

**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 than 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  
Rulemaking**

**Case No. PU-05-364**

**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:  
 $3,000 \text{ MW} * .25 * 365 \text{ days/year} * 24 \text{ hours/day}$   
 $= 6,570,000 \text{ MWH per year.}$

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:  
 $20 \text{ MW} * .25 * 24 * 365 * \$1.934 = \$84,709.20$  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  
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.