STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Public Utilities
Rulemaking — **Case No. PU-12-162**

Public Service Commission
Siting
Rulemaking — **Case No. PU-12-165**

Public Service Commission
Reclamation
Rulemaking — **Case No. RC-12-166**

ORDER SUBMITTING RULES TO ATTORNEY GENERAL

August 29, 2012

Appearances

Commissioners Brian P. Kalk, Kevin Cramer, and Bonny M. Fetch

Preliminary Statement

On May 30, 2012 the North Dakota Public Service Commission (Commission) issued a formal Notice of Proposed Rulemaking and an Abbreviated Notice proposing to revise several sections of the North Dakota Administrative Code. The proposed rules are summarized as follows:

Public Utilities - Case No. PU-12-162

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

The Commission is proposing a new section to Chapter 69-02-05 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 change to North Dakota Administrative Code section 69-09-02-35 adopts by reference the current National Electrical Safety Code, the 2012 Edition.

Master Metering – Sections 69-09-02-14 and 69-09-02-37

The proposal repeals North Dakota Administrative Code section 69-09-02-37 that prohibits master metering of electric service in certain multi-tenant commercial or

residential buildings unless a waiver is granted. 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. The proposed change to North Dakota Administrative Code section 69-09-02-14 removes the reference to master metering. Due to repeal of the mater metering prohibition, the reference is no longer necessary.

Siting - Case No. PU-12-165 - Article 69-06

The revisions to North Dakota Administrative Code Article 69-06, Energy Conversion and Transmission Facility Siting, clarify what is required and update the process for processing siting applications heard by the North Dakota Public Service Commission. Items that are currently included in commission guidelines are incorporated into the rules. The resulting rules also address issues specific to wind energy conversion facilities and the new lower jurisdiction threshold for wind energy conversion facilities.

Reclamation - Case No. RC-12-166 - Article 69-05.2

Several changes are proposed to North Dakota Administrative Code Article 69-05.2 pertaining to surface coal mining and reclamation operations. The federal Office of Surface Mining is requiring that provisions be added for the Commission's use of the Applicant Violator System prior to the approval of mining permits, renewals and certain revisions. The Applicant Violator System is a national database of mining companies that have unabated violations or unpaid civil penalties. A mining company that is linked to an entity in this database may be ineligible to receive a new mining permit, renewal, or revision that proposes to permit or mine additional lands. The proposed rules also contain procedures for companies to use if they want to challenge information or links in the Applicant Violator System.

Two other rule changes are recommended by staff. One adds a new subsection to an existing rule on the format of electronic permit applications. The other change will make a minor correction to a provision that should have been changed more than fifteen years ago when another rule was modified to no longer require the renewal of a permit once lands in that permit are no longer being mined or used in support of mining.

Public Hearing and Comments

The Abbreviated Notice was published once in 51 official county newspapers the week of June 12 through June 18, 2012. 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 10:00 a.m., July 12, 2012. 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 23, 2012, 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.

Written comments filed by Commission staff were received at the hearing. In addition to other staff testimony and written comments, Pat Fahn, Director of the Compliance and Competitive Markets Division of the North Dakota Public Service Commission, also testified regarding the need for revisions to NDAC § 69-06-01-06, the siting rule regarding siting fee refunds.

Kevin Nelson, Deputy Director for Installation Support at the Minot Air Force Base, submitted written comments suggesting the proposed language in NDAC § 69-06-08-01(1)(h) and NDAC § 69-06-08-02(1)(f) be changed from "nuclear missile launch facility" to "Intercontinental Ballistic Missile (ICBM) launch or launch control facility."

Discussion

Public Utilities - Case No. PU-12-162

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

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

Staff testified that the proposed changes would establish an official time frame for responding to interrogatories related to public utility regulation so that there is no question about interrogatory response times, absent an ad hoc agreement of less than thirty days.

No other comments were received and we are not making changes to the rules as originally proposed.

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

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

Staff testified that the proposed changes update the National Electrical Safety Code book, which needs to be updated periodically, with a new edition issued every five years. The changes proposed would simply adopt the latest NESC 2012 Edition instead of the previously adopted 2007 Edition. Staff testified that the purpose of adopting the 2012 Edition is to ensure that North Dakota safety requirements keep pace with industry standards. In practice, the utilities are very committed to safety and are already applying the 2007 Edition.

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

Master Metering – Sections 69-09-02-14 and 69-09-02-37

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

Staff testified that the proposed changes to Section 69-09-02-37, prohibiting master metering of electric service in new or substantially remodeled buildings, is proposed to be repealed because of concerns with implementation including limiting the use of real property, competitive disadvantages in rental property markets, and increased costs for construction and electric usage.

No other comments were received. We are changing the rules as originally proposed to remove the reference to master metering in North Dakota Administrative Code section 69-09-02-14, as the reference is no longer necessary.

Siting - Case No. PU-12-165 - Article 69-06

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

Staff testified that the primary purposes for the rule changes are to update and codify the Commission's existing siting application guidelines, establish setback and other requirements for siting wind turbines, and implement abbreviated procedures for siting small wind projects with less than 20 MW of generating capacity. The proposed changes also help to clarify the process for service of siting notices by explicitly indicating that service of notices can be accomplished by electronic mail. Updates were also made to the list of agencies that need to be served with notices of filings.

Pat Fahn, Director of the Compliance and Competitive Markets Division of the North Dakota Public Service Commission, also testified regarding the need to

incorporate rules changes to NDAC § 69-06-01-06, Siting fee refund. The Commission directed that this proposed rule be discussed further at a future Commission meeting or work session if proposed, and that it be proposed in a future rules package.

Kevin Nelson, Deputy Director for Installation Support at the Minot Air Force Base, submitted written comments suggesting the proposed language in NDAC § 69-06-08-01(1)(h) and NDAC § 69-06-08-02(1)(f) be changed from "nuclear missile launch facility" to "Intercontinental Ballistic Missile (ICBM) launch or launch control facility."

No other comments were received. We are not making changes to the rules as originally proposed.

Reclamation - Case No. RC-12-166 - Article 69-05.2

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

Staff testified that the proposed rules incorporate three new sections and amend several existing sections of the North Dakota Administrative Code Article 69-05.2 pertaining to surface coal mining and reclamation operations. Those changes would include procedures for mining companies to use to challenge information or links in the Applicant Violator System, general requirements for the format of electronic permit applications, and minor corrections to subsection 2 of to North Dakota Administrative Code Section 69-05.2-05-08 to no longer require the renewal of a permit once lands in that permit are no longer being mined or used in support of mining.

No other comments were received and we are not making changes to the rules as originally proposed.

Mining and reclamation rule changes adopted by the Commission must be as effective as the counterpart federal rules that have issued by the federal Office of Surface Mining (OSM) within the Department of the Interior. Before final adoption by the Commission, these rule changes will be submitted to OSM for approval as a State Program Amendment.

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

Kevin Cramer	Brian P. Kalk	Bonny M. Fetch
Commissioner	**Chairman**	**Commissioner**

State of North Dakota
Public Service Commission

Public Service Commission **Case No. PU-12-162**
Public Utilities
Rulemaking

May 30, 2012

Section 69-02-05-12 is created as follows:

69-02-05-12. Interrogatories in cases under North Dakota Century Code Title 49.

Any party to a public utility proceeding under North Dakota Century Code Title 49 may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Each interrogatory must be answered separately and fully in writing, unless it is objected to, in which event the objecting party shall state the reasons for the objection and shall answer to the extent the interrogatory is not objectionable. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections, if any, within ten business days after the service of the interrogatories. A shorter or longer time may be directed by the commission or, in the absence of such direction, agreed to in writing by the parties. Any ground for an objection to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the commission for good cause shown. A party answering interrogatories shall set out the interrogatory immediately preceding the answer.

History: Effective _____ 2012.
General Authority: NDCC 28-32-02
Law Implemented: NDCC Title 49

State of North Dakota
Public Service Commission

Public Service Commission
Siting
Rulemaking

Case No. PU-12-165

May 30, 2012

Article 69-06 is amended and created as follows:

Article 69-06. Energy Conversion and Transmission Facility Siting

Chapter
69-06-01 General Provisions
69-06-02 Utility Reporting Requirements
69-06-03 Letter of Intent
69-06-04 Certificate of Site ~~or Corridor~~ Compatibility
69-06-05 Transmission Facility Permit
69-06-06 Waiver of Procedures and Time Schedules
69-06-07 Emergency Certificate or Permit [Repealed]
69-06-08 Criteria
69-06-09 Continuing Suitability of Certificate or Permit

CHAPTER 69-06-01
GENERAL PROVISIONS

Section
69-06-01-01 Definitions
69-06-01-02 Procedure for Public Hearings
69-06-01-03 Advisory Committees
69-06-01-04 ~~Applications~~ Application
69-06-01-05 Designated ~~State~~ Agencies and Officers
69-06-01-06 Siting Fee Refund

69-06-01-01. Definitions. The terms used throughout this article have the same meanings as in North Dakota Century Code chapter 49-22, and in addition:

1. "Act" means the North Dakota Energy Conversion and Transmission Facility Siting Act, North Dakota Century Code chapter 49-22.

2. "Avoidance criteria" means criteria that remove areas from consideration for energy conversion facility sites and transmission facility routes unless it is shown that under the circumstances there are no reasonable alternatives.

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3. "Criteria" means policy statements that guide and govern the preparation of the inventory of exclusion and avoidance areas, and the energy conversion facility site and transmission facility corridor and route suitability evaluation process.

4. "Designated corridor" means a corridor for which a certificate has been issued by the commission.

5. "Designated route" means a route for which a permit has been issued by the commission.

6. "Designated site" means a site for which a certificate has been issued by the commission.

7. "Extractive resources" means natural resources that are removed during the construction of a facility including sand, gravel, soil, rock, and other similar materials.

8. "Exclusion criteria" means criteria that remove areas from consideration for energy conversion facility sites and transmission facility routes.

~~8~~9. "Height of the turbine" means the distance from the base of the wind turbine to the turbine blade tip when it is in its highest position.

10. "Historical resource" means a district, site, building, structure, or other object which possesses significance in history, archaeology, paleontology, or architecture, or has other cultural value to the state or local community.

~~9~~11. "Party aggrieved" means a person who will be affected in a manner different from the effect on the general public.

~~10~~12. "Policy criteria" means criteria that guide and govern the selection of energy conversion facility sites and transmission facility corridors and routes in order to maximize benefits during the construction and operation of a facility.

~~11~~13. "Refinement" means the action or process of purifying.

~~12~~14. "Selection criteria" means criteria that guide and govern the selection of energy conversion facility sites and transmission facility corridors and routes in order to minimize adverse human and environmental impact after the exclusion and avoidance criteria have been applied.

~~13~~15. "Siting rules" means this article adopted by the commission pursuant to North Dakota Century Code chapter 49-22.

~~14~~16. "Wetland" means an aquatic area important to the life stages of certain wildlife species as defined by the United States fish and wildlife service.

History: Amended effective August 1, 1979; 2012.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-01, 49-22-03, 49-22-05.1, 49-22-07, 49-22-08, 49-22-08.1, 49-22-19

69-06-01-02. Procedure for public hearings.

1. ~~General~~ **Rulemaking hearings.** A ~~general~~ public hearing ~~shall~~ consistent with the rulemaking provisions of North Dakota Century Code Chapter 28-32 must be held prior to the adoption, amendment, or repeal of~~, or a substantial or material modification to, the criteria, a substantial or material modification or addition to these rules, and the revocation or suspension of a certificate or permit~~ a rule.

2. **Revocation or suspension hearings.** A public hearing consistent with the complaint provisions of North Dakota Century Code chapter 28-32 must be held on the revocation or suspension of a certificate or permit. Notice of ~~a general~~ the public hearing ~~shall~~ must be given by the commission ~~at least twenty days prior to the hearing~~ by publication in the official newspaper of the county where the hearing will be held and in the official newspaper of all counties in which any part of an affected facility is located~~, and if it is a hearing on the adoption of, or a substantial or material modification or addition to, the criteria or these rules, in all of the state daily newspapers~~.

~~2~~3. **Application hearings.** One or more public hearings ~~shall~~ must be held on an application for a certificate or a permit in each county in which any part of the site, corridor, or route is proposed to be located; provided, that the commission ~~by order~~ may consolidate the county hearings. The notice of a hearing on an application for a certificate of corridor compatibility for a transmission facility ~~shall~~ must include a map ~~of the appropriate county~~ depicting the proposed corridor and study area. The notice of a hearing on an application for a route permit ~~shall~~ must include a map ~~of the appropriate county~~ depicting the ~~designated~~ corridor and the location of the proposed route and any proposed alternative routes. ~~The maps shall be of a size, style, and legend as specified by the commission.~~ Notice of each hearing ~~shall~~ must be given by the commission at least twenty days prior to the hearing, as follows:

   a. By publication in the official newspaper of each county in which any part of the site, corridor, or route is proposed to be located, whether

the hearings are consolidated or not, and in such other newspapers that the commission may determine to be appropriate.

b. By mail or electronic mail to the following persons in each county in which any part of the site, corridor, or route is proposed to be located:

(1) The chairman of the board of county commissioners.

(2) The county auditor.

(3) The chief executive officer of each city in the county on an application for a Certificate for an energy conversion facility.

(4) The chief executive officer of each city within a corridor on an application for a certificate or permit for a transmission facility.

c. By mail or electronic mail to any state or federal agency ~~authorized to issue a permit required for the construction or operation of the facility~~ listed in section 69-06-01-05.

d. By mail or electronic mail to all parties.

e. By mail or electronic mail to the state senators and representatives of each legislative district in which any part of the site, corridor, or route is proposed to be located.

~~f. By publication as provided in subdivision a on each city in the county outside of the proposed corridor.~~

~~3~~4. **Transfer and waiver hearings.** The commission, upon determination that an application for the transfer of a certificate or permit or an application for a waiver of procedures and time schedules is complete, shall publish a notice of opportunity for a public hearing, or upon its own motion shall publish a notice of hearing, once in the official newspaper of each county in which any part of the site, corridor, or route is located or proposed to be located. A public hearing ~~shall~~ must be held on an application if, either within twenty days following the publication of a notice of opportunity any interested person requests and demonstrates good cause for a public hearing, or the commission determines upon its own motion that there is good cause for a public hearing. Notice of a public hearing ~~shall~~ must be given by the commission at least twenty days prior to the hearing by publication in the official newspaper of each county in which the site, corridor, or route is located or proposed to be located.

History: Amended effective August 1, 1979; January 1, 1982; 2012.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-13

69-06-01-03. Advisory committees.

1. **Public representatives.** Persons appointed to an advisory committee to advise and assist the commission in the evaluation of a site or corridor who are to serve as representatives of a city or a county shall be deemed to be the public representatives on that committee.

2. **Meetings.** Committee meetings ~~shall~~ must be scheduled at the discretion of the commission. All meetings of an advisory committee ~~shall~~ must be open to the public, and public notice shall be given of the time and place of each meeting. All committee meetings ~~shall~~ must be conducted in an informal manner by the commission or its representative, and members of the public and the applicant shall be afforded a reasonable opportunity to participate in the proceedings.

3. **Term.** All members of an advisory committee ~~shall~~ serve at the pleasure of the commission.

General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-14

69-06-01-04. ~~Applications~~ Application.

1. **Time.** The time in which the commission is required to act in response to an application ~~shall~~ does not commence until the commission notifies the applicant in writing that the application is complete.

2. **Complete application.** An application for a certificate or permit ~~shall~~ will be deemed complete when the commission determines the application contains sufficient information and supporting documentation to enable the commission to process the application.

General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-08, 49-22-08.1

69-06-01-05. Designated ~~state~~ agencies and officers. The following are the designated ~~state~~ agencies and officers entitled to notice when so referred to in this article:

1. Aeronautics commission.
2. Attorney general.
3. Department of agriculture.
4. Department of health.
5. Department of human services.
6. Department of labor.
7. Department of career and technical education.
8. ~~Economic development commission.~~ Department of commerce.
9. Energy development impact office.
10. Game and fish department.
11. ~~Geological survey.~~ Industrial commission.
12. Governor.
13. Highway department.
14. State Historical Society of North Dakota.
15. Indian affairs commission.
16. Job service North Dakota.
17. Land department.
18. Parks and recreation department.
19. ~~Division of community services - department of commerce~~.
20. Soil conservation committee.
21. State water commission.
22. United States department of defense.
23. United States fish and wildlife service.

24. United States corps of engineers.

25. Federal aviation administration.

26. The county commission of the county or counties where the project is located.

27. North Dakota transmission authority.

28. North Dakota pipeline authority.

History: Effective August 1, 1979; amended effective July 1, 2008; 2012.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-08, 49-22-08.1

69-06-01-06. Siting fee refund. After all siting permits and certificates are issued by the commission and after all notice and hearing costs and expenses are paid, the commission will refund to the applicant all of the application fee paid by the applicant except five thousand dollars or the amount of the fee remaining if that amount is less than five thousand dollars. When construction and ~~all postconstruction~~ post-construction inspections are complete and when the commission has determined that any required tree mitigation is satisfactory, any remaining balance of the application fee will be refunded to the applicant. No refunds for less than fifty dollars will be processed.

History: Effective July 1, 2008; amended effective 2012.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-22

CHAPTER 69-06-02
UTILITY REPORTING REQUIREMENTS

Section
69-06-02-01 Ten-year Plan
69-06-02-02 Filing

69-06-02-01. Ten-year plan. A ten-year plan ~~shall~~ must contain the information specified by the commission.

General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-04

69-06-02-02. Filing.

1. Ten copies of each ~~report shall~~ plan must be filed with the commission, and one copy of each ~~report shall~~ plan must be filed with the county auditor of each county in which any part of a site or corridor is proposed to be located.

2. Notice of the filing of each ~~report shall~~ plan must be given by the utility to each ~~state~~ agency and officer entitled to notice as designated in section 69-06-01-05.

History: Amended effective August 1, 1979; 2012.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-04

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 April 1, 2011.
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 April 1, 2011; 2012.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-07.1

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~~.

History: Amended effective April 1, 2011; 2012.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-07.1

69-06-03-02. Contents. A letter of intent 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 which will be used to determine the filing fee that must accompany the application.

History: Amended effective April 1, 2011; 2012.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-07.1

CHAPTER 69-06-04
CERTIFICATE OF SITE ~~OR CORRIDOR~~ COMPATIBILITY

Section
69-06-04-01 Application
69-06-04-02 Designation of Sites ~~and Corridors~~

69-06-04-01. Application.

1. **Form.** ~~All applications shall be in such form as the commission may prescribe.~~ An application must be reproduced and bound to 8 ½ by 11 inch size. Accompanying maps must be folded to 8 ½ by 11 inches with the title block appearing in the lower right-hand corner.

2. **Contents**. The application must contain:

   a. A description of:

      (1) the type of energy conversion facility proposed,

      (2) the gross design capacity,

      (3) the net design capacity,

      (4) the estimated thermal efficiency of the energy conversion process and the assumptions upon which the estimate is based,

      (5) the number of acres that the proposed facility will occupy, and

      (6) the anticipated time schedule for:

         a. obtaining the certificate of site compatibility

         b. completing land acquisition

         c. starting construction

         d. completing construction

         e. testing operations

         f. commencing commercial production

         g. beginning any expansions or additions.

b. Copies of any evaluative studies or assessments of the environmental impact of the proposed facility submitted to any federal, regional, state, or local agency.

c. An analysis of the need for the proposed facility based on present and projected demand for the product or products to be produced by the proposed facility, including the most recent system studies supporting the analysis of the need.

d. A description of any feasible alternative methods of serving the need.

e. A study area that includes the proposed facility site, of sufficient size to enable the commission to evaluate the factors addressed in North Dakota Century Code section 49-22-09.

f. A discussion of the utility's policies and commitments to limit the environmental impact of its facilities, including copies of board resolutions and management directives.

g. A map identifying the criteria that provides the basis for the specific location of the proposed facility within the study area.

h. A discussion of the criteria evaluated within the study area, including exclusion areas, avoidance areas, selection criteria, policy criteria, design and construction limitations, and economic considerations.

i. A discussion of the mitigative measures that the applicant will take to minimize adverse impacts which result from the location, construction, and operation of the proposed facility.

j. The qualifications of each person involved in the facility site location study.

k. A map of the study area showing the location of the proposed facility and the criteria evaluated.

l. An 8 ½ inch by 11 inch black and white map suitable for newspaper publication depicting the site area.

m. A discussion of present and future natural resource development in the area.

n. Map and GIS requirements. The applicant shall provide information that is complete, current, presented clearly and

concisely, and supported by appropriate references to technical and other written material available to the commission.

Data must be submitted in the ESRI shapefile or geodatabase format. If the applicant cannot submit the data in the ESRI format, an alternate format may be submitted with written approval by Commission staff. Data must include appropriate attribute data for the included features. Relevant and complete metadata in compliance with FGDC metadata standards must be provided with all files. Supporting documents such as base maps, figures, cross-sections and reports must be submitted in the Portable Document File (PDF). If the supporting documents were derived from GIS/Cad files the supporting GIS/Cad files must also be included in the submittal. Aerial photos (raster images) must be georeferenced and submitted in TIFF, GEOTIFF, or MrSID image file formats with the associated world files. Appropriate metadata must be provided with all files, such as the source for the raster images, dates of aerial photography and the type of the imagery, color bands i.e., black & white, color, color infra-red and any other pertinent data.

All GIS base map data must be referenced to a published geographic or projected coordinate system. The appropriate systems would be North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83), UTM Zone 13N or 14N meters (NAD 83), or Geographic coordinate system (WGS 84) meters. The vertical datum must be the North American Vertical Datum of 1988. Tabular data (i.e. laboratory analytical data, water level elevation data, monitor well construction data, well and boring X and Y location data, grain size analysis data, hydraulic conductivity data, etc) must be submitted in either a Microsoft Excel or Microsoft Access database format or both if both are used. Textural data may be submitted in Microsoft Word or PDF format.

The application may be submitted to the Commission on the following media:

Compact Disc (CD - ROM (CD-R)), Digital Versatile Disc (DVD-R or DVD+R) or other media upon commission approval.

~~2.~~3. **Filing.** The applicant shall file an original and ten copies of an application with the commission.

~~3.~~4. **Notice of filing.** The commission shall serve a notice of filing of a complete application on the following:

a. The chairman of the board of county commissioners and the auditor of each county in which any part of the site or corridor is proposed to be located.

b. The chief executive officer of each city in a county in which any part of an energy conversion facility is proposed to be located.

c. The chief executive officer of each city within a proposed corridor for a transmission facility.

d. The ~~state~~ agencies and officers entitled to notice as designated in section 69-06-01-05.

e. The state senators and representatives of each legislative district in which any part of the site or corridor is proposed to be located.

~~4.~~5. **Amendment of application.** The commission may allow an applicant to amend its application, consistent with North Dakota Century Code chapter 28-32 and North Dakota Administrative Code Article 69-02 at any time during the pendency of an application.

~~5.~~6. **Reapplication.** When a certificate is denied and the commission specifies a modification that would make it acceptable, the applicant may reapply. Reapplication must be made within six months of the order denying an application. In a reapplication:

a. The reapplication ~~shall~~ must be heard ~~in the same manner as an original application~~ as specified in section 69-06-01-02.

b. The utility shall indicate its acceptance or rejection of the suggested modification.

c. If a suggested modification is rejected by the applicant, it shall propose an alternative modification.

d. ~~No initial~~ Include a filing fee and any additional fees ~~shall be~~ as specified in North Dakota Century Code Chapter 49-22~~is required~~.

~~e. Further additional fees may be required.~~

History: Amended effective August 1, 1979; 2012.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-08, 49-22-08.1

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

1. **Requirements of order.**

a. An order approving the issuance of a certificate ~~shall~~ must 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~~.

2. **Modifications or special conditions.**

(1) Any modifications or special conditions required by the commission ~~shall be~~ are 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 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~~3. **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~~.

General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-08

CHAPTER 69-06-05
TRANSMISSION FACILITY PERMIT

Section
69-06-05-01 Application
69-06-05-02 Designation of Corridor and Route

69-06-05-01. Application.

1. **Form.** ~~All applications shall be in such form as the commission may prescribe.~~ An application must be reproduced and bound to 8 ½ by 11 inch size. Accompanying maps must be folded to 8 ½ by 11 inches with the title block appearing in the lower right-hand corner.

2. **Contents**. The application must contain:

   a. A description of the following:

      1. the type of facility proposed.

      2. the purpose of the facility.

      3. the technology to be deployed.

      4. the type of product to be transmitted

      5. the source of the product to be transmitted

      6. the final destination of the product to be transmitted

      7. the proposed size and design and any alternate size or design that was considered, including:

         (a) the width of right of way,

         (b) the approximate length of facility,

         (c) the estimated span length for electric facilities,

         (d) the anticipated type of structure for electric facilities,

         (f) the voltage for electric facilities,

         (g) the requirement for and general location of any new associated facilities,

(h) the estimated distance between surface structures for pipeline facilities,

(i) the pipe size for pipeline facilities,

(j) the maximum design operating pressure and temperature for pipeline facilities,

(k) the maximum design flow rate for pipeline facilities, and

(l) the number and general location of compressor or pumping stations.

b. The anticipated time schedule for accomplishing major events including:

(1) obtaining the certificate of corridor compatibility,

(2) obtaining the route permit,

(3) completing right of way acquisition,

(4) starting construction,

(5) completing construction,

(6) testing operations, and

(7) commencing operations.

c. A copy of each evaluative study or assessment of the environmental impact of the proposed facility submitted to the agencies listed in section 69-06-01-05 and each response received.

d. An analysis of the need for the proposed facility based on present and projected demand for the product transmitted, including the most recent system studies supporting the analysis of the need.

e. A description of any feasible alternative methods for serving the need.

f. 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 another appropriate width is determined by the commission.

g. A study area that includes a proposed corridor of sufficient width to enable the commission to evaluate the factors addressed in North Dakota Century Code section 49-22-09.

h. A discussion of the factors in North Dakota Century Code section 49-22-09 to aid the commission's evaluation of the proposed route.

i. A discussion of the applicant's policies and commitments to limit the environmental impact of its facilities, including copies of board resolutions and management directives.

j. Identification and map of the criteria that led to the proposed route location within the designated corridor including exclusion areas, avoidance areas, selection criteria, policy criteria, design construction limitations, and economic considerations.

k. A discussion of the relative value of each criteria and how the applicant selected the proposed corridor location, giving consideration to all criteria and how the location, construction, and operation of the facility will affect each criteria.

l. A discussion of the general mitigative measures that the applicant will take to minimize adverse impacts that result from a route location in the proposed corridor and the construction and operation of the facility..

m. The qualifications of each person involved in the corridor location study.

n. A map identifying the criteria that led to the proposed route location within the designated corridor and the location of any new associated facilities. Several different criteria may be shown on each map depending on the map scale and the density and nature of the criteria.

o. An 8 ½ inch by 11 inch black and white map suitable for newspaper publication depicting the site area.

p. A discussion of present and future natural resource development in the area.

q. Map and GIS requirements. The applicant shall provide information that is complete, current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the commission. Data must be submitted in the ESRI shapefile or geodatabase format. If the applicant cannot submit the data in the ESRI format, an alternate format may be submitted with written approval by Commission staff. Data must include appropriate attribute data for the

included features. Relevant and complete metadata in compliance with FGDC metadata standards must be provided with all files. Supporting documents such as base maps, figures, cross-sections and reports must be submitted in the Portable Document File (PDF). If the supporting documents were derived from GIS/Cad files the supporting GIS/Cad files must also be included in the submittal. Aerial photos (raster images) must be georeferenced and submitted in TIFF, GEOTIFF, or MrSID image file formats with the associated world files. Appropriate metadata must be provided with all files, such as the source for the raster images, dates of aerial photography and the type of the imagery, color bands i.e., black & white, color, color infra-red and any other pertinent data. All GIS base map data must be referenced to a published geographic or projected coordinate system. The appropriate systems would be North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83), UTM Zone 13N or 14N meters (NAD 83), or Geographic coordinate system (WGS 84) meters. The vertical datum must be the North American Vertical Datum of 1988. Tabular data (i.e. laboratory analytical data, water level elevation data, monitor well construction data, well and boring X and Y location data, grain size analysis data, hydraulic conductivity data, etc) must be submitted in either a Microsoft Excel or Microsoft Access database format or both if both are used. Textural data may be submitted in Microsoft Word or PDF format. The application may be submitted to the Commission on the following media:

Compact Disc (CD - ROM (CD-R)), Digital Versatile Disc (DVD-R or DVD+R) or other media upon commission approval.

~~2~~3. **Filing.** The applicant shall file an original and ten copies of an application with the commission.

~~3~~4. **Service.** The applicant shall serve one copy of a complete application on the county auditor in each county in which any part of the designated corridor is located.

~~4~~5. **Notice of filing.** The commission shall serve a notice of the filing of a complete application on the following:

a. The chief executive officer of each city within the designated corridor.

b. The ~~state~~ agencies and officers entitled to notice as designated in section 69-06-01-05.

c. The chairman of the board of county commissioners of each county in which any part of the designated corridor is located.

d. The state senators and representatives of each legislative district in which any part of the designated corridor is located.

History: Amended effective August 1, 1979; 2012.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-08.1

69-06-05-02. Designation of corridor and route.

1. **Issuance of a permit.** An order approving the issuance of a permit ~~shall~~ must:

   a. Describe the authority granted.

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

   c. Specify any required modifications in the type, design, routing, right-of-way preparation, or construction of the facility.

   d. Contain findings that the application, with modifications, if any, meets the corridor evaluation process requirements of the Act, and any special conditions the commission may require.

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

3. **Deviations.** ~~A~~ The Commission may permit a deviation from the designated route ~~be permitted~~ before or during construction if the deviation does not violate any of the exclusion and avoidance area criteria of this article. After construction is complete a deviation is governed by North Dakota Century Code section 49-22-03.

~~3~~4. **Variance from permit conditions.** The commission may allow a variance from any special condition upon a request ~~which demonstrates~~ demonstrating the existence of good cause.

5. **Corridor width.** 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 otherwise determined by the commission.

History: Amended effective August 1, 1979; 2012.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-08.1

CHAPTER 69-06-06
WAIVER OF PROCEDURES AND TIME SCHEDULES

Section
69-06-06-01 Application
69-06-06-02 Order

69-06-06-01. Application.

~~1.~~ ~~**Form.** All applications shall~~ An application must be in ~~such~~ the form ~~as~~ prescribed by the commission ~~may prescribe~~.

~~2~~1. **Filing.** The applicant shall file an original and ten copies of an application with the commission.

2. **Contents.** The application must contain:

a. A description of the type of facility addressed in the application, including the purpose and the technology to be employed.

b. A description of the products to be produced or transmitted by the proposed facility.

c. The capacity and design of the proposed facility.

d. The location of the proposed facility and a map showing the location of the proposed facility.

e. A description of the general area to be served by the facility.

f. The anticipated time schedule for major events.

g. Any plans for future expansion of the proposed facility.

h. The need for the proposed facility based on the present and projected demand for the product or products to be produced by the proposed facility, including the most recent system studies supporting the analysis of the need.

i. Any reasonable alternative methods of serving the need.

j. Justification for any deviations from the applicant's most recent ten-year plan that the proposed facility may present.

k. The estimated total cost of construction of the facility.

l. Any specific provisions of law that the applicant requests the commission waive or modify, with a separate justification for each provision.

m. The factual basis demonstrating that the proposed facility is of such length, design, location, or purpose that it will produce minimal adverse effects.

n. The nature of the emergency justifying immediate authority, if the application is based on an emergency situation.

General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-07.2

69-06-06-02. Order.

~~1. **Requirements of order.**~~ An order approving or denying all or part of a request ~~shall~~ must contain findings ~~in support of such approval or denial~~ supporting the decision and ~~shall~~ must specifically describe the procedures and time schedules that are waived.

~~2. **Time requirement.** The commission shall issue its order in response to an application containing a request for waiver within three months of the filing of a complete application.~~

~~3. **Extension of time.** Upon a showing of just cause or upon its own motion, the commission may extend the time within which it is required to act in response to an application containing a request for waiver.~~

General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-07.2

CHAPTER 69-06-08
CRITERIA

Section
69-06-08-01 Energy Conversion Facility Siting Criteria
69-06-08-02 Transmission Facility Corridor and Route Criteria

69-06-08-01. Energy conversion facility siting criteria. The following criteria ~~shall~~ must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process.

1. **Exclusion areas.** The following geographical areas ~~shall~~ must be excluded in the consideration of a site for an energy conversion facility, ~~and shall include a buffer zone of a reasonable width to protect the~~

~~integrity of the area. Natural screening may be considered in determining the width of the buffer zone~~.

a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; historic districts; monuments; wilderness areas; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.

b. Designated or registered state: parks; forests; forest management lands; historic sites; monuments; historical markers; archaeological sites; grasslands; wild, scenic, or recreational rivers; game refuges; game management areas; management areas; and nature preserves.

c. County parks and recreational areas; municipal parks; parks owned or administered by other governmental subdivisions; hardwood draws; and enrolled woodlands.

d. Prime farmland and unique farmland, as defined by the land inventory and monitoring division of the soil conservation service, United States department of agriculture, in 7 C.F.R. part 657; provided, however, that if the commission finds that the prime farmland and unique farmland that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural productions, ~~such~~ this exclusion ~~shall~~ does not apply.

e. Irrigated land.

f. Areas critical to the life stages of threatened or endangered animal or plant species.

g. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.

h. Areas within 1,200 feet of the geographic center of a nuclear missile launch facility.

2. **Additional exclusion areas for wind energy conversion facilities.** The following geographical areas must be excluded in the consideration of a site for a wind energy conversion facility:

   a. Areas less than:

      (1) 1.1 times the height of the turbine from interstate or state roadway right-of-way;

(2) 1.1 times the height of the turbine plus seventy-five (75) feet from the centerline of any county or maintained township roadway;

(3) 1.1 times the height of the turbine from any railroad right-of-way;

(4) 1.1 times the height of the turbine from a 115kV or higher transmission line; and

(5) 1.1 times the height of the turbine from the property line of a non-participating landowner, unless a variance is granted. A variance may be granted if an authorized representative or agent of the permittee and affected parties with associated wind rights file a written agreement expressing all parties' support for a variance to reduce the setback requirement in this subsection. A non-participating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in North Dakota Century Code Chapter 17-04.

3. **Avoidance areas.** The following geographical areas ~~shall~~ may not be approved as a site for an energy conversion facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative sites. Economic considerations alone ~~shall~~ will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area ~~shall~~ must be included. Natural screening may be considered in determining the width of the buffer zone.

a. Historical resources which are not designated as exclusion areas.

b. Areas within the city limits of a city or the boundaries of a military installation.

c. Areas within known floodplains as defined by the geographical boundaries of the hundred-year flood.

d. Areas that are geologically unstable.

e. Woodlands and wetlands.

f. Areas of recreational significance which are not designated as exclusion areas.

4. **Additional avoidance areas for wind energy conversion facilities.** A wind energy conversion facility site must not include a geographic area where, due to operation of the facility, the sound levels within 100 feet of an inhabited residence or a community building will exceed 50 dBA. The sound level avoidance area criteria may be waived in writing by the owner of the occupied residence or the community building.

~~3.~~5. **Selection criteria.** A site ~~shall~~ may be approved in an area only when it is demonstrated to the commission by the applicant that any significant adverse effects resulting from the location, construction, and operation of the facility in that area as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. The effects to be considered include:

a. The impact upon agriculture:

(1) Agricultural production.

(2) Family farms and ranches.

(3) Land which the owner demonstrates has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.

(4) Surface drainage patterns and ground water flow patterns.

(5) The agricultural quality of the cropland.

b. The impact upon the availability and adequacy of:

(1) Law enforcement.

(2) School systems and education programs.

(3) Governmental services and facilities.

(4) General and mental health care facilities.

(5) Recreational programs and facilities.

(6) Transportation facilities and networks.

(7) Retail service facilities.

(8) Utility services.

c. The impact upon:

(1) Local institutions.

(2) Noise-sensitive land uses.

(3) Rural residences and businesses.

(4) Aquifers.

(5) Human health and safety.

(6) Animal health and safety.

(7) Plant life.

(8) Temporary and permanent housing.

(9) Temporary and permanent skilled and unskilled labor.

d. The cumulative effects of the location of the facility in relation to existing and planned facilities and other industrial development.

~~4.~~6. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits. The benefits to be considered include:

a. Recycling of the conversion byproducts and effluents.

b. Energy conservation through location, process, and design.

c. Training and utilization of available labor in this state for the general and specialized skills required.

d. Use of a primary energy source or raw material located within the state.

e. ~~Nonrelocation of~~ Not relocating residents.

f. The dedication of an area adjacent to the facility to land uses such as recreation, agriculture, or wildlife management.

g. Economies of construction and operation.

h. Secondary uses of appropriate associated facilities for recreation and the enhancement of wildlife.

i. Use of citizen coordinating committees.

j. A commitment of a portion of the energy produced for use in this state.

k. Labor relations.

l. The coordination of facilities.

m. Monitoring of impacts.

History: Amended effective August 1, 1979; July 1, 2006; 2012.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-05.1

69-06-08-02. Transmission facility corridor and route criteria. The following criteria ~~shall~~ must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process. Exclusion and avoidance areas may be located within a corridor, but at no given point ~~shall~~ may such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

1. **Exclusion areas.** The following geographical areas ~~shall~~ must be excluded in the consideration of a route for a transmission facility. A buffer zone of a reasonable width to protect the integrity of the area ~~shall~~ must be included. Natural screening may be considered in determining the width of the buffer zone.

   a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; monuments; and wilderness areas.

   b. Designated or registered state: parks; historic sites; monuments; historical markers; archaeological sites; and nature preserves.

   c. County parks and recreational areas; municipal parks; and parks owned or administered by other governmental subdivisions.

d. Areas critical to the life stages of threatened or endangered animal or plant species.

e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.

f. Areas within 1,200 feet of the geographic center of a Intercontinental Ballistic Missile (ICBM) launch or launch control facility.

2. **Avoidance areas.** The following geographical areas ~~shall~~ may not be considered in the routing of a transmission facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility, the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative routes. Economic considerations alone ~~shall~~ will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area ~~shall~~ must be included unless a distance is specified in the criteria. Natural screening may be considered in determining the width of the buffer zone.

a. Designated or registered national: historic districts; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.

b. Designated or registered state: wild, scenic, or recreational rivers; game refuges; game management areas; management areas; forests; forest management lands; and grasslands.

c. Historical resources which are not specifically designated as exclusion or avoidance areas.

d. Areas which are geologically unstable.

e. Within five hundred feet [152.4 meters] of a residence, school, or place of business. This criterion shall not apply to a water pipeline transmission facility.

f. Reservoirs and municipal water supplies.

g. Water sources for organized rural water districts.

h. Irrigated land. This criterion shall not apply to an underground transmission facility.

i. Areas of recreational significance which are not designated as exclusion areas.

3. **Selection criteria.** A corridor or route ~~shall~~ may be designated only when it is demonstrated to the commission by the applicant that any significant adverse effects which will result from the location, construction, and maintenance of the facility as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. The effects to be considered include:

a. The impact upon agriculture:

(1) Agricultural production.

(2) Family farms and ranches.

(3) Land which the owner can demonstrate has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.

(4) Surface drainage patterns and ground water flow patterns.

b. The impact upon:

(1) ~~Noise~~ Sound-sensitive land uses.

(2) The visual effect on the adjacent area.

(3) Extractive and storage resources.

(4) Wetlands, woodlands, and wooded areas.

(5) Radio and television reception, and other communication or electronic control facilities.

(6) Human health and safety.

(7) Animal health and safety.

(8) Plant life.

4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such

policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits. The benefits to be considered include:

a. Location and design.

b. Training and utilization of available labor in this state for the general and specialized skills required.

c. Economies of construction and operation.

d. Use of citizen coordinating committees.

e. A commitment of a portion of the transmitted product for use in this state.

f. Labor relations.

g. The coordination of facilities.

h. Monitoring of impacts.

i. Utilization of existing and proposed rights of way and corridors.

j. Other existing or proposed transmission facilities.

History: Amended effective August 1, 1979; January 1, 1982; February 1, 1995; July 1, 2006; 2012.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-05.1

CHAPTER 69-06-09
CONTINUING SUITABILITY OF CERTIFICATE OR PERMIT

Section
69-06-09-01 Certification
69-06-09-02 Determination and Order

69-06-09-01. Certification. A certification of continuing suitability shall contain the following:

1. The proposed date for the commencement of construction or improvement.

2. The information relied upon in making the certification.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-17

69-06-09-02. Determination and order.

1. If the commission determines that the site or route continues to meet the evaluation requirements of the Act and this article, it shall issue an order authorizing the beginning of construction or improvement, which order shall specify the time within which the utility shall begin construction or improvement.

2. If the commission determines that the site or route does not continue to meet the evaluation requirements of the Act and this article it shall do one of the following:

   a. Cancel the certificate or permit.

   b. Make such modifications to the certificate or permit as it may require.

General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-17

69-06-XX
SMALL WIND ENERGY CONVERSION FACILITIES

Section
69-06-XX-01 Application
69-06-XX-02 Exemption
69-06-XX-03 Contents
69-06-XX-04 Hearing

69-06-XX-01. Application. Except as provided in section 60-06-XX-02 an applicant for a certificate of site compatibility for a wind energy conversion facility designed for or capable of generating no more than 20 megawatts of electricity may file an application under this chapter.

69-06-XX-02. Exemption. This chapter does not apply to a wind energy conversion facility with outer boundaries that are adjacent to or within one mile of the outer boundaries of another wind energy conversion facility.

69-06-XX-03. Contents. The application must be accompanied by:

1. An application fee as required under North Dakota Century Code section 49-22-22.

2. All supporting documentation regarding exclusion and avoidance areas.

3. Written certification that the applicant will follow all siting laws and rules.

4. Written certification that the proposed facility will not affect any known exclusion areas. If the proposed energy conversion facility will not affect any known avoidance areas, written certification that the proposed facility will not affect any known avoidance areas.

5. If a proposed energy conversion facility will affect a known avoidance area, written notice that the proposed facility will affect a known avoidance area and information on the specific avoidance area expected to be impacted and the reasons why the impact cannot be avoided.

6. Written certification that the applicant will comply with the applicable tree and shrub mitigation specifications and any other representations and covenants contained in the applicable certification relating to order provisions.

69-06-XX-04. Hearing. Upon a determination that an application is complete, the commission may issue a notice of filing and notice of opportunity to comment or request for hearing. The notice must be served in the manner provided in section 69-06-01-02 and published once in the official county newspaper of the county in which the facility is to be located. The notice must be served and published at least 20 days before the date by which interested persons may comment or request a hearing on the application. The commission may order a hearing on the application by its own motion.

State of North Dakota
Public Service Commission

Public Service Commission
Public Utilities
Rulemaking

Case No. PU-12-162

May 30, 2012

Section 69-09-02-35 is amended as follows:

69-09-02-35. Installation and maintenance - Conformance to National Electrical Safety Code. The installation and maintenance of electric supply and communication lines shall conform to rules and regulations established in the ~~2007~~2012 edition of the National Electrical Safety Code~~, issued August 1, 2006,~~ which is adopted by reference. Copies of these regulations may be obtained from the public service commission, state capitol, Bismarck, North Dakota 58505-0480.

History: Amended effective September 1, 1984; January 1, 1988; December 1, 1990; August 1, 1993; July 1, 1997; March 1, 2003; July 1, 2008; 2012.
General Authority: NDCC 49-02-04
Law Implemented: NDCC 49-02-04, 49-20-02

State of North Dakota
Public Service Commission

Public Service Commission
Public Utilities
Rulemaking

Case No. PU-12-162

May 30, 2012

Section 69-09-02-37 is repealed as follows:

69-09-02-37. Electric master metering prohibited - Exception.

~~1. Applicability. This section is applicable to any new or substantially remodeled commercial or residential building containing more than one unit or any other multiple use facility in which the occupant of each unit has control over a portion of the electric energy used in the building or facility. This section is applicable to those buildings or facilities on which construction or substantial remodeling is commenced on or after November 1, 1980. This section is not applicable to hotels, motels, dormitories, nursing homes, homes for the elderly, or similar facilities, or to low income rental housing in which the cost of electricity is included in the rent and where the amount of the rental payment is based upon the tenant's ability to pay.~~

~~2. Master metering of electric service in new or substantially remodeled buildings is prohibited, except to the extent determined appropriate by the commission pursuant to subsection 3.~~

~~3. An owner or builder of a new or substantially remodeled building may petition the commission for approval of master metering of electric service. The commission may approve the petition if the owner or builder affirmatively demonstrates to the satisfaction of the commission that the costs of purchasing and installing separate meters in such building exceed the longrun benefits of separate metering to the customers in such building.~~

History: Effective October 1, 1980; repealed _____ 2012.
General Authority: NDCC 49-02-11
Law Implemented: NDCC 49-02-11

State of North Dakota
Public Service Commission

Public Service Commission
Reclamation
Rulemaking

Case No. RC-12-166

May 30, 2012

69-05.2-05-02. Permit applications – General requirements for format and contents.

6. Applications may be filed in an electronic format acceptable to the commission. All text, tables, spreadsheets, maps and other information must be presented in a clear and concise manner and in a format that can be easily viewed using standard computer software. Changes to original and approved narratives must be displayed in an underline-strikethrough format until the application is approved by the commission. Similarly, tables that are revised must be highlighted or otherwise clearly marked to identify all changes. Maps included in an electronic submittal must depict the entire permit area when the scale allows and include the dimensions at which it can be printed, the scale of the map, a scale bar, and north arrow. Details on the map must be legible at the printed size; however, if text is not legible, color coding or other means of identification may be used and represented in the legend. Print size should not exceed forty-eight inches in width. Each electronic document must also include a date stamp or other marking that clearly shows the date the document was last revised.

History: Effective August 1, 1980; amended effective May 1, 1990; _____ 2012.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-11, 38-14.1-13, 38-14.1-14, 38-14.1-15

69-05.2-05-08. Permit applications - Permit term.

2. Permitted acreage where surface coal mining ~~and reclamation~~ operations are not complete shall be successively renewed under section 69-05.2-11-03 until final bond release.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; January 1, 1993; _____ 2012.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-12

69-05.2-06-01. Permit applications - Identification of interests.

2. With regard to the business entity information required by subdivisions d through f of subsection 1:

   a. If this information is already in the applicant violator system maintained by the office of surface mining reclamation and enforcement, the applicant:

      (1) May certify to the commission by affirming, under oath and in writing, that the relevant information in applicant violator system is accurate, complete, and up to date, or

      (2) If the part of the information in the applicant violator system is missing or incorrect, submit the necessary information or corrections and affirm, under oath and in writing, that the information you submit is accurate and complete.

   b. The applicant shall affirm, under oath and in writing, that all business entity information provided in an application is accurate and complete.

   c. The commission may establish a central file to house the applicant's business entity identity information, rather than place duplicate information in each permit file. If a central file is established for an applicant, the information in that file will be considered a component of each permit it is connected to. The commission will make information in a central file available to the public and the applicant shall file a copy with the county auditor in the county where mining is proposed.

   d. After notification that the application is deemed ready for approval but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subdivisions d through f of subsection 1 or certify that information in the applicant violator system is still accurate, complete, and up to date.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1,1990; May 1, 1992; July 1, 1995; 2012.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-06-02. Permit applications - Compliance information.

6. With regard to the violation information required by subsections 3 through 5:

   a. If this information is already in the applicant violator system maintained by the office of surface mining reclamation and enforcement, the applicant:

      (1) May certify to the commission by affirming, under oath and in writing, that the relevant information in the applicant violator system is accurate, complete, and up to date, or

(2) If the part of the information in the applicant violator system is missing or incorrect, submit the necessary information or corrections and affirm, under oath and in writing, that the information you submit is accurate and complete.

b. The applicant shall affirm, under oath and in writing, that all violation information provided in an application is accurate and complete.

c. The commission may establish a central file to house the applicant's identity information, rather than place duplicate information in each permit file. If a central file is established for an applicant, the information in that file will be considered a component of each permit it is connected to. The commission will make information in a central file available to the public and the applicant shall file a copy with the county auditor in the county where mining is proposed.

d. After notification that the application is deemed ready for approval but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections 3 through 5 or certify that information in the applicant violator system is still accurate, complete, and up to date.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992; June 1, 1994; July 1, 1995; _____ 2012.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-10-01. Permit applications – Public notices of filing and entering data into the applicant violation system.

7. Upon deeming an application complete, the commission will:

a. Enter into the applicant violator system maintained by the office of surface mining reclamation and enforcement the business entity information that the applicant is required to submit under section 69-05.2-06-01 and information required by 69-05.2-06-02 pertaining to violations which are unabated or uncorrected after the abatement or correction period has expired. The applicant violator system, or AVS, is the automated information system of applicant, permittee, operator, violation and related data that the office of surface mining reclamation and enforcement maintains to assist in implementing the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201, et seq.].

b. Update the information referred to in subdivision a in AVS upon verifying any additional information submitted or discovered during the review of the permit application.

8. The commission will rely upon the information that the applicant submits under section 69-05.2-06-01, information from AVS, and any other available information, to review the applicant's and operator's organizational structure and ownership or control relationships. This review will be conducted before a permit eligibility determination is made in accordance with subsections 1 through 5 of section 69-05.2-10-03.

9. The commission will rely upon the information that the applicant submits under section 69-05.2-06-01, information from AVS, and any other available information to review the applicant's and operator's permit histories and previous mining experiences. The commission will also determine if the applicant and operator have previous mining experience. If the applicant or operator does not have any previous mining experience, the commission may conduct additional reviews to determine if someone else with mining experience controls the mining operation. These reviews will be conducted before a permit eligibility determination is made in accordance with subsections 1 through 5 of section 69-05.2-10-03.

10. The commission will rely upon the information that the applicant submits under section 69-05.2-06-02, a report from AVS, and any other available information to review histories of compliance for the applicant, any person who owns or controls the applicant, the operator, or operations owned or controlled by the operator, in regard to violations of any law or rule of this state, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201, et seq.], or any law or rule in any state enacted under federal law or regulation pertaining to air or water environmental protection, incurred in connection with any surface coal mining and reclamation operation. This review will be conducted before a permit eligibility determination is made in accordance with subsections 1 through 5 of section 69-05.2-10-03.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997; April 1, 2007; 2012.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-18

69-05.2-10-03. Permit applications - Criteria for permit approval or denial.

5. After an application is deemed ready for approval, but before the permit is issued, the commission's decision to approve or disapprove the application will be made, based on the compliance review required by subsection 1, in light of any new information submitted under subsection 2 of section 69-05.2-06-01 and subsection 6 of section 69-05.2-06-02. After that information is submitted, the commission will again request a compliance history report from AVS to determine if there are any unabated or uncorrected violations which affect the applicant's permit eligibility under subsections 1 through 4. This report will be requested no more than five

business days before the permit is issued by the commission. If the commission then determines that the applicant is not eligible for a permit, written notification of the decision will be sent to the applicant explaining the reasons and the appeal rights that are available under North Dakota Century Code 38-14.1-30.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992; June 1, 1994; July 1, 1995; June 1, 1997; May 1, 2001; January 1, 2009; 2012.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-21, 38-14.1-33

69-05.2-10-07. Permit Applications – Challenges to ownership or control listings and findings.

1. A person may challenge a listing or finding of ownership or control using the procedures detailed below if that person is:

   a. Listed in a permit application or in AVS as an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof;

   b. Found to be an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof, under section 69-05.2-10-08 or section 69-05.2-32-01; or

   c. An applicant or permittee affected by an ownership and control listing or finding.

2. In order to challenge an ownership and control listing or finding a written explanation must be submitted to the regulatory authority regarding the basis of the challenge along with any evidence or explanatory materials outlined in subsection 7. If the challenge concerns a pending permit application, the written explanation must be submitted to the regulatory authority with jurisdiction over the application. If the challenge concerns the applicant's ownership and control of a surface coal mining operation and the person is not currently seeking a permit, the written explanation must be submitted to the regulatory authority with jurisdiction over the surface coal mining operation.

3. When a challenge concerns a violation under the jurisdiction of a different regulatory authority, the commission will consult the regulatory authority with jurisdiction over the violation and the AVS office to obtain additional information.

4. If the commission is responsible for deciding a challenge under this section it may request an investigation by the AVS office may be requested.

5. At any time a person listed in AVS as an owner or controller of a surface coal mining operation may request an informal explanation from the AVS office as to the reason they are shown in the AVS in an ownership or control capacity.

6. When a challenge is made to a listing of ownership and control, or a finding of ownership and control, the challenger shall prove by a preponderance of the evidence that the challenger either:

    a. Does not own or control the entire operation or relevant portion or aspect thereof; or

    b. Did not own or control the entire operation or relevant portion or aspect during the relevant time period.

7. In order to meet the burden of proof in subsection 6, the challenger shall present reliable, credible, and substantial evidence and any explanatory materials to the regulatory authority. A request to hold materials submitted under this section as a trade secret may be made to the commission following the procedures of North Dakota Administrative Code chapter 69-02-09. Acceptable materials include:

    a. Notarized affidavits containing specific facts concerning the duties that were performed for the relevant operation, the beginning and ending dates pertaining to ownership or control of the operation, and the nature and details of any transaction creating or severing ownership or control of the operation in question.

    b. Certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records.

    c. Certified copies of documents filed with or issued by any State; municipal, or Federal government agency.

    d. An opinion of counsel, when supported by evidentiary materials, a statement by counsel that counsel is qualified to render the opinion, and a statement that counsel has personally and diligently investigated the facts of the matter.

8. Within sixty days of receipt of an ownership and control listing or finding challenge, the commission will review and investigate the evidence and explanatory materials submitted and any other reasonable available information bearing on the challenge and issue a written decision. The decision will state whether the challenger own or control the relevant surface coal mining operation, or owned or controlled the operation during the relevant time period. Decisions regarding the challenge will be promptly provided to the challenger by certified mail, return receipt requested. Service of the decision will be complete upon delivery and is not incomplete if acceptance of delivery is refused. Appeals of the written decision must be made by

requesting a formal hearing under North Dakota Century Code section 38-14.1-30. The commission will also post all decisions in AVS.

9. Following the commission's written decision, or any formal hearing decision or court reviewing such decision, the commission will review the information in AVS to determine if it is consistent with the decision. If it is not, the commission will promptly inform the office of surface mining reclamation and enforcement and request that the AVS information be revised to reflect the decision.

History: Effective 2012.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-21, 38-14.1-22, 38-14.1-23

69-05.2-10-08. Permit Applications – Commission actions related to ownership and control information after permit issuance.

1. For the purposes of future permit eligibility determinations and enforcement actions, the commission will enter the following data into AVS:

   a. Permit records will be entered within thirty days after issuing a permit or subsequent changes.

   b. Unabated or uncorrected violations will be entered within thirty days after the abatement period expires for any violation.

   c. Any changes to the information required under section 69-05.2-06-01 will be entered within thirty days after receiving notice of a change.

   d. A change in status of violations listed in AVS will be entered within thirty days after abatement, correction, or termination of a violation, or an administrative or judicial decision affecting a violation.

2. If, at any time, it is discovered that any person owns or controls an operation with an unabated or uncorrected violation, the commission will determine whether enforcement action is appropriate under North Dakota Century Code section 38-14.1-28. The commission will enter the results of each enforcement action, including administrative and judicial decisions, into AVS.

3. The commission will serve a preliminary finding of permanent permit ineligibility under subdivision c of subsection 1 North Dakota Century Code section 38-14.1-28 on the applicant or operator if the criteria in subdivisions a and b below are met. In making a finding under this subsection, the commission we will only consider control relationships and violations which would make, or would have made, the applicant or operator ineligible for a permit under subsection 4 of section 69-05.2-10-03. A preliminary finding of permanent permit ineligibility will be made if it found that:

a. The applicant or operator controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations under subdivision c of subsection 1 North Dakota Century Code section 38-14.1-28; and

b. The violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with North Dakota Century Code chapter 38-14.1, this chapter, or the approved permit.

4. The permittee or operator may request a hearing on a preliminary finding of permanent permit ineligibility under North Dakota Century Code section 38-14.1-30.

5. If a hearing is not requested and the time for seeking a hearing has expired, the commission will enter the finding into AVS. If a hearing is requested, the commission will enter the finding into AVS only if that finding is upheld on appeal.

6. At any time, the commission may identify any person who owns or controls an entire operation or any relevant portion or aspect thereof. If such a person is identified, the commission will issue a written preliminary finding to the person and the applicant or permittee describing the nature and extent of ownership or control. The commission's written preliminary finding must be based on evidence sufficient to establish a *prima facie* case of ownership or control.

7. After the commission issues a written preliminary finding under subsection 6, the commission will allow the person subject to the preliminary finding thirty days in which to submit any information tending to demonstrate the lack of ownership or control. If after reviewing any information that is submitted, the commission is persuaded that the person is not an owner or controller, a written notice will be served to that effect. If, after reviewing any information that is submitted, the commission still finds that the person is an owner or controller, or no information is submitted within the 30-day period, the commission will issue a written finding and enter that finding into AVS.

8. If the commission identifies a person as an owner or controller under subsection 7, that finding may be challenged using the provisions under section 69-05.2-10-07.

History: Effective 2012.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-21, 38-14.1-22, 38-14.1-23

69-05.2-10-09. Permit Applications – Ownership and control requirements for permittees after permit issuance.

1. Within thirty days of being issued a cessation order under subdivision b of subsection 1 North Dakota Century Code section 38-14.1-28, the permittee must provide or update all the information required under section 69-05.2-06-01.

2. A permittee does not have to submit information under section 1 if a court of competent jurisdiction grants a stay of the cessation order and the stay remains in effect.

3. Within sixty days of any addition, departure, or change in position of any person identified in subdivision e of section 1 of section 69-05.2-06-01, the permittee must provide:

   a. The date of any departure; and

   b. A certification, under oath, from the natural person with the greatest level of effective control over the entire proposed surface coal mining operation that he or she controls the proposed surface coal mining operation.

History: Effective 2012.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-21, 38-14.1-22, 38-14.1-23