically stated, the provisions of this section apply uniformly to all participants in the tracking program.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-04. Facilities eligible for participation in the renewable energy certificates tracking program. For a renewable energy facility to be eligible to participate in the tracking program, the facility must be either a new facility or existing facility as defined in section 69-09-08-02 and must also:

1. Register under North Dakota Administrative Code Section 69-09-08-07; and

2. Have output that is capable of being physically metered and verified by the program administrator.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-05. Responsibilities of program administrator. At a minimum, the program administrator shall perform the following functions:

1. Create accounts that track renewable energy certificates for each participant in the tracking program;

2. Award renewable energy certificates to registered renewable energy facilities based on verified meter reads;

3. Maintain public information on the program administrator's website that provides tracking program information to interested buyers and sellers of renewable energy certificates;

4. Facilitate private trading of renewable energy certificates;

5. Verify the accuracy of metered production data and other information identified in the renewable energy certificate;

6. Provide an annual report to the commission. Beginning in the year following commission designation of the program administrator, the program administrator shall submit a report to the commission on or before April 15 of each year. At a minimum, the report must contain the amount of registered existing and new generating capacity from a renewable energy facility installed in the state, (in megawatts) by technology type, the owner or operator of each facility or the facility's certificates, the date each facility began to produce electricity, and the total number of renewable energy credits certified by the program administrator during each month of the reporting period.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-06. Production and transfer of renewable energy certificates. The program administrator shall administer a tracking program for renewable energy certificates in accordance with the requirements of this chapter.

1. The transfer of renewable energy certificates between parties is effective only when the transfer is recorded by the program administrator.

2. The program administrator shall require that renewable energy certificates be adequately identified prior to recording a transfer and shall issue a confirmation of the transaction to parties when the transfer is recorded.

3. The program administrator shall establish a procedure to ensure that the award, transfer, and retirement of certificates are accurately recorded.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-07. Registration and certification of renewable energy facilities. To be awarded renewable energy certificates, ~~a power generator~~ a designated representative must complete the registration process described in this section.

1. The designated representative shall register with the program administrator each renewable energy generation unit. At a minimum, the registration must include the location, owner, technology, rated capacity of the facility, and evidence that the facility meets the resource eligibility criteria in North Dakota Century Code Section 49-02-25.

2. After verifying the information required in the registration process for renewable facilities, the program administrator shall create a

renewable energy certificate account for the designated representative of the renewable energy resource.

3. The commission or its program administrator may make on-site visits to any registered unit of a renewable energy resource and may revoke the registration of any unit not in compliance with the law and rules.

identify or narrow the reference

4. A renewable energy facility may not be awarded renewable energy certificates under this program if it is not registered.

5. Any disputes will be resolved using dispute resolution procedures established by the commission or its program administrator.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

State of North Dakota
Public Service Commission

Public Service Commission
Public Utilities – Telephone
Rulemaking

Case No. PU-05-575

Regulatory Analysis, Takings Assessment, and Small Entity Analysis

November 21, 2005

New North Dakota Administrative Code Section 69-09-05-14 is being proposed for the purpose of formalizing existing Commission procedures for processing negotiated telecommunications carrier to carrier interconnection agreements filed for Commission approval under 47 USC Section 252(e).

Regulatory Analysis

The proposed changes are not expected to have an impact on the regulated community in excess of fifty thousand dollars because they merely codify existing Commission practice and do not enact additional procedures beyond what the Commission currently does.

Takings Assessment

North Dakota Century Code Section 28-32-09(1) requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private property. The assessment must:

a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
b. Clearly and specifically identify the purpose of the proposed rule.
c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
e. Identify the source of payment within the agency's budget for any compensation that may be ordered.
f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

None of these proposed rule changes affect the use of private real property so they will not result in any taking.

The purpose of the proposed rule is to formalizing existing Commission procedures for processing negotiated telecommunications carrier to carrier interconnection agreements filed for Commission approval under 47 USC Section 252(e).

We do not expect any impact on private property owners as a result of the proposed rule changes.

We do not expect the proposed rules to constitute a taking; therefore, there should be no cost to the state.

Subsection e is not applicable because the proposed rule changes will not limit the use of private real property.

Subsection f is not applicable because the proposed rule changes will not limit the use of private real property.

Small Entity Regulatory Analysis

An economic impact analysis under North Dakota Century Code Section 28-32-08.1 requires a regulatory analysis which considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. Subsection 2 states that the agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:

a. Establishment of less stringent compliance or reporting requirements for small entities.
b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities.
c. Consolidation or simplification of compliance or reporting requirements for small entities.
d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule.
e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

No additional compliance standards or reporting requirements are proposed by the rule changes.

No additional performance standards are proposed by these rule changes.

Small entities will not be exempt from any part of the requirements contained in the proposed rule.

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Public Utilities - Telephone
Rulemaking

Case No. PU-051-575

STAFF TESTIMONY
January 4, 2006

My name is Jerry Lein. I am a Public Utility Analyst in the Public Utility Division of the Public Service Commission. The purpose of my testimony is to explain changes proposed to the Commission's administrative rules to establish a new section 69-09-05-14 of the North Dakota Administrative Code pertaining to procedure for filing negotiated carrier-to-carrier interconnection agreements.

The proposed rules formalize an existing procedure for processing of negotiated interconnection agreements that are required to be filed for Commission approval under 47 U.S.C section 252(e). This existing procedure is detailed on the Commission's web site and has been working well for several months. Under this existing procedure interconnection agreements are posted on the Commission's web page when filed. The Commission accepts written comments on the agreements for sixty days. Absent Commission action within 90 days, the agreement will be deemed approved under 47 U.S.C. section 252(e)(4).

Written Comments were received from a partnership of North Dakota wireless carriers (Wireless Partnership) in response to the public notice issued by the Commission in this proceeding on November 22, 2005. The Wireless Partnership propose that the proposed rules should be modified to exclude the assignment, assumption or transfer of agreements from its scope. They contend that Commission approval of the assignment or transfer of an interconnection agreement is not required or authorized under 47 U.S.C. section 252(e) or under N.D.C.C. section 49-21-01.7(9). They further contend that requiring such approval is unnecessary and an impediment to any transaction in which an interconnection agreement is assigned.

Staff does not object to eliminating the requirement for Commission approval of assumptions, assignments or transfer of previously approved interconnection agreements. Staff notes that this requirement has been Commission practice all along and believes there is value in maintaining the existing database of interconnection agreements and parties to them. Therefore, if the Commission discontinues its requirement for approval of agreement transfers, then Staff recommends modifying proposed new subsection 6 to require that a notification be filed with the Commission within thirty days after the assignment, assumption or transfer occurs:

> 69-09-05-14(6). Any assignment, assumption or transfer of an approved interconnection agreement requires notification to be filed with the commission within thirty days after the assignment, assumption or transfer occurs ~~a new filing with a new 90-day review and comment period~~.

That concludes my testimony in Case No. PU-05-575. Thank you.

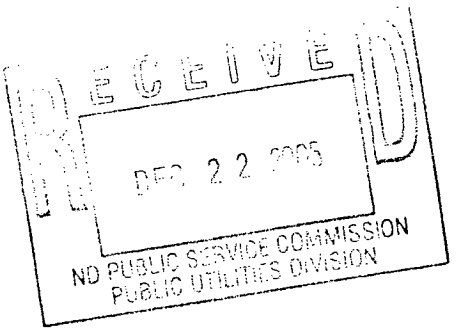
2200 IDS CENTER
80 SOUTH EIGHTH STREET
MINNEAPOLIS, MINNESOTA 55402
TELEPHONE (612) 977-8400
FACSIMILE (612) 977-8650

BRIGGS AND MORGAN

PROFESSIONAL ASSOCIATION

WRITER'S DIRECT DIAL
(612) 977-8240
WRITER'S E-MAIL
mayotte@briggs.com

December 22, 2005



VIA FEDERAL EXPRESS

Illona Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
State Capitol
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

Re: In the Matter of Public Service Commission Public Utilities - Telephone Rulemaking
Case No. PU-05-575

Dear Ms. Jeffcoat-Sacco:

Please find enclosed an original and seven (7) copies of the following:

(1) Wireless Partnerships' Comments on Proposed Rules on Eligible Telecommunications Carrier Applications and Advertising; and

(2) Wireless Partnerships' Comments on Proposed Interconnection Agreement Filing Rules.

An electronic copy of this filing has been sent by electronic mail to Sandy Scott.

If you should have any questions, please contact me.

Very truly yours,

Mark J. Ayotte

MJA/sjc
Enclosures

27 **PU-05-575** Pages: 1

Cover letter re: filing

by Briggs and Morgan by Mark J. Ayotte
12/22/2005 CC: Comm Legal Illona . .

STATE OF NORTH DAKOTA

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of	)	
	)	Case No. PU-05-575
Public Service Commission Public Utilities – Telephone Rulemaking	)	

WIRELESS PARTNERSHIPS' COMMENTS ON PROPOSED INTERCONNECTION AGREEMENT FILING RULES

December 22, 2005

BRIGGS AND MORGAN, P.A.
Mark J. Ayotte
2200 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
Phone: (612) 977-8400
Facsimile: (612) 977-8650

Its Counsel

25 PU-05-575 Pages: 8

Wireless partnerships comments on proposed interconnection agreement filing rule by Briggs and Morgan by Mark J. Ayotte
12/22/2005 CC: Comm Legal Illona . .

STATE OF NORTH DAKOTA

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of	)	
	)	Case No. PU-05-575
Public Service Commission Public Utilities – Telephone Rulemaking	)	
	)	

WIRELESS PARTNERSHIPS' COMMENTS ON PROPOSED INTERCONNECTION AGREEMENT FILING RULES

I. INTRODUCTION AND SUMMARY

Northwest Dakota Cellular of North Dakota Limited Partnership; North Central RSA 2 of North Dakota Limited Partnership; North Dakota RSA No. 3 Limited Partnership; Badlands Cellular of North Dakota Limited Partnership; North Dakota 5 – Kidder Limited Partnership; and Bismarck MSA Limited Partnership (collectively, "Partnerships"), by and through their undersigned counsel, submit the following comments in response to the Commission's November 22, 2005, Amended Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing ("*Public Notice*")[1] relating to the Proposed Interconnection Agreement File Rules.

The proposed rule establishing procedures for filing and approving negotiated interconnection agreements and amendments is consistent with federal law and should be adopted. However, the rule should be modified to exclude the assignment, assumption or transfer of agreements from its scope. The Commission's approval of assignments or transfers of an interconnection agreement is not required or authorized under 47 U.S.C. § 252(e) or N.D.

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[1] As set forth in the *Public Notice*, the Commission invited interested parties to submit written comments and appear in person or through counsel at the Public Hearing scheduled for January 4, 2006. The *Public Notice* also provides that interested persons may submit supplemental data, views or oral argument until January 17, 2006.

Cent. Code § 49-21-01.7(9). Subjecting an approved interconnection agreement to further review and approval, simply because the agreement may be assigned, is also unnecessary. If the Commission imposes an additional 90-day review and approval process, it will only serve as an impediment to closing any transaction in which an interconnection agreement is assigned. The Partnerships' specific recommended language modifications to the proposed rule are set forth in the attached Exhibit A.

II. THE PROPOSED INTERCONNECTION AGREEMENT FILING RULES SHOULD BE MODIFIED TO EXCLUDE THE ASSIGNMENT AND TRANSFER OF AGREEMENTS

The portions of proposed Rule 69-09-05-14 setting forth procedures for the filing and Commission approval of negotiated interconnection agreements and amendments is appropriate. Section 252(a)(1) of the Telecommunications Act of 1996 (the "Act") requires incumbent carriers to negotiate interconnection agreements with competitive carriers.[2] Once finalized, the agreements must be submitted to a State commission for approval under Section 252(e).[3] Section 252(e)(2) also prescribes the limited reasons a State commission may reject an interconnection agreement, including that the agreement discriminates against other telecommunications carriers, is contrary to the public interest, or fails to satisfy the requirements of Section 251 or the FCC's rules.[4]

As noted by the FCC, the filing of all interconnection agreements best promotes Congress' stated goals of opening local markets to competition and permitting interconnection

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2 47 U.S.C. § 252(a)(1).

3 47 U.S.C. § 252(e)(1) ("[a]ny interconnection agreement adopted by negotiation or arbitration shall be submitted for approval by a State commission").

4 47 U.S.C. § 252(e)(2).

on just, reasonable and nondiscriminatory terms.[5] After an interconnection agreement is approved by the Commission, other carriers may adopt the terms, conditions and rates in the agreement pursuant to Section 252(i) and FCC Rule 51.809(a). The proposed rule setting forth a streamlined process for public filing and approval within 90 days absent Commission action to disapprove a negotiated agreement is consistent with 47 U.S.C. § 252(e)(4) and should be adopted.

However, the portion of proposed Rule 69-09-05-14 which would require Commission review and approval of the "assignments, assumptions or transfers of interconnection agreements" should be deleted as contrary to Section 252(e) and N.D. Cent. Code § 49-21-01.7. Section 252(e) of the Act does not require State commission approval for any assignment or transfer of an interconnection agreement. Similarly, Section 252(e) sets forth no standards governing the approval or rejection of any assignment of an interconnection agreement. Since all negotiated interconnection agreements are required to be approved by the Commission, it is logical to conclude that any proposed assignment or transfer would be of a previously approved interconnection agreement. As a result, the Commission need not again review or reapprove a previously approved agreement in the context of an assignment to another telecommunications carrier. Similarly, nothing in N.D. Cent. Code § 42-21-01.7(8)-(9) authorizes the Commission to approve or reject the assignment of a previously approved interconnection agreement.

Subjecting the assignment of an interconnection agreement to Commission review and approval will also serve as an unwarranted impediment to carriers. Most assignments or transfers will arise in the context of a transaction between telecommunications carriers. An

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[5] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15583, ¶ 167 (1996).

interconnection agreement is a contract. As such, it may be assigned and transferred to another party pursuant to its terms and conditions. In the case of an asset sale transaction, previously-approved interconnection agreements are often assigned to and assumed by the purchaser. To subject such a transaction to a 90-day Commission review and approval process is unnecessary and may likely serve as an obstacle to closing any transaction.

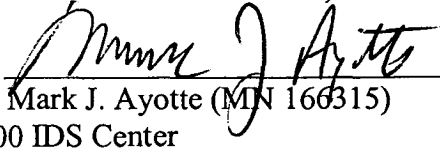
III. CONCLUSION

For the reasons set forth above, the Partnerships support the adoption of proposed Rule 69-09-05-14 as modified to exclude the assignment, assumption or transfer of interconnection agreements from the scope of the rule. The Partnerships' recommended modification to proposed Rule 69-09-05-14 are set forth in the attached Exhibit A.

Respectfully submitted,

BRIGGS AND MORGAN, P.A.

Dated: December 22, 2005

By 
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Its Counsel

1854810v2

EXHIBIT A

Public Service Commission
Public Utilities – Telephone
Rulemaking

Case No. PU-05-575

Proposed Interconnection Agreement Filing Rules

69-09-05-14 **Procedure for filing negotiated interconnection agreements.**

Carrier-to-carrier interconnection agreements adopted by negotiation must be filed for Commission approval under 47 U.S.C. section 252(e), following the procedure set out in this section.

1. The requirements of this section apply to interconnection agreements negotiated under 47 U.S.C. section 251, amendments to interconnection agreements, and agreements for Qwest Platform Plus (QPP) services. The requirements of this section do not apply to commercial line sharing agreements or the assignment, assumption or transfer of interconnection agreements.

2. Each filing must include a completed cover sheet in a form prescribed by the Commission.

3. Filed interconnection agreements will be listed on the commission Internet site for comment by interested parties. The Internet listing will include the date each agreement was filed, and links to the agreement itself.

4. The commission will accept written comments on a listed agreement for 60 days from the date filed.

5. Absent commission action within 90 days of filing to disapprove an agreement (or portion thereof), the agreement will be deemed approved under 47 U.S.C. section 252(e)(4).

6. Any amendment to an interconnection agreement requires a new filing with a new 90-day review and comment period.

History: ?

General Authority: ?

Law Implemented: ?

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State of North Dakota
Public Service Commission

Public Service Commission
Public Utilities – Telephone
Rulemaking

Case No. PU-05-575

Regulatory Analysis, Takings Assessment, and Small Entity Analysis

November 25, 2005

Proposed changes to North Dakota Administrative Code Section 69-09-05-02 implement new North Dakota Century Code Section 49-03.1-09 which was designed to streamline the regulatory process for telecommunications companies that are not incumbent local exchange companies. The proposed changes also clarify the definition of prepayment, and set forth the performance bond and escrow account requirements for resellers.

The proposed changes impose no new or additional burdens on any regulated entity. The bond requirement is not new, and the minimum bond amounts are not new. The bond requirement is now described in the proposed rule, and the statutory exception for facilities based wireless companies is spelled out. The existing minimum bond amounts are now codified in the proposed rules.

The changes are needed because a statute enacted in 2005 substitutes a streamlined self registration process for the previous requirement to obtain a registration certificate (applicable to for resellers) or a certificate of public convenience and necessity (applicable to facilities based carriers).

Regulatory Analysis

The proposed changes are not expected to have an impact on the regulated community in excess of fifty thousand dollars because they lessen the regulatory burden on affected companies. There is no fee for registration.

Takings Assessment

North Dakota Century Code Section 28-32-09(1) requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private property. The assessment must:

a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
b. Clearly and specifically identify the purpose of the proposed rule.
c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
e. Identify the source of payment within the agency's budget for any compensation that may be ordered.

f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

None of these proposed rule changes affects the use of private real property so they will not result in any taking and therefore, there should be no cost to the state and no impact on private property owners.

Subsection e is not applicable because the proposed rule changes will not limit the use of private real property.

Subsection f is not applicable because the proposed rule changes will not limit the use of private real property.

Small Entity Regulatory Analysis

An economic impact analysis under North Dakota Century Code Section 28-32-08.1 requires a regulatory analysis which considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. Subsection 2 states that the agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:

a. Establishment of less stringent compliance or reporting requirements for small entities.
b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities.
c. Consolidation or simplification of compliance or reporting requirements for small entities.
d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule.
e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

The new registration statute establishes a minimal compliance regime. The process is easy, accessible, and free. There is no waiting period and very little required information. The rules simply implement this new streamlined process enacted by law. The rules themselves impose no new or additional reporting or compliance requirements. The new process and the rules implementing it should benefit small entities because they can register to provide telecommunications services more easily and with fewer burdens that ever before.

No additional performance standards are proposed by these rule changes.

Small entities will not be exempt from any part of the requirements contained in the proposed rule because the rules and the law implemented by them make registration easily accessible and affordable for small entities.

State of North Dakota
Public Service Commission

Public Service Commission
Public Utilities – Telephone
Rulemaking

Case No. PU-05-575

Commission Staff Comments on Proposed Telecommunications Rulemaking

January 4, 2006

I. Proposed Rules on Eligible Carrier Applications and Advertising

Section 214(e)(2) of the Telecommunications Act of 1996 provides states with the primary responsibility to designate carriers that will be eligible to receive federal universal service funding. State authority for the Public Service Commission power to designate those eligible telecommunications companies is provided under North Dakota Century Code Section 49-21-01.7 (12).

Under current Commission procedure, a telecommunications company seeking designation as an eligible telecommunications carrier (ETC) must file an application with the Commission. The proposed revisions to North Dakota Administrative Code Section 69-09-05-02 codify the application requirements and establish reporting requirements for ETCs, including ETCs previously designated by the Commission. The proposed rules also establish the criteria to be considered by the Commission in designating an eligible carrier.

The Commission's proposed rules largely mirror new ETC application and reporting requirements adopted by the Federal Communications Commission (FCC), codified at 47 C.F.R. §§ 54.202 and 54.209.[1] The FCC states that the reporting requirements are intended to improve the long term sustainability of the federal universal service fund and ensure that eligible carriers satisfy their obligations to provide universal services throughout their designated service areas.[2] While the FCC adopted its rules to apply to applicants for ETC for designation before the FCC, the FCC encouraged states to apply the FCC's analysis in determining whether to designate a carrier as an ETC[3] and encouraged states to require the reporting requirements adopted by the FCC to be filled by all ETCs over which they have jurisdiction.[4] The FCC also stated that "[w]e do not believe that different ETCs should be subject to different obligations,

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[1] *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, *Report and Order*, FCC 05-46, released March 17, 2005.
[2] Id. paragraph 5.
[3] Id. paragraph 3.
[4] Id. paragraph 4.

going forward, because of when they happened to first obtain ETC designation from the Commission or the state."[5]

The rules propose that ETCs file annual commitments for providing telecommunications service on a timely basis, that it can remain functional in emergency situation, that it will comply with consumer protection and service quality standards, that it offers a local usage plan comparable to the plan offered by the incumbent local exchange company, and that it may be required to provide equal access to long distance carriers. The proposed rules also require the annual filing of a five-year plan demonstrating how federal high-cost universal service support will be used to improve service coverage, service quality or capacity in each wire center for which it seeks to be or is designated as an ETC and expects to receive federal universal service support.

II. Proposed Telecommunications Registration Rulemaking

Proposed changes to North Dakota Administrative Code Section 69-09-05-02 implement new North Dakota Century Code Section 49-03.1-09 which was designed to streamline the regulatory process for telecommunications companies that are not incumbent local exchange companies. The proposed changes also clarify the definition of prepayment, and set forth the performance bond and escrow account requirements for resellers.

The proposed changes impose no new or additional burdens on any regulated entity. The bond requirement is not new, and the minimum bond amounts are not new. The bond requirement is now described in the proposed rule, and the statutory exception for facilities based wireless companies is spelled out. The existing minimum bond amounts are now codified in the proposed rules.

The changes are needed because a statute enacted in 2005 substitutes a streamlined self registration process for the previous requirement to obtain a registration certificate (applicable to for resellers) or a certificate of public convenience and necessity (applicable to facilities based carriers).

[5] Id. paragraph 20.

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DEC 30 2005

December 29, 2005

Illona A. Jeffcoat-Sacco, Executive Secretary
PUBLIC SERVICE COMMISSION
600 East Boulevard Avenue, Department 408
Bismarck, ND 58505-0480

PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES —TELEPHONE RULEMAKING
CASE NO. PU-05-575

Enclosed for filing in the above-captioned matter are an original and seven copies of the comments of the Rural Telephone Company Group in regard to the proposed telecommunications registration rulemaking.

Don Negaard

jt

Enclosures

28 PU-05-575 Pages: 5
Comments re: telephone rulemaking
by Rural Telephone Company Group by Pringle & Herigs
12/30/2005 CC: Comm Legal Illona . .

RECEIVED
DEC 30 2005

STATE OF NORTH DAKOTA

BEFORE THE PUBLIC SERVICE COMMISSION

PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES – TELEPHONE RULEMAKING

CASE NO. PU-05-575

Proposed Telecommunications Registration Rulemaking

The Rural Telephone Company Group (hereinafter RTCG), composed of those companies set forth in Exhibit A hereto, submit the following comments on proposed Telephone Rulemaking propounded by the North Dakota Public Service Commission.[1]

69-09-05-02. Discontinuance of telecommunications services. The RTCG makes no comment on this proposed change.

69-09-05-04. Rules for resale of telecommunications services. The RTCG makes no comment on the proposed change.

69-09-05-04.1. Identification of intraLATA interexchange carriers. The RTCG does not, at this time, see any need for this regulation. It creates more unnecessary burden on local exchange companies because there is no similar requirement for interstate interexchange traffic. In the business world, there is no distinction between interstate and intrastate IXC carriers, and the distinction under this rule creates more administrative burdens for the local exchange carrier.

69-09-05-05. Rules for the provision of operator services. The RTCG makes no comment on the proposed changes.

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[1] The RTCG does not, by comments submitted, agree to waive any legal rights they may have, including, but not limited to, their right to later challenge any administrative rule or regulation as contrary to legislative intent or any other basis upon which administrative regulations might be challenged.

69-09-05-10. Registration – Procedure. The RTCG makes no comment on this proposed change.

69-09-05-11. Certificate of public convenience and necessity for incumbent local telecommunications company – Procedure. The RTCG makes no comment on the proposed change.

69-09-05-12. Eligible carrier applications and advertising. The RTCG does not, at this time, see the need for the proposed ETC rules. The RTCG could be in jeopardy of losing a significant portion of their USF funds for unintentional non-compliance whereas a carrier operating in a multitude of states or jurisdictions would face a less severe penalty, in terms of a percentage of revenue lost, for a finding of non-compliance at the North Dakota level. Further, without agreeing on the necessity of the proposed rules, the RTCG offers the following comments:

a. Subpart 3b requiring companies to submit a five-year plan. In competitive situations, this would require a company to lay its business plan out in a public document. There is no confidentiality for these documents, and it would require companies to disclose confidential information to competitors or potential competitors.

b. Subpart 4: The RTCG believes its members have met the commitment to use USF funds for network installation, maintenance, and upgrades through local managers who know their local service areas and have responded to local service quality issues. They did so long before the FCC, which created a huge funding problem by allowing new carriers to access USF funding, realized a problem existed with certain carriers using USF funds for purposes other than local support. As such, the RTCG sees no need for companies who are currently certified as ETCs to comply. It is a

solution for a problem that does not exist. The RTCG does not believe there is currently a problem other than the formulas used to disburse USF funds.

c. While there may be some need for a CMRS carrier to certify information on wire center basis, the RTCG believes a wire line carrier should be allowed to provide information required on a company-wide basis. Most of the RTCG companies do not calculate information on a wire center basis and providing this information could require costly studies to be conducted on an annual basis, all at an added cost to the end user, for most companies who do not segregate this data.

d. The RTCG believes the rules should address situations where the ETC in question is not receiving current funding. In some situations, companies designated as an ETC have not activated a business plan and being required to submit another annual report is another bookkeeping cost.

e. With no criticism intended, the RTCG also has practical questions about how the Commission will review, police, and enforce the new regulations. What procedure would the North Dakota Public Service Commission follow to enforce these regulations? What due process requirements and safeguards would there be for a company wishing to dispute a PSC finding of non-compliance? Does the PSC intend to revoke an ETC status? If so, what safeguards would then be to make sure USF funds are not lost pending a dispute process?

Dated this 29th day of December, 2005.

PRINGLE & HERIGSTAD, P.C.

By: Donn Negaard, ND Bar ID #03598
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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission **Gas Pipeline Safety** **Rulemaking**	**Case No. GS-05-341**
Public Service Commission **Public Utilities - Electric** **Rulemaking**	**Case No. PU-05-364**
Public Service Commission **Public Utilities - Telephone** **Rulemaking**	**Case No. PU-05-575**
Public Service Commission **Reclamation** **Rulemaking**	**Case No. RC-05-591**
Public Service Commission **Licensing – Grain Buyer** **Rulemaking**	**Case No. GE-05-594**
Public Service Commission **Public Utilities – Siting** **Rulemaking**	**Case No. PU-05-602**

AMENDED
NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES AND NOTICE OF PUBLIC HEARING

November 22, 2005

PLEASE TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to several articles of the North Dakota Administrative Code. The hearing will be held **at 1:00 p.m., CST, January 4, 2006, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.** The proposed revisions to the North Dakota Administrative Code are as follows:

Gas Pipeline Safety: Case No. GS-05-341

The Gas Pipeline Safety Federal rules to be adopted by reference will amend the state pipeline safety regulations to: require gas operators to prepare and follow procedures for periodic inspections of pipeline facilities located in the Gulf of Mexico

and its inlets in waters less than 15 feet deep; codify new program requirements concerning personnel training, notice of program changes, government review and verification of programs, and use of on-the-job performance as a qualification method; amend the requirements for pipeline operators to develop and implement public awareness (also known as public education) programs; revise all references to the former Research and Special Programs Administration in 49 CFR parts 190 through 199 to reflect the creation of Pipeline and Hazardous Materials Safety Administration.

Public Utilities – Electric: Case No. PU-05-364

Proposed rules for establishing or participating in a program to track, record and verify the trading of credits for electricity generated from renewable electricity sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states as authorized and defined by newly-enacted North Dakota Century Code Sections 49-02-24 through 26.

Public Utilities – Siting: Case No. PU-05-602

Proposed changes to North Dakota Administrative Code Subsections 69-06-08-01(4) and 69-06-08-02(4) add to the policy criteria used in evaluating energy conversion and transmission facility siting applications an indication that the Commission may give preference to applicants that maximize the interstate benefits of proposed projects.

Public Utilities – Telephone: Case No. PU-05-575

Case No. PU-05-575 consists of proposals concerning telecommunications registration, eligible carrier applications and advertising, and interconnection agreement filings.

Proposed changes to North Dakota Administrative Code Section 69-09-05-02 implement new North Dakota Century Code Section 49-03.1-09 which was designed to streamline the regulatory process for telecommunications companies that are not incumbent local exchange companies. The proposed changes also clarify the definition of prepayment, and set forth the performance bond and escrow account requirements for resellers.

Proposed changes to North Dakota Administrative Code Section 69-09-05-12 concern the application requirements for a telecommunications company seeking designation as an eligible carrier for purposes of receiving federal universal service funding, annual reporting requirements of designated eligible carriers, and the criteria to be considered by the Commission in designating an eligible carrier.

New North Dakota Administrative Code Section 69-09-05-14 is being proposed for the purpose of formalizing existing Commission procedures for processing

negotiated telecommunications carrier to carrier interconnection agreements filed for Commission approval under 47 USC Section 252(e).

Reclamation: Case No. RC-05-591

Several changes are proposed to rules that pertain to the coal mining and reclamation regulatory program. The changes will allow some lease documents to be deleted from a mining permit once mining is completed or when a lease is otherwise terminated; dropping the name of the United State Geological Survey map containing the permit area and not listing the names of subsurface owners who are not affected by mining activities in newspaper notices for permit applications; adding a cross reference to another rule for information that must be submitted with bond release applications; clarifying inspection requirements for sedimentation ponds and other impoundments; and modifying data requirements for proving reclamation success and adding new language to revegetation success standards on the counting of volunteer trees and shrubs. A cross reference error is also being corrected in the general requirements for roads. These proposed rule changes are not expected to have an impact on the regulated community in excess of fifty thousand dollars.

Licensing – Grain Buyer: Case No. GE-05-594

On October 7, 2005, the North Dakota Dry Pea and Lentil Association formally asked the Commission to consider a change to North Dakota Administrative Code Section 69-07-01-14. The North Dakota Dry Pea and Lentil Association proposes to change the existing rule to exempt a grain buyer from the licensing requirement when the grain buyer purchases dry peas, lentils or chickpeas owned by a licensed entity. The current rule exempts a grain buyer from the licensing requirement when purchasing any grain that is owned by a licensed entity and also has been substantially altered by processing or blending, or cleaned and bagged for consumption.

The Notice of Intent to Adopt and Amend Administrative Rules and an abbreviated notice were issued on November 17, 2005. Late that afternoon the North Central Bean Dealers Association filed in support of the existing proposal and formally asked the Commission to consider an additional change in the proposed rule to exempt a grain buyer from the licensing requirement when the grain buyer purchases dry edible beans owned by a licensed entity. The proposed rule itself has not been revised at this time to incorporate this request, but this amended notice is being issued to notify interested parties of the possible inclusion of dry edible beans in the exemption. The abbreviated notice was also revised prior to publication to indicate the support of the North Central Bean Dealers Association.

All of the proposed rule changes and any statements concerning Regulatory Analyses and Takings Assessments, and Small Entity Regulatory Analyses may be reviewed at the Public Service Commission's offices on the 12th floor of the State Capitol, Bismarck, North Dakota. To obtain a copy of the proposed rule changes, or

any statements concerning Regulatory Analyses and Takings Assessments, and Small Entity Regulatory Analyses, contact the Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, 701-328-2400. The proposed rule changes and any statements concerning Regulatory Analyses and Takings Assessments, and Small Entity Regulatory Analyses may be viewed at http://www.psc.state.nd.us (see Formal Actions: Notices).

Interested persons may submit written data, views, arguments, or appear in person or through counsel concerning the proposals. Written comments should be filed with Illona A. Jeffcoat-Sacco, Executive Secretary, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480.

The Commission will allow after the conclusion of the rulemaking hearing, a comment period until January 17, 2006, during which data, views, or oral arguments concerning the proposed rulemaking will be received by the Commission and made a part of the rulemaking record to be considered by the Commission.

If individuals require any auxiliary aids or services, such as readers, signers, or braille materials, please notify, Illona A. Jeffcoat-Sacco, Executive Secretary, at least 24 hours prior to the hearing. She can be contacted at the following numbers: 701-328-2400 and Relay North Dakota TTY: 1-800-366-6888.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

AMENDED
NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES
AND NOTICE OF PUBLIC HEARING

November 22, 2005

TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to the N.D. Admin. Code, relating to gas safety, electric, telecommunications, siting, reclamation and grain buyers, at 1 p.m., CST, January 4, 2006, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. The proposed grain buyer rule change was formally requested by the North Dakota Dry Pea and Lentil Association, and is supported by the North Central Bean Dealers Association.

A copy of the proposed rule changes may be obtained by calling the Public Service Commission at 701-328-2400, TDD 800-366-6888, or view at www.psc.state.nd.us (see Formal Notices). Also, written comments may be submitted to the Public Service Commission, 600 East Boulevard Ave., Bismarck, ND 58505-0480 until 5:00 PM CST, January 17, 2006. If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Public Service Commission at the above telephone number or address at least 24 hours prior to the public hearing.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission Gas Pipeline Safety Rulemaking	**Case No. GS-05-341**
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Public Service Commission Licensing – Grain Buyer Rulemaking	**Case No. GE-05-594**
Public Service Commission Public Utilities – Siting Rulemaking	**Case No. PU-05-602**

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November 17, 2005

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concerning personnel training, notice of program changes, government review and verification of programs, and use of on-the-job performance as a qualification method; amend the requirements for pipeline operators to develop and implement public awareness (also known as public education) programs; revise all references to the former Research and Special Programs Administration in 49 CFR parts 190 through 199 to reflect the creation of Pipeline and Hazardous Materials Safety Administration.

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Proposed rules for establishing or participating in a program to track, record and verify the trading of credits for electricity generated from renewable electricity sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states as authorized and defined by newly-enacted North Dakota Century Code Sections 49-02-24 through 26.

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Proposed changes to North Dakota Administrative Code Section 69-09-05-12 concern the application requirements for a telecommunications company seeking designation as an eligible carrier for purposes of receiving federal universal service funding, annual reporting requirements of designated eligible carriers, and the criteria to be considered by the Commission in designating an eligible carrier.

New North Dakota Administrative Code Section 69-09-05-14 is being proposed for the purpose of formalizing existing Commission procedures for processing negotiated telecommunications carrier to carrier interconnection agreements filed for Commission approval under 47 USC Section 252(e).

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Several changes are proposed to rules that pertain to the coal mining and reclamation regulatory program. The changes will allow some lease documents to be deleted from a mining permit once mining is completed or when a lease is otherwise terminated; dropping the name of the United State Geological Survey map containing the permit area and not listing the names of subsurface owners who are not affected by mining activities in newspaper notices for permit applications; adding a cross reference to another rule for information that must be submitted with bond release applications; clarifying inspection requirements for sedimentation ponds and other impoundments; and modifying data requirements for proving reclamation success and adding new language to revegetation success standards on the counting of volunteer trees and shrubs. A cross reference error is also being corrected in the general requirements for roads. These proposed rule changes are not expected to have an impact on the regulated community in excess of fifty thousand dollars.

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All of the proposed rule changes and any statements concerning Regulatory Analyses and Takings Assessments, and Small Entity Regulatory Analyses may be reviewed at the Public Service Commission's offices on the 12th floor of the State Capitol, Bismarck, North Dakota. To obtain a copy of the proposed rule changes, or any statements concerning Regulatory Analyses and Takings Assessments, and Small Entity Regulatory Analyses, contact the Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, 701-328-2400. The proposed rule changes and any statements concerning Regulatory Analyses and Takings Assessments, and Small Entity Regulatory Analyses may be viewed at http://www.psc.state.nd.us (see Formal Actions: Notices).

Interested persons may submit written data, views, arguments, or appear in person or through counsel concerning the proposals. Written comments should be filed with Illona A. Jeffcoat-Sacco, Executive Secretary, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480.

The Commission will allow after the conclusion of the rulemaking hearing, a comment period until January 17, 2006, during which data, views, or oral arguments concerning the proposed rulemaking will be received by the Commission and made a part of the rulemaking record to be considered by the Commission.

If individuals require any auxiliary aids or services, such as readers, signers, or braille materials, please notify, Illona A. Jeffcoat-Sacco, Executive Secretary, at least 24 hours prior to the hearing. She can be contacted at the following numbers: 701-328-2400 and Relay North Dakota TTY: 1-800-366-6888.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES AND NOTICE OF PUBLIC HEARING

November 17, 2005

TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to the N.D. Admin. Code, relating to gas safety, electric, telecommunications, siting, reclamation and grain buyers, at 1 p.m., CST, January 4, 2006, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. The proposed grain buyer rule change was formally requested by the North Dakota Dry Pea and Lentil Association.

A copy of the proposed rule changes may be obtained by calling the Public Service Commission at 701-328-2400, TDD 800-366-6888, or view at www.psc.state.nd.us (see Formal Notices). Also, written comments may be submitted to the Public Service Commission, 600 East Boulevard Ave., Bismarck, ND 58505-0480 until 5:00 PM CST, January 17, 2006. If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Public Service Commission at the above telephone number or address at least 24 hours prior to the public hearing.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

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NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES

relating to gas safety, electric, telecommunications, siting, reclamation and grain buyers. The proposed grain buyer rule change was formally requested by the ND Dry Pea and Lentil Association, and is supported by the North Central Bean Dealers Association.

Public Service Commission

will hold a public hearing to address proposed amendments to the N.D. Admin. Code.

Commission Hearing Room
12th Floor
State Capitol
Bismarck
Wed., Jan. 4, 2006
1:00 p.m. CT

A copy of the proposed rule changes may be obtained by calling the Public Service Commission at (701) 328-2400, TDD (800) 366-6888, or view at www.psc.state.nd.us (see Formal Notices). Also, written comments may be submitted to the Public Service Commission, 600 East Boulevard Ave., Bismarck, ND 58505-0480 until 5:00 PM CST, January 17, 2006. If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Public Service Commission at the above telephone number or address at least 24 hours prior to the public hearing.

Susan E. Wefald, Commissioner — Tony Clark, President — Kevin Cramer, Commissioner

13 **GS-05-341** ✓ Pages: 1

Display ad proof

by North Dakota Advertising Service, Inc.

16 **PU-05-364** Pages: 1

Display ad proof

by North Dakota Advertising Service, Inc.
11/18/2005 CC: Comm Legal Illona

11 **PU-05-575** Pages: 1

Display ad proof

13 **RC-05-591** Pages: 1

Display ad proof

by North Dakota Advertising Service, Inc.
11/18/2005

12 **GE-05-594** Pages: 1

Display ad proof

by North Dakota Advertising Service, Inc.

8 **PU-05-602** Pages: 1

Display ad proof

by North Dakota Advertising Service, Inc.
11/18/2005

approval:
Pet.-407.27, Otter Tail Power- Chairman-Wynne

RECEIVED
DEC 16 2005
EXECUTIVE SECRETARY

Affidavit of Publication

Colleen Park, being duly sworn, state as follows:

. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.

. The newspapers listed on the exhibits published the advertisement of:

PSC, Case Safety re Grain Buyers,

1 time(s) as required by law or ordinance.

. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the rovisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter equired by law or ordinance to be printed or published in a newspaper in North Dakota.

igned: Colleen Park

tate of ND

ounty of Burleigh

ubscribed and sworn to before me this 15 day of December 20 05.

Kim Hilzendeger

KIM HILZENDEGER
Notary Public
State of North Dakota
My Commission Expires July 14, 2009

3	**GS-05-341**	Pages: 1	
	Affidavit of Publication		
	PU-05-364	Pages: 1	
	Affidavit of Publication		
	by North Dakota Advertising Service, Inc.		
20	**PU-05-575**	Pages: 1	
	Affidavit of Service		
20	**RC-05-591**	Pages: 1	
21	**GE-05-594**	Pages: 1	
	Affidavit of Service		
16	**PU-05-602**	Pages: 11	
	Affidavit of Service		
	by Dakota Valley Electric Cooperative, Inc.		
	12/19/2005		

North Dakota Newspaper Association
1435 Interstate Loop
Bismarck, ND 58503-0567
Ph (701) 223-6397 • Fax (701) 223-8185

RECEIVED
DEC 19
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARIAT

INVOICE

Order 21339-05115PP0 Invoice # 64902

December 16, 2005

Attn: ILLONAA. JEFFCOAT-SACCO
PUBLIC SERVICE COMMISSION
600 E. BOULEVARD AVE.
STATE CAPITOL
BISMARCK, ND 58505
Voice: 701-328-4076

Advertiser: Public Service Commission

P.O.#:

Amount Due $1,540.00

Amount Paid

Please detach and return this portion with your payment

Public Service Commission Invoice # 21339-05115PP0-64902

Ad Size	Rate Type	Rate	Total	Discount	(%)	Caption	Page	Run Date
			COUNTY95					
Ashley Tribune (Ashley ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/23/05
Beach Golden Valley News (Beach ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/24/05
Bismarck Tribune (Bismarck ND)								
5.50	SPR1	10.00	55.00	0.00		Gas Safety - Grain Buy		11/25/05
Bottineau Courant (Bottineau ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/29/05
Bowbells Burke County Tribune (Bowbells ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/23/05
Bowman County Pioneer (Bowman ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/25/05
Cando Towner Co Record Herald (Cando ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/26/05
Carrington Foster Co Independent (Carrington ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/28/05
Carson Press (Elgin ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/23/05
Cavalier Chronicle (Cavalier ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/23/05
Center Republican (Washburn ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/24/05
Cooperstown Griggs Co. Sentinel-Courier (Cooperstown ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/25/05
Crosby The Journal (Crosby ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/23/05
Devils Lake Daily Journal (Devils Lake ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/25/05
Dickinson Press (Dickinson ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/25/05
Elgin Grant County News (Elgin ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/23/05

	Rate	Total	Discount	(%)	Caption	Page	Run Date
			COUNTY95				
(Ellendale ND)							
	5.00	27.50	0.00		Gas Safety - Grain Buy		11/24/05
go ND)							
SPR1	10.00	55.00	0.00		Gas Safety - Grain Buy		11/28/05
y Press (Finley ND)							
SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/25/05
n Co Independent (Garrison ND)							
5.50 SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/24/05
lish County Record (Grafton ND)							
5.50 SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/23/05
orks Herald (Grand Forks ND)							
5.50 SPR1	10.00	55.00	0.00		Gas Safety - Grain Buy		11/26/05
ey The Herald-Press (Harvey ND)							
5.50 SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/26/05
Hazen Star (Hazen ND)							
5.50 SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/24/05
Hettinger Adams Co Record (Hettinger ND)							
5.50 SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/29/05
Jamestown Sun (Jamestown ND)							
5.50 SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/26/05
Killdeer Dunn County Herald (Killdeer ND)							
5.50 SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/25/05
Lakota American (Lakota ND)							
5.50 SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/23/05
LaMoure Chronicle (LaMoure ND)							
5.50 SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/23/05
Langdon Cavalier Co Republican (Langdon ND)							
5.50 SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/28/05
Linton Emmons County Record (Linton ND)							
5.50 SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/24/05
Lisbon Ransom County Gazette (Lisbon ND)							
5.50 SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/28/05
Mandan News (Mandan ND)							
5.50 SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/25/05
Mayville * Traill County Tribune (Mayville ND)							
5.50 SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/26/05
McClusky Gazette (McClusky ND)							
5.50 SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/24/05
Medora Billings County Pioneer (Beach ND)							
5.50 SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/24/05
Milnor The Teller (Milnor ND)							
5.50 SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/25/05
Minnewaukan Benson Co Farmers Press (Minnewaukan ND)							
5.50 SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/23/05
Minot Daily News (Minot ND)							
5.50 SPR1	10.00	55.00	0.00		Gas Safety - Grain Buy		11/25/05
Mohall Renville County Farmer (Mohall ND)							
5.50 SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/23/05
Napoleon Homestead (Napoleon ND)							
5.50 SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/23/05

	Rate Type	Rate	Total	Discount	(%)	Caption	Page	Run Date
			COUNTY95					
...and The Herald (New England ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/25/05
...Rockford Transcript (New Rockford ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/28/05
...Rolla Turtle Mountain Star (Rolla ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/28/05
Rugby Pierce County Tribune (Rugby ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/26/05
Stanley Mountrail Co Promoter (Stanley ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/23/05
Steele Ozone-Press (Steele ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/23/05
Towner Mouse River Journal (Towner ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/23/05
Valley City Times-Record (Valley City ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/28/05
Wahpeton Daily News (Wahpeton ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/25/05
Watford City McKenzie Co Farmer (Watford City ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/23/05
Williston Herald (Williston ND)								
5.50	SPR1	5.00	27.50	0.00		Gas Safety - Grain Buy		11/25/05

Gross Advertising	1,540.00	Total Misc	0.00	Amount Paid	0.00
Agency Discount		Tax	0.00	Adjustments	0.00
Other Discount	0.00	Total Billed	1,540.00	Payment Date	
Service Charge	0.00	Unbilled	0.00	Balance Due	1,540.00

19	GS-05-341	Pages: 1
24	PU-05-364	Pages: 1
20	PU-05-575	Pages: 1
20	RC-05-591	Pages: 1
21	GE-05-594	Pages: 1
	Affidavit of Service	
16	PU-05-602	Pages: 11
	Affidavit of Service	
	by Dakota Valley Electric Cooperative, Inc.	
	12/19/2005	

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The thirty-day public comment period for the draft permit will begin December 2, 2005 and end on January 2, 2006. Public comments should be directed to Terry L. O'Clair, Director, Air Quality Division, 1200 Missouri Avenue, Room 304, Box 5520, Bismarck, North Dakota 58506-5520. All comments received will be considered in the final determination concerning issuance of the Title V Permit to Operate. A public hearing regarding issuance of the Title V Permit to Operate will be held if a significant degree of public interest exists as determined by the Department. Requests for a public hearing must be addressed, in writing, to the Department at the above-mentioned address before the end of the public comment period. The permit application, statement of basis and draft Title V Permit to Operate are available for inspection at the above address and at the McIntosh County Auditor's office in Ashley, North Dakota. A copy of the above-mentioned documents may be obtained by writing the aforementioned address or contacting Mr. Gary Helbling of the Department at (701) 328-5188 or email to ghelblin@state.nd.us.

Dated this 21st day of November 2005.

Terry L. O'Clair, P.E.
Director, Air Quality Division

NOTICE OF MCINTOSH COUNTY COMMISSION MEETING

The regular monthly meeting of the McIntosh County Commissioners will be Tues., December 6, 2005, at 9 a.m. in the commission room at the courthouse. Also the Water Resource Board will meet on Tues., December 6, 2005 at 9 a.m. in the courthouse. The Disaster Emergency Manager, DeLoris Rudolph, will have the Tier II chemical facility reports available for public review from 9 a.m. until 10 a.m. in the auditor's office.

got his limit again. Again he had dropped two with one shot from the 20 gauge Browning he had gone to in concession to the years. "He just couldn't miss with that gun," Tim says. He hadn't missed in getting his limit. His dog, Cutty, a 13-year-old Chesapeake Bay retriever, performed like a pup. She retrieved the last bird of the day. "He must have said it

NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES

relating to gas safety, electric, telecommunications, siting, reclamation and grain buyers. The proposed grain buyer rule change was formally requested by the ND Dry Pea and Lentil Association, and is supported by the North Central Bean Dealers Association.

Public Service Commission

will hold a public hearing to address proposed amendments to the N.D. Admin. Code.

Commission Hearing Room
12th Floor
State Capitol
Bismarck
Wed., Jan. 4, 2006
1:00 p.m. CT

A copy of the proposed rule changes may be obtained by calling the Public Service Commission at (701) 328-2400, TDD (800) 366-6888, or view at www.psc.state.nd.us (see Formal Notices). Also, written comments may be submitted to the Public Service Commission, 600 East Boulevard Ave., Bismarck, ND 58505-0480 until 5:00 PM CST, January 17, 2006. If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Public Service Commission at the above telephone number or address at least 24 hours prior to the public hearing.

Susan E. Wefald, Commissioner | Tony Clark, President | Kevin Cramer, Commissioner

"That was typical of Father," Tim says, smiling, tears welling, "shaking a guy's hand, telling him what a good dog he had." CPR started Tommy breathing again and in those frantic moments Cutty stood over him and barked. "Get up goddam it," Tim translates.

At the hospital, Dr. Mattson told Tim, "He might be able to hear you."

"I love you, Dad," Tim said to his father as he squeezed his hand. And in his darkness, Tommy heard. "He squeezed back... with his trigger finger," Tim says, choking back the tears.

It was his last signal to the world, but his heart beat on. "C'mon Dad, give it up," Tim implored as the days dragged on. "Goddam Dad, give it up!"

After Orma and Linda, Tim's sister, had arrived to say their goodbyes, the oxygen was turned off. And then, and only then, did that great heart stop beating. Now Tim continues the hunt but "I don't attack it with the same intensity. It's not that important for me to shoot anything." For his elk hunt in Wyoming, ten days removed from the funeral, Tim loaded up his father's Remington 30-06, the one with open sights. Tommy didn't use a scope and this year neither will Tim. Tim will be back for pheasant season in Hettinger next year. "Oh yeah. But I don't think I could do opening day... Too tough." He shakes his head slowly. "Too many memories..."

—1994

Bender's mother and father in law in response to Tony's incredibly funny recent column exposing them as Williams and Ree groupies. They cannot take a joke. They gave Tony bad water and and burnt toast on Thanksgiving. Really.

Dear Tony,

Your column does insult us, we didn't think our son-in-law would offend us like that. We have never driven over 290 miles to see Williams and Ree. On our cruise to Cozumel they just happened to also be on the ship.

We are not geriatric groupies, in fact groupies are usually teenage teeny boppers. If you want to belittle us we will tell it like it is (Ashley Tribune's motto.)

Every town or city you have lived in or visited you have caused great loss, hardship, suffering. Ashley was glad to see you move many years ago but you were let back in when some residents had forgotten about your younger escapades and others thought that you had changed. Were they wrong!

Since you have returned, school board members get grouchy, police officials stay about 2 months and hunters are antagonized.

Ashley has a celebration everytime you go on vacation, you spent some time in Frederick, the law stated you could stay until you finished high school, then the town gave you a one way bus ticket to western South Dakota.

Frederick has been a nice town to live in ever since in spite of some Republicans living there.

You landed a radio job in South Carolina where after a hurricane devastated the town, they fired you.

[illegible] waste to a [illegible] and the Exxon Valdez went aground and spilled millions of gallons of oil to spread havoc among wildlife and Alaska's beaches.

You moved to Sturgis, they wanted you out of there so bad they had a tar and feather Tony Bender Day.

When you lived in Hettinger, they had a record snowfall and ice storm that started there and covered all of eastern North Dakota and western Minnesota.

You visited Mexico one time now the United States is talking about putting a fence between the countries, not to keep illegal aliens out as you might read in the press, but just in case you go to Mexico again the fence will go up very quick. You visited New York the week of Nov. 11-18. Let us all pray for New York.

Ashley citizens wanted you to visit us each month but we restricted you to three times a year and when you do come, we keep you locked up in an upstairs bedroom and only let you out one time a day for pumpkin bars.

After you disparaged us one time a year and will only be let out for bread and water.

Yes, we are mild Viking fans, we do not want lap dances from Fred Smoot but we might go on a cruise with the team. Poor Fred, you mention him in your "That's Life" and he suffers a broken collar bone and may be out for the season. Thanks Tony!!!

Now, you can get rid of Tice. Tony can you write something about Tice?

No more pumpkin bars for you for a long time.

Gary and Mariyn Lovgren
Verona, ND

11/30 Ashley.

December 6, 2005
(I.D. #04368)