

**State of North Dakota  
Public Service Commission**

**Public Service Commission  
Siting  
Rulemaking**

**Case No. PU-12-165**

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

**May 30, 2012**

The Commission is proposing amendments to North Dakota Administrative Code Article 69-06 Energy Conversion and Transmission Facility Siting. The rule revisions update the process for processing siting applications and clarify what is required in each siting application. Items that are currently in commission guidelines are incorporated into the rules. Additional definitions are added to Section 69-06-01-01. The procedure for public hearing is updated and electronic mail is added as a method of notification to interested and affected parties. The list of designated agencies and officers has been updated and revised. The one year waiting period between filing a letter of intent for a project and an application has been eliminated. The requirements for a siting application that previously existed in Commission guidelines have been integrated into the rules throughout Chapter 69-06-04 and Chapter 69-06-05 and map and GIS requirements have been added. Specific siting criteria for wind energy conversion facilities are added. A chapter is added for small wind energy conversion facilities.

**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.

The proposed rule revisions and additions modify the process used for siting energy conversion and transmission facilities. Many of the changes simply incorporate filing requirements previously in the guidelines and so impose no new requirements on industry. Additionally, the rules implementing the new wind farm siting threshold are designed to lessen the burden on regulated industry. These proposed rule revisions and additions are 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.

See the discussion above. For the same reasons, the proposed rule changes are not expected to have an adverse effect 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.

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