

NOV 29 2010



# Public Service Commission

## State of North Dakota

### COMMISSIONERS

Kevin Cramer  
Tony Clark  
Brian P. Kalk

Executive Secretary  
Darrell Nitschke

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TDD 800-366-6888 or 711

29 November 2010

Mr. John Walstad  
Code Revisor  
North Dakota Legislative Council  
State Capitol  
600 East Boulevard, 2<sup>nd</sup> Floor  
Bismarck, ND 58505-0360

RE: Siting, Electric, and Practice & Procedures Rulemakings  
Case No. PU-10-128, Case No. PU-10-129, and Case No. AD-10-167

Dear Mr. Walstad:

Enclosed for publication in the North Dakota Administrative Code please find a copy of amendments to N.D. Admin. Code Article 69-06 relating to Energy Conversion and Transmission Facility Siting, Chapter 69-09-06 relating to Renewable Electricity and Recycled Energy Tracking System, and Section 69-02-01-06 relating to Practice before the Commission.

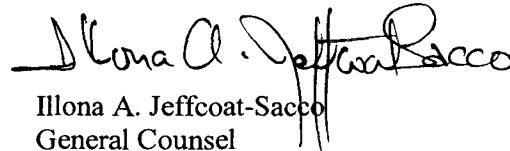
In support of this filing, enclosed please find copies of:

- 24 November Public Service Commission Motion with the amendments as adopted and approved;
- Letter from the Attorney General dated 29 October 2010 approving the proposed rules as to legality;
- The Public Service Commission's 22 September 2010 Order Submitting Rules to Attorney General, which includes a summary of all comments and is the written record of the agency's consideration of all comments for the captioned cases; and
- Comments.

The only comments filed were those of Commission staff and were received at the hearing.

Thank you for your attention to this matter.

Best regards,

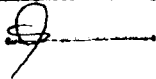
  
Illona A. Jeffcoat-Sacco  
General Counsel

### attachments

- 22 AD-10-167 Filed 11/29/2010 Pages: 20  
Letter to Legislative Council Enclosing Proposed Rules for Publication  
Public Service Commission
- 23 PU-10-129 Filed 11/29/2010 Pages: 20  
Letter to Legislative Council Enclosing Proposed Rules for Publication  
Public Service Commission
- 23 PU-10-128 Filed 11/29/2010 Pages: 20  
Letter to Legislative Council Enclosing Proposed Rules for Publication  
Public Service Commission

APPENDIX

DATE: 11-24-10



**MOTION**

**November 24, 2010**

**Public Service Commission  
Siting  
Rulemaking**

**Case No. PU-10-128**

**Public Service Commission  
Electric  
Rulemaking**

**Case No. PU-10-129**

**Public Service Commission  
Practice and Procedure  
Rulemaking**

**Case No. AD-10-167**

Having been approved by the Attorney General, I move the Commission adopt the proposed amendments to Article 69-06, Chapter 69-09-08, and Section 69-02-01-06 of the North Dakota Administrative Code, and forward the rules to the Legislative Council for publication, Case No. PU-10-128, Siting Rulemaking, Case No. PU-10-129, Electric Rulemaking, and Case No. AD-10-167, Practice and Procedure Rulemaking.

- 21 AD-10-167 Filed 11/24/2010 Pages: 8  
Commission Motion adopting proposed rules and forwarding them to the Legislative Council for publication  
Public Service Commission
- 22 PU-10-128 Filed 11/24/2010 Pages: 8  
Commission Motion adopting proposed rules and forwarding them to the Legislative Council for publication  
Public Service Commission
- 22 PU-10-129 Filed 11/24/2010 Pages: 8  
Commission Motion adopting proposed rules and forwarding them to the Legislative Council for publication  
Public Service Commission

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Practice and Procedure  
Rulemaking**

**Case No. AD-10-167**

**69-02-01-06. Practice before the commission.**

1. **Party in own interest.** Any party may appear before the commission in the party's own right.
2. **Attorneys.** Attorneys at law who are admitted to practice in North Dakota and, with the commission's permission, attorneys admitted to practice in any other jurisdiction may practice before the commission.
3. **Other persons.** Any other person who possesses the necessary legal or technical qualifications to enable the person to render valuable service may, with the commission's permission, practice before the commission.
4. **Rules of conduct.** All persons appearing before the commission must conform to the standards of ethical conduct required of practitioners before the courts of the state of North Dakota. The commission or a hearing officer may bar a person from appearing before the commission for improper conduct.

**History:** Amended effective September 1, 1992, \_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-01-07

**CHAPTER 69-06-03  
LETTER OF INTENT**

Section	
69-06-03-01	Filing
69-06-03-02	Contents

**69-06-03-01. Filing.** Any utility planning to construct an energy conversion or transmission facility shall file a letter of intent with the commission at least one year prior to the filing of an application for a certificate unless a shorter period is requested in writing and approved by the commission. ~~A letter of intent may be filed for the sole purpose of seeking a determination of whether the commission has jurisdiction over a proposed facility.~~

**History:** Amended effective \_\_\_\_\_.  
**General Authority:** NDCC 49-22-18  
**Law Implemented:** NDCC 49-22-07.1

**69-06-03-02. Contents.** ~~All letters~~ A letter of intent shall ~~shall~~ must contain the following:

1. A description of the size and type of facility, and the area to be served.
2. A map of the study area for the proposed site or corridor.
3. The anticipated construction and operation schedule.
4. An estimate of the total cost of construction.

**History:** Amended effective \_\_\_\_\_.  
**General Authority:** NDCC 49-22-18  
**Law Implemented:** NDCC 49-22-07.1

**69-06-04-02. Designation of sites and corridors.**

**1. Requirements of order.**

a. An order approving the issuance of a certificate shall contain findings that the application, with modifications, if any, meets the site or corridor evaluation process requirements of the Act, and any special conditions the commission may require.

(1) Any modifications or special conditions required by the commission shall be deemed to be accepted unless the applicant petitions for a rehearing.

(2) If the applicant rejects any modifications or special conditions and proposes alternatives which it would accept, such a proposal shall be treated by the commission as an amendment to the application.

(3) If the applicant rejects any modifications or special conditions without either requesting a rehearing or proposing alternatives, the commission shall rescind its order and deny the application.

b. The width of a corridor must be at least ten percent of its length, but not less than one mile [1.61 kilometers] or greater than six miles [9.66 kilometers] unless approved otherwise determined by the commission.

c. An order denying the issuance of a certificate shall contain findings that state:

(1) The reason for such denial.

(2) What modification in the application would make it acceptable or that there is no modification that would be acceptable based upon the record before the commission.

**2. Issuance of a certificate.** When a site or corridor is approved, the commission shall issue a certificate in accordance with the order which shall:

a. Describe the authority granted.

b. Contain any special conditions that the commission may require.

**History:** Amended effective \_\_\_\_\_.

**General Authority:** NDCC 49-22-18

**Law Implemented:** NDCC 49-22-08

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
Public Utilities - Siting  
Rulemaking

Case No. PU-10-128

**CHAPTER 69-06-02.1**  
**REQUESTS FOR JURISDICTIONAL DETERMINATION**

Section

69-06-02.1-01      Filing  
69-06-02.1-02      Contents

**69-06-02.1-01. Filing.** A utility planning to construct an energy conversion or transmission facility may request a jurisdictional determination from the commission. A request for jurisdictional determination must be in writing.

**History:** Effective \_\_\_\_\_.

**General Authority:** NDCC 49-22-18

**Law Implemented:** NDCC 49-22-07.1

**69-06-02.1-02. Contents.** A request for a jurisdictional determination must contain:

1.    A description of the size of the facility,
2.    A description of the type of the facility,
3.    A description of the area to be served,
4.    A map of the study area for the proposed site or corridor,
5.    A description of the ownership and operation responsibility of the facility,
6.    A description of the facilities and equipment that will be used and how they will be maintained,
7.    A description of the owner's or operator's plans for selling, transmitting or distributing the output of the plant,
8.    A description of how the facility will be physically and electronically interconnected with other energy conversion, transmission, and distribution facilities,

9. A description of the owner's and operator's economic evaluation of the facility, and
10. A description of how the site will be leased or other rights of access will be obtained.

**History:** Effective \_\_\_\_\_.

**General Authority:** NDCC \_\_\_\_\_

**Law Implemented:** NDCC \_\_\_\_\_

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Electric  
Rulemaking**

**Case No. PU-10-129**

**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
<u>69-09-08-08</u>	<u>Annual Reporting Requirements for Retail Providers</u>

**69-09-08-01. Purpose, application, and effective date.** This chapter establishes a program to include tracking, recording, and verifying, and reporting 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

69-09-08-08. Annual reporting requirements for retail providers. The annual progress report required by North Dakota Century Code section 49-02-34 must be filed in the form and detail the commission may require.

**History:** Effective \_\_\_\_\_.

**General Authority:** NDCC 49-02-34

**Law Implemented:** NDCC 49-02-34



Wayne Stenehjem  
ATTORNEY GENERAL

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  
www.ag.nd.gov

OPINION

October 28, 2010

**RECEIVED**

OCT 29 2010

Ms. Ilona A. Jeffcoat-Sacco  
General Counsel  
Public Service Commission  
600 E Boulevard Ave Dept 408  
Bismarck, ND 58505-0480

**PUBLIC SERVICE COMMISSION**

Dear Ms. Jeffcoat-Sacco:

The Office of Attorney General has examined the proposed amendments to N.D.A.C. art. 69-06 concerning siting (Case No. PU-10-128), proposed amendments to N.D.A.C. ch. 69-09-08 concerning renewable electricity and recycled energy tracking (Case No. PU-10-129), and proposed amendments to N.D.A.C. § 69-02-01-06 concerning practice before the Commission (Case No. AD-10-167), 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 not issued or requested, 3) a takings assessment was not prepared, 4) a small entity regulatory analysis and an economic impact statement were not prepared because the rules are not expected to have an adverse impact on small entities or were expected to reduce costs for small entities, and 5) the proposed rules are within the agency's statutory authority.

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

eee/vkk

cc: John Walstad, Legislative Council

20 AD-10-167 Filed 10/29/2010 Pages: 1  
Letter Approving Administrative Rules  
Attorney General  
Wayne Stenehjem, Attorney General

21 PU-10-129 Filed 10/29/2010 Pages: 1  
Letter Approving Administrative Rules  
Attorney General  
Wayne Stenehjem, Attorney General

21 PU-10-128 Filed 10/29/2010 Pages: 1  
Letter Approving Administrative Rules  
Attorney General  
Wayne Stenehjem, Attorney General

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Siting  
Rulemaking**

**Case No. PU-10-128**

**Public Service Commission  
Electric  
Rulemaking**

**Case No. PU-10-129**

**Public Service Commission  
Practice and Procedure  
Rulemaking**

**Case No. AD-10-167**

**ORDER SUBMITTING RULES TO ATTORNEY GENERAL**

**September 22, 2010**

**Appearances**

Commissioners Tony Clark, Kevin Cramer, and Brian P. Kalk

**Preliminary Statement**

On June 2, 2010 the North Dakota Public Service Commission (Commission) issued a formal Notice of Proposed Rulemaking and an Abbreviated Notice proposing to revise several sections to the North Dakota Administrative Code. The proposed rules are summarized as follows:

**Siting - Case No. PU-10-128**

Siting proposed rules incorporate a minor change relating to determining corridor size, a proposed rule concerning requests for jurisdictional determinations, and a proposed rule concerning letters of intent. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

**Electric: Case No. PU-10-129**

The renewable electricity and recycled energy tracking proposed rule standardizes the content and format of required annual reports of electric retail providers. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

### **Practice and Procedure: Case No. AD-10-167**

The proposed amendment repeals language regarding practice before the Commission that is inconsistent with the North Dakota Admission to Practice Rules. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

### **Public Hearing and Comments**

The Abbreviated Notice was published once in 51 official county newspapers the week of June 13 through June 19, 2010. The Ashley Tribune published the Notice on June 30, 2010. The notices were also forwarded to the Legislative Council for publication at least 30 days in advance of the hearing.

A public hearing was noticed for and held at 1:30 p.m., July 14, 2010. The hearing was held in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until July 26, 2010, 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 only written comments filed were received at the hearing and were those of Commission staff.

### **Discussion**

#### **Siting - Case No. PU-10-128**

Staff prepared and filed a statement regarding the regulatory analysis, takings assessment, and small entity regulatory analysis.

Staff testified that the proposed changes incorporate a minor change relating to determining corridor size, a proposed rule concerning requests for jurisdictional determinations, and a proposed rule concerning letters of intent. One proposed change would clarify that the Commission can designate a smaller corridor without first receiving a request from the applicant. The rest of the proposed changes to the siting rules are intended to separate requests for jurisdictional determination from the letter of intent process.

No other comments were received and no changes are being made to the rules as originally proposed.

**Electric: Case No. PU-10-129**

Staff prepared and filed a statement regarding the regulatory analysis, takings assessment, and small entity regulatory analysis.

Staff testified that the proposed changes standardize the content and format of required annual reports of electric retail providers.

No other comments were received and no changes are being made to the rules as originally proposed.

**Practice and Procedure: Case No. AD-10-167**

Staff prepared and filed a statement regarding the regulatory analysis, takings assessment, and small entity regulatory analysis.

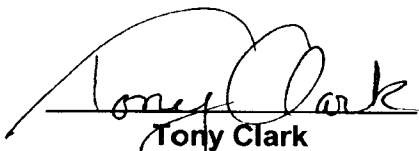
Staff testified that the proposed amendment repeals language regarding practice before the Commission that is inconsistent with the North Dakota Admission to Practice Rules.

No other comments were received and no changes are being made to the rules as originally proposed.

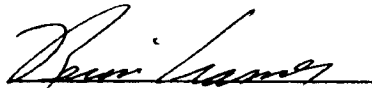
**Order**

The Commission orders 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 approved as to legality.

**PUBLIC SERVICE COMMISSION**



**Tony Clark**  
Commissioner



**Kevin Cramer**  
Chairman



**Brian P. Kalk**  
Commissioner

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
Public Utilities - Siting  
Rulemaking

Case No. PU-10-128

CHAPTER 69-06-02.1  
REQUESTS FOR JURISDICTIONAL DETERMINATION

Section

69-06-02.1-01      Filing  
69-06-02.1-02      Contents

69-06-02.1-01. Filing. A utility planning to construct an energy conversion or transmission facility may request a jurisdictional determination from the commission. A request for jurisdictional determination must be in writing.

**History:** Effective \_\_\_\_\_.

**General Authority:** NDCC 49-22-18

**Law Implemented:** NDCC 49-22-07.1

69-06-02.1-02. Contents. A request for a jurisdictional determination must contain:

1. A description of the size of the facility.
2. A description of the type of the facility.
3. A description of the area to be served.
4. A map of the study area for the proposed site or corridor.
5. A description of the ownership and operation responsibility of the facility.
6. A description of the facilities and equipment that will be used and how they will be maintained.
7. A description of the owner's or operator's plans for selling, transmitting or distributing the output of the plant.
8. A description of how the facility will be physically and electronically interconnected with other energy conversion, transmission, and distribution facilities.

9. A description of the owner's and operator's economic evaluation of the facility, and
10. A description of how the site will be leased or other rights of access will be obtained.

**History:** Effective \_\_\_\_\_  
**General Authority:** NDCC \_\_\_\_\_  
**Law Implemented:** NDCC \_\_\_\_\_

**CHAPTER 69-06-03  
LETTER OF INTENT**

Section	
69-06-03-01	Filing
69-06-03-02	Contents

**69-06-03-01. Filing.** Any utility planning to construct an energy conversion or transmission facility shall file a letter of intent with the commission at least one year prior to the filing of an application for a certificate unless a shorter period is requested in writing and approved by the commission. ~~A letter of intent may be filed for the sole purpose of seeking a determination of whether the commission has jurisdiction over a proposed facility.~~

**History:** Amended effective \_\_\_\_\_.

**General Authority:** NDCC 49-22-18

**Law Implemented:** NDCC 49-22-07.1

**69-06-03-02. Contents.** ~~All letters~~ A letter of intent shall ~~shall~~ must contain the following:

1. A description of the size and type of facility, and the area to be served.
2. A map of the study area for the proposed site or corridor.
3. The anticipated construction and operation schedule.
4. An estimate of the total cost of construction.

**History:** Amended effective \_\_\_\_\_.

**General Authority:** NDCC 49-22-18

**Law Implemented:** NDCC 49-22-07.1

**69-06-04-02. Designation of sites and corridors.**

**1. Requirements of order.**

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(1) Any modifications or special conditions required by the commission shall be deemed to be accepted unless the applicant petitions for a rehearing.

(2) If the applicant rejects any modifications or special conditions and proposes alternatives which it would accept, such a proposal shall be treated by the commission as an amendment to the application.

(3) If the applicant rejects any modifications or special conditions without either requesting a rehearing or proposing alternatives, the commission shall rescind its order and deny the application.

b. The width of a corridor must be at least ten percent of its length, but not less than one mile [1.61 kilometers] or greater than six miles [9.66 kilometers] unless approved otherwise determined by the commission.

c. An order denying the issuance of a certificate shall contain findings that state:

(1) The reason for such denial.

(2) What modification in the application would make it acceptable or that there is no modification that would be acceptable based upon the record before the commission.

**2. Issuance of a certificate.** When a site or corridor is approved, the commission shall issue a certificate in accordance with the order which shall:

a. Describe the authority granted.

b. Contain any special conditions that the commission may require.

**History:** Amended effective \_\_\_\_\_.

**General Authority:** NDCC 49-22-18

**Law Implemented:** NDCC 49-22-08

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Electric  
Rulemaking**

**Case No. PU-10-129**

**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
<u>69-09-08-08</u>	<u>Annual Reporting Requirements for Retail Providers</u>

**69-09-08-01. Purpose, application, and effective date.** This chapter establishes a program to include tracking, recording, and verifying, and reporting 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

69-09-08-08. Annual reporting requirements for retail providers. The annual progress report required by North Dakota Century Code section 49-02-34 must be filed in the form and detail the commission may require.

**History:** Effective \_\_\_\_\_.

**General Authority:** NDCC 49-02-34

**Law Implemented:** NDCC 49-02-34

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Practice and Procedure  
Rulemaking**

**Case No. AD-10-167**

**69-02-01-06. Practice before the commission.**

1. **Party in own interest.** Any party may appear before the commission in the party's own right.
2. **Attorneys.** Attorneys at law who are admitted to practice in North Dakota and, ~~with the commission's permission, attorneys admitted to practice in any other jurisdiction~~ may practice before the commission.
3. **Other persons.** Any other person who possesses the necessary legal or technical qualifications to enable the person to render valuable service may, with the commission's permission, practice before the commission.
4. **Rules of conduct.** All persons appearing before the commission must conform to the standards of ethical conduct required of practitioners before the courts of the state of North Dakota. The commission or a hearing officer may bar a person from appearing before the commission for improper conduct.

**History:** Amended effective September 1, 1992, \_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-01-07