

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Electric
Rulemaking**

Case No. PU-10-129

**STATEMENT ON REGULATORY ANALYSIS, SMALL ENTITY ANALYSIS
AND TAKINGS ASSESSMENT**

As required by N.D.C.C. § 49-02-34, electric retail providers report annually on their previous calendar year's energy sales. The reports include information regarding qualifying electricity delivered and renewable energy and recycled energy certificates purchased and retired as a percentage of annual retail sales and a brief narrative report that describes steps taken to meet the state renewable and recycled energy objective ("objective") over time, as established in NDCC § 49-02-28. and the reports also identify any challenges or barriers encountered in meeting the objective. The last annual report must be made on June 30, 2016.

After the reports were submitted to the Public Service Commission ("Commission") for 2009, a request was made by a generation and transmission cooperative, on behalf of its North Dakota distribution cooperatives, to the Commission for clarification on the expected content and format of the required annual reports because the reports submitted by the electric retail providers varied in content and format.

At a work session held on March 4, 2010 and as considered in the administrative portion of its regular meeting on March 10, 2010, the Commission directed the the staff to draft proposed rules to standardize the reporting content and format.

Regulatory Analysis

N.D.C.C. § 28-32-08 requires an agency to prepare a regulatory analysis if the rule is expected to have an impact on the regulated community in excess of fifty thousand dollars. The law provides, in part:

2. The regulatory analysis must contain:
 - a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
 - b. A description of the probable impact, including economic impact, of the proposed rule;

- c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
- d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.

A regulatory analysis is not required since the proposed rules are not expected to have an impact on the regulated community in excess of fifty thousand dollars. In fact, by standardizing the reporting content and format, it is anticipated that it will reduce costs for electric retail providers in complying with this reporting requirement.

Small Entity Regulatory Analysis

N.D.C.C. § 28-32-08.1 requires that before adoption of any proposed rule, the adopting agency prepare a regulatory analysis in which the agency considers options to minimize adverse impact on small entities. The law provides, in part:

- 2. . . . 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; and
 - e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

It is anticipated that by standardizing the reporting content and format, complying with this reporting requirement will reduce costs for electric retail providers including small entities. In addition, distribution cooperatives may aggregate their reporting through generation and transmission cooperatives and municipal utilities may aggregate their reporting through a municipal power agency.

Takings Assessment

N.D.C.C. § 28-32-09 requires an entity to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The law provides, in part:

1. . . . The agency's 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.

Given that the proposed rules do not limit the use of private real property, a written assessment of the constitutional takings is not required.