

**State of North Dakota
Public Service Commission**

**Public Service Commission
Public Utilities
Rulemaking**

Case No. PU-12-162

**Statements on Regulatory Analysis, Small Entity Regulatory Analysis and
Economic Impact, and Takings Assessment**

May 30, 2012

Discovery Response Time - Section 69-02-05-12

The Commission is proposing a new section to Title 49 of the North Dakota Century Code section 69-02-05-12 relating to discovery response time in public utility cases. The rule addition requires that interrogatory responses and objections be received in ten business days.

National Electrical Safety Code - Section 69-09-02-35

The proposed rule adopts by reference the current National Electrical Safety Code, the 2012 Edition. North Dakota Administrative Code section 69-09-02-35.

Master Metering - Section 69-09-02-37

The rules proposal repeals an existing limitation, North Dakota Administrative Code Section 69-09-02-37, that prohibits master metering of electric service in certain multi-tenant commercial or residential buildings. Master metering is the practice of metering all electric service through a single meter instead of requiring separate meters and separate bills for each tenant. Landlords choosing to master meter would pay one electric bill for their entire building such that tenants in the building would not receive an electric bill from the distribution utility.

Statement on Regulatory Analysis

North Dakota Century Code Section 28-32-08 requires that an agency issue a regulatory analysis if the proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars or if a written request for the analysis is filed by the governor or a member of the legislative assembly. 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.

Discovery Response Time - Section 69-02-05-12

The proposed rule addition sets a shortened response time for discovery requests in public utility cases. This proposed rule addition is not expected to have an impact on the regulated community in excess of fifty thousand dollars and to date, there has not been a request for a regulatory analysis. Consequently, a regulatory analysis is not required at this time.

National Electrical Safety Code - Section 69-09-02-35

Requiring compliance with the National Electrical Safety Code is not a new requirement. This rule simply updates that requirement to the current version of the code. Also, code compliance is required by other relevant regulatory authorities. Electric transmission and distribution facilities are constructed in accordance with current codes as a matter of sound engineering and construction practice regardless whether the Commission's rules reflect the latest code requirement.

Therefore, this proposed rule is not expected to have an impact on the regulated community in excess of fifty thousand dollars and to date, there has not been a request for a regulatory analysis. Consequently, a regulatory analysis is not required at this time.

Master Metering - Section 69-09-02-37

The original rule was implemented in response to a federal program encouraging energy conservation. The idea behind prohibiting master metering is that such a practice reduces the incentive to conserve because each renter within a facility does not receive a utility bill. While that fact remains, public awareness and the practice of conservation are much greater today and the societal benefit of prohibiting master metering is much less.

While the theory behind the rule makes sense, there are practical problems with it today. For instance, the growth rate in North Dakota, especially the oil patch, does not allow for the time necessary to install separate meters. Further, the constant turnover of tenants makes the idea of separate metering expensive from a capital and operating standpoint. Also note that commercial buildings are often reconfigured to meet new

tenant's space requirements yet the heating and air conditioning system is built to serve the entire building for efficiency purposes making separate metering impossible.

This proposed rule repeal is not expected to have an impact on the regulated community in excess of fifty thousand dollars and to date, there has not been a request for a regulatory analysis. Consequently, a regulatory analysis is not required at this time.

Statement on Small Entity Regulatory Analysis and Economic Impact

North Dakota Century Code section 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.

Discovery Response Time - Section 69-02-05-12

The proposed rule changes are not expected to have an adverse effect on small entities.

National Electrical Safety Code - Section 69-09-02-35

For the same reasons noted above, the proposed rule change is not expected to have any adverse impact on small entities. Further, the National Electric Safety Code applies to facilities owned by electric utilities, which usually are not small entities. However, some North Dakota municipal or cooperative electric suppliers may be small entities under subsection 28-32-08.1(1). Costs of compliance with this proposed rule update are expected to be minimal or non-existent because sound engineering and construction practices require compliance with the code in effect at the time of

construction, regardless whether the Commission rules have been updated to reflect the latest code requirement. No effect is anticipated on state revenues. The purpose for updating of this rule is to maintain public safety. Establishing an exemption from the code or less stringent standards of small entities would not be consistent with public safety.

Master Metering - Section 69-09-02-37

Rescinding the rule provides additional electric metering options for small entity property developers and owners with no compliance or reporting requirements. Developers may begin exercising their increased metering options as soon as the rule is rescinded and there are no compliance or reporting requirements.

The proposed repeal is not expected to have any adverse impact on small entities.

Statement on 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 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.

Discovery Response Time - Section 69-02-05-12

The proposed rule would not limit the use of private real property and would not result in a taking or regulatory taking.

National Electrical Safety Code - Section 69-09-02-35

The proposed rule would not limit the use of private real property and would not result in a taking or regulatory taking.

Master Metering - Section 69-09-02-37

The proposed rule repealing North Dakota Administrative Code Section 69-09-02-37 would not limit the use of private real property and would not result in a taking or regulatory taking. To the contrary, the proposal would repeal an existing limitation that prohibits master metering of electric service in certain multi-tenant commercial or residential buildings. As noted above, master metering is the practice of metering all electric service through a single meter instead of requiring separate meters and separate bills for each tenant. Landlords choosing to master meter would pay one electric bill for their entire building such that tenants in the building would not receive an electric bill from the distribution utility. Thus, rather than limiting the use of private real property, this proposal would provide landlords with additional options for the use of their property.

The purpose of the proposed repeal is to allow landlords the option of furnishing electricity to their tenants. Repealing the existing rule is necessary to allow master metering in buildings where it is currently prohibited. We do not expect the proposal to constitute a taking; therefore, there should be no cost to the state.

The rule prohibiting master metering is easily overcome because the rule itself allows for an exception if separate metering costs more than installing one master meter. Generally speaking, it is cheaper to install one meter than several. Thus, the PSC is required to conduct administrative meetings and approvals for an answer that is all but known.