

**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:

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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.

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:

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The 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 1 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.

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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.

There were no objections to the staff proposal and the proposed rules are modified accordingly.

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.

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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.

These amendments are being proposed to clarify the Commission's ability to consider interstate benefits of 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 from the facilities.

No comments were received as a result of the Commission's comment period ending January 17, 2006.

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**