



# North Dakota Legislative Council

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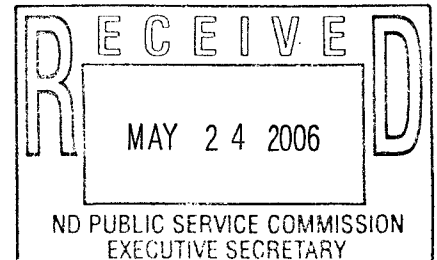
JIM W. SMITH  
Legislative Budget  
Analyst & Auditor

JOHN WALSTAD  
Code Revisor

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

May 23, 2006

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.

- ~~e. 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 incompleting 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

<u>69-09-08-01</u>	<u>Purpose, Application, and Effective Date</u>
<u>69-09-08-02</u>	<u>Definitions</u>
<u>69-09-08-03</u>	<u>Renewable Energy Certificates Tracking Program</u>
<u>69-09-08-04</u>	<u>Facilities Eligible for Participation in the Renewable Energy Certificates Tracking Program</u>
<u>69-09-08-05</u>	<u>Responsibilities of Program Administrator</u>
<u>69-09-08-06</u>	<u>Production and Transfer of Renewable Energy Certificates</u>
<u>69-09-08-07</u>	<u>Registration and Certification of Renewable Energy Facilities</u>

**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



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