

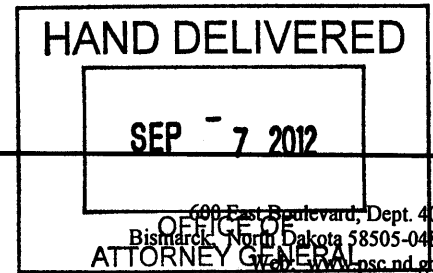


Public Service Commission State of North Dakota

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7 September 2012

The Honorable Wayne Stenehjem
North Dakota Attorney General
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0040

RE: Siting, Master Meter, Discovery, NESC book, and Reclamation Rulemakings
Case No. PU-12-162, Case No. PU-12-165, and Case No. RC-12-166

Dear Attorney General Stenehjem:

Enclosed please find proposed amendments to the North Dakota Administrative Code by the North Dakota Public Service Commission. In accordance with N.D.C.C. § 28-32-14, the North Dakota Public Service Commission requests your examination of these rules as to their legality so they may be considered for formal adoption and publication in the North Dakota Administrative Code.

Attached for purposes of review is a copy of each of the following:


- The August 29, 2012, Public Service Commission Order Submitting Rules to the Attorney General which summarizes the written and oral comments and the Commission's consideration of them, and states the Commission's conclusions. The proposed rules as ordered are attached to the Commission's August 29, 2012 Order;
- The rule changes as originally proposed by the Commission. After receiving comments, the Commission ordered two changes to the rules. One was to the master meter rule and the other was to a part of the siting rules;
- Full Notice of Intent to Amend Administrative Rules;
- Abbreviated Notice of Intent to Amend Administrative Rules;
- Affidavit of Publication from the North Dakota Newspaper Association;
- North Dakota Newspaper Association invoice showing the names of the newspapers where the abbreviated Notice was published;
- A copy of one of the actual notices, as published (others are available if you want them);
- A copy of the cover letter filing the Notice and Administrative Rules with the Legislative Council with the filing acknowledgment;
- Notice to sponsors for the siting rules. The only rules that implement legislation enacted during the most recent legislative session were the siting rules;

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Letter to Attorney General enclosing proposed Rules
Public Service Commission

- A statement for each rule case regarding the required regulatory analyses, takings assessments, and small entity regulatory analyses; and
- Written comments: Staff testimony, email comments from Kevin Nelson, Deputy Director for Installation Support at the Minot Air Force Base, and letter comments from Otter Tail Power Company are included.

Thank you for your consideration of the rules. If you have any questions please do not hesitate to call or email.

Best regards,



Illona A. Jeffcoat-Sacco
General Counsel

enclosures

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.

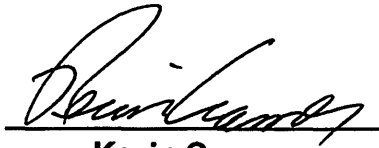
No other comments were received and we are not making changes to the rules as originally proposed.

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
Commissioner**



**Brian P. Kalk
Chairman**



**Bonny M. Fetch
Commissioner**

**State of North Dakota
Public Service Commission**

**Public Service Commission
Public Utilities
Rulemaking**

Case No. PU-12-162

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.

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.
89. "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.
911. "Party aggrieved" means a person who will be affected in a manner different from the effect on the general public.
4012. "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.
1113. "Refinement" means the action or process of purifying.
1214. "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.
1315. "Siting rules" means this article adopted by the commission pursuant to North Dakota Century Code chapter 49-22.

4416. "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.~~
23. **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.~~

- 34. 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.~~

23. 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.

23. **Filing.** The applicant shall file an original and ten copies of an application with the commission.
34. **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.
45. **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.
34. **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. **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 ~~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.

69-09-02-14. Classification of service.

1. Residential service is defined as service for general household purposes in space occupied as living quarters, such as single private residences, single apartments, fraternity houses and sorority houses, and for garages, or other auxiliary buildings on the same premises used by the residential customer.
2. Commercial service is defined as service to a business enterprise in space occupied and operated for commercial purposes, such as stores, offices, shops, hotels, garages, wholesale houses, filling stations, barber shops, beauty shops, and any other space occupied for commercial purposes.

A business enterprise operated by an individual, a partnership, or a corporation, may include more than one type of business activity at the same location.

A landlord renting space to separate business enterprises in the same building may take electric service through a single meter on the commercial service rate provided electric service is furnished for occupants of the building as part of the rent, ~~subject, however, to the provisions restricting master meters contained in section 69-09-02-37.~~

If a single business enterprise occupies more than one unit of space in the conduct of the same business, each separate unit will be metered individually and considered a separate service unless the customer makes provision for the necessary circuits to connect the separate units to permit the use of a single meter.

3. A customer occupying a building for residential and commercial purposes jointly may combine the customer's residential and commercial use on the applicable commercial service rate.
4. Other classes of electric service furnished by the utility shall be defined in applicable rate schedules, or in rules and regulations pertaining thereto. Service to customers for which no specific rate schedule is applicable shall be billed on the commercial or general service rate.

History: Amended effective October 1, 1980; _____ 2012.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

**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
Public Utilities
Rulemaking**

Case No. PU-12-162

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
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
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.

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.
89. "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.
911. "Party aggrieved" means a person who will be affected in a manner different from the effect on the general public.
4012. "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.
4413. "Refinement" means the action or process of purifying.
4214. "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.
4315. "Siting rules" means this article adopted by the commission pursuant to North Dakota Century Code chapter 49-22.

4416. "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.~~
23. **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.~~

- 34. 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 ~~post~~ 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.~~

23. 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.

- 23. Filing.** The applicant shall file an original and ten copies of an application with the commission.
- 34. 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.
- 45. 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.
34. **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 nuclear missile launch 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
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

**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

**NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES
AND NOTICE OF PUBLIC HEARING**

May 30, 2012

PLEASE TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to North Dakota Administrative Code Article 69-05.2. The hearing will be held at **10:00 a.m., on July 12, 2012, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.** The proposed revisions to the North Dakota Administrative Code are 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 - Section 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.

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, update the process for processing siting applications by the North Dakota Public Service Commission and clarify what is required in each siting application. 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 also being proposed. One adds a new subsection to an existing rule on the format of electronic permit applications and the other modifies an existing provision to make it consistent with another rule that was previously amended. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000.

Two other rule changes are recommended by staff. One adds a new subsection to an existing rule with general requirements for the format of electronic 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.

The proposed rule changes and the statements concerning the Regulatory Analysis, Small Entity Regulatory Analysis and Economic Impact, and Takings Assessment may be reviewed at the Public Service Commission's offices on the 12th floor of the State Capitol, Bismarck, North Dakota. To obtain a copy of the proposed rule changes or the statements contact the Public Service Commission at 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, 701-328-2400, toll free 1-877-245-6685, Relay North Dakota TTY 1-800-366-6888, or

NDPSC@ND.gov. This information is also available to view on the Commission's web site at www.psc.state.nd.us under "Formal Actions/Case Search".

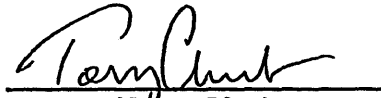
Interested persons may submit written comments on the proposed rules. Written comments should be filed with Darrell Nitschke, Executive Secretary, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, or NDPSC@ND.gov. The comment period closes 10 days after the hearing. Comments must be received by the close of business on July 23, 2012.

If you require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify the Commission at least 24 hours in advance.

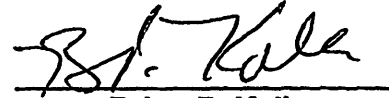
PUBLIC SERVICE COMMISSION



**Kevin Cramer
Commissioner**



**Tony Clark
Chairman**



**Brian P. Kalk
Commissioner**

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

NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES
NOTICE OF PUBLIC HEARING

May 30, 2012


TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to the N.D. Admin. Code, relating to public utilities, energy conversion and transmission facility siting, and surface coal mining and reclamation operations.

The public hearing will be held at 10:00 a.m., July 12, 2012, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. Written comments may be submitted to the Public Service Commission until the close of business on July 23, 2012.

A copy of the proposed rules may be obtained from the Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, 701-328-2400, toll free 1-877-245-6685, Relay North Dakota TTY: 1-800-366-6888, or NDPSC@ND.gov. This information is also available to view on the Public Service Commission's web site at www.psc.state.nd.us under "Formal Actions/Case Search".

If you require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify the Commission at least 24 hours in advance.

PUBLIC SERVICE COMMISSION


Kevin Cramer
Commissioner


Tony Clark
Chairman


Brian P. Kalk
Commissioner

RECEIVED

Affidavit of Publication

JUL 16 2012

PUBLIC SERVICE COMMISSION

Colleen Park, being duly sworn, states as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.
2. The newspapers listed on the exhibits published the advertisement of: **Public Service Commission – Administrative Rules Relating to Public Utilities, Energy Conversion and Transmission Facility Siting, and Surface Coal Mining and Reclamation Operations; 1 time(s) as required by law or ordinance.**
3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

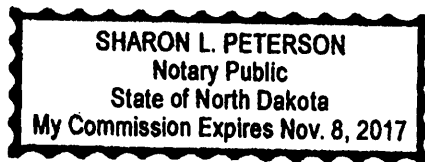
Signed: Colleen Park

State of North Dakota

County of Burleigh

Subscribed and sworn to before me this 13 day of July, 20 12.

Sharon L. Peterson



12 PU-12-165 Filed 07/16/2012 Pages: 53
Affidavit of Publication with tear sheets
North Dakota Newspaper Association

11 RC-12-166 Filed 07/16/2012 Pages: 53
Affidavit of Publication with tear sheets
North Dakota Newspaper Association

16 PU-12-162 Filed 07/16/2012 Pages: 53
Affidavit of Publication with tear sheets
North Dakota Newspaper Association



North Dakota Newspaper Association
 1435 Interstate Loop
 Bismarck, ND 58503-0567
 Ph (701) 223-6397 • Fax (701) 223-8185

RECEIVED

JUL 16 2012

INVOICE

PUBLIC SERVICE COMMISSION

Order 30847-12063PP0

Invoice # 163707

July 13, 2012

Attn: JOHNG. HAMRE
 PUBLIC SERVICE COMMISSION
 600 E. BOULEVARD AVE.
 STATE CAPITOL
 BISMARCK, ND 58505

Advertiser: Public Service Commission

P.O.#:

Amount Due

\$4,946.70

Amount Paid

Voice: 701-328-4076

Please detach and return this portion with your payment

When placing an administrative rule notice, please fax or email your request. Regular mail is not always reliable when a deadline must be met. Thank you.

Public Service Commission Invoice # 30847-12063PP0-163707

Ad Size	Rate Type	Rate	Total	Discount (%)	Caption	Page	Run Date
COUNTY							
Ashley Tribune (Ashley ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/13/12
Beach Golden Valley News (Beach ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/14/12
Bismarck Tribune (Bismarck ND)							
15.00	SPR1	11.45	171.75	0.00	PSC Admin Rules		06/12/12
Bottineau Courant (Bottineau ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/12/12
Bowbells Burke County Tribune (Bowbells ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/13/12
Bowman County Pioneer (Bowman ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/15/12
Cando Towner Co Record Herald (Cando ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/16/12
Carrington Foster Co Independ (Carrington ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/18/12
Carson Press (Elgin ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/13/12
Cavaller Chronicle (Cavaller ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/13/12
Center Republican (Hazen ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/14/12
Cooperstown Griggs County Courler (Cooperstown ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/15/12
Crosby The Journal (Crosby ND)							
15.00	SPR1	5.65	Did Not Run	0.00	PSC Admin Rules		06/13/12
Crosby The Journal (Crosby ND)							
15.00	Special	5.65	84.75	0.00	PSC Admin Rules		06/20/12

12 RC-12-166 Filed 07/16/2012 Pages: 3
 Invoice #163707 \$4,946.70
 North Dakota Newspaper Association

<i>Ad Size</i>	<i>Rate Type</i>	<i>Rate</i>	<i>Total</i>	<i>Discount (%)</i>	<i>Caption</i>	<i>Page</i>	<i>Run Date</i>
COUNTY							
Devils Lake Daily Journal (Devils Lake ND)							
15.00	SPR1	7.78	116.70	0.00	PSC Admin Rules		06/12/12
Dickinson Press (Dickinson ND)							
15.00	SPR1	7.78	116.70	0.00	PSC Admin Rules		06/12/12
Elgin Grant County News (Elgin ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/13/12
Ellendale Dickey Co Leader (Ellendale ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/14/12
Fargo, The Forum (Fargo ND)							
15.00	SPR1	11.45	171.75	0.00	PSC Admin Rules		06/11/12
Finley Steele County Press (Finley ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/15/12
Garrison McLean Co Independ (Garrison ND)							
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Grafton * Walsh County Record (Grafton ND)							
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Grafton * Walsh County Record (Grafton ND)							
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Grand Forks Herald (Grand Forks ND)							
15.00	SPR1	11.45	171.75	0.00	PSC Admin Rules		06/12/12
Harvey The Herald-Press (Harvey ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/16/12
Hazen Star (Hazen ND)							
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Hettinger Adams Co Record (Hettinger ND)							
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Jamestown Sun (Jamestown ND)							
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Killdeer Dunn County Herald (Killdeer ND)							
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Lakota American (Lakota ND)							
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LaMoure Chronicle (LaMoure ND)							
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Langdon Cavalier Co Republican (Langdon ND)							
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Linton Emmons County Record (Linton ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/14/12
Lisbon Ransom County Gazette (Lisbon ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/18/12
Mandan News (Bismarck ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/15/12
Mayville * Trail County Tribune (Mayville ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/16/12
McClusky Gazette (McClusky ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/14/12
Medora Billings Co Pioneer (Beach ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/14/12
Milnor Sargent County Teller (Milnor ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/15/12

<i>Ad Size</i>	<i>Rate Type</i>	<i>Rate</i>	<i>Total</i>	<i>Discount (%)</i>	<i>Caption</i>	<i>Page</i>	<i>Run Date</i>
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COUNTY

Minnewaukan Benson Co Farmers Press (Minnewaukan ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/13/12
Minot Daily News (Minot ND)							
15.00	SPR1	11.45	171.75	0.00	PSC Admin Rules		06/12/12
Mohall Renville County Farmer (Mohall ND)							
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Napoleon Homestead (Napoleon ND)							
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New England The Herald (New England ND)							
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New Rockford Transcript (New Rockford ND)							
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Rolla Turtle Mountain Star (Rolla ND)							
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Rugby Pierce County Tribune (Rugby ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/16/12
Stanley Mountrall Co Promoter (Stanley ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/13/12
Steele Ozone & Kidder Co. Press (Steele ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/13/12
Towner Mouse River Journal (Towner ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/13/12
Valley City Times-Record (Valley City ND)							
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Valley City Times-Record (Valley City ND)							
15.00	SPR1	7.78	116.70	0.00	PSC Admin Rules		06/15/12
Wahpeton Daily News (Wahpeton ND)							
15.00	SPR1	7.78	116.70	0.00	PSC Admin Rules		06/12/12
Watford City McKenzie Co Farmer (Watford City ND)							
15.00	SPR1	5.65	84.75	0.00	PSC Admin Rules		06/13/12
Williston Herald (Williston ND)							
15.00	SPR1	7.78	116.70	0.00	PSC Admin Rules		06/12/12

Gross Advertising	4,946.70	Total Misc	0.00	Amount Paid	0.00
Agency Discount		Tax	0.00	Adjustments	0.00
Other Discount	0.00	Total Billed	4,946.70	Payment Date	
Service Charge	0.00	Unbilled	0.00	Balance Due	4,946.70

Your payment is due upon receipt. Thank you in advance for your prompt payment!

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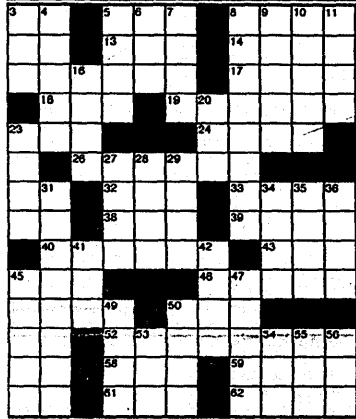
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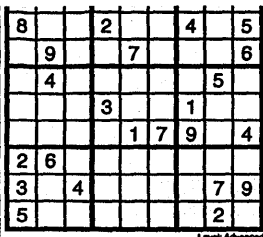
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- 56 Pentagon grp.

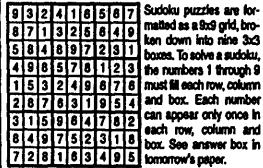
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Level: Advanced



Sudoku puzzles are formatted as a 9x9 grid, broken down into nine 3x3 boxes. To solve a sudoku, the numbers 1 through 9 must fill each row, column and box. Each number can appear only once in each row, column and box. See answer box in tomorrow's paper.

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Public Notices

SCHOOL BOARD MEETING
May 16th 2012
I Berger, Anna Hoffman, Sheila Larson, Bob Turcotte, Steve Miller, Cameron, Anita Falcon, Lisa Turcotte, Janice Jon-Vondal, Mona Durward and
I am to approve minutes of the meeting 2nd, MC.
I am to approve agenda with the 2nd, MC.
I am to approve contracts, Falcon 2nd, MC.
I am to read resignation letter from the 2nd, MC.
I am to read resignation from Jenna Larson to accept resignations of and Ms. Bolstad, 2nd by Lynch.
I am resigned and LaFae Falcon to high school position. We will use for a position in the elementary position will require someone of knowledge and be a quick learner openings in 8th grade, Mid of Phy-Ed. We have offered a position to Ashley Westvang. She has a teaching license. The Turcotte did not present letter, but he did not resign by the May 2nd deadline. I am a member to serve on the OTE committee. It will be discussed at the next meeting.
I will be taking vacation June 1st.
I am the only candidate on the school board. Worriors have been discussed briefly. Many of the students to protest not being able to do that they wanted.
I am presented the Power-Point presentation will be paid a, Dawn, and Sharon will go to conference will be June 18-19 Principal, HS teacher and Ellen go.
I am school training on June 18th need to attend with the new principal at 12:15 conference in Bismarck and maybe Doug should be approved at the annual meeting needs to go to a workshop on 8th in Bismarck.
I am to approve travel with the 16th and 18th and the 2nd, MC.
I am a student who went over her when she moved asking to appear next meeting.
I am a year-end report for Teresa discussion on using the 16th course. She is coming for at least 8 ports next year. I am on drivers education. I am out for our students to be able to learn.

999. Public Notices

Lisa will hand out diplomas at graduation. The board will give in the front row instead of on stage.
Bob Turcotte gave a short presentation on spring sporting activities.
Business Manager asked for approval to pay bills transfers # 4218-4218, Activity fund #2070-2082 and General fund #9503-0008.
Motion by Falcon, 2nd by Lynch to approve business manager's report, MC.
Rental agreement was discussed. There will be an extra paragraph in the lease agreement stating that they will have any addition that they make to the apartment. The landlord will be responsible. Landlord only can be contacted with issues concerning rental property.
Motion by Falcon, 2nd by Lynch that if Ms. Jonson does not want to rent the apartment, that the board pay the \$500 to hold it for a future staff member.
Motion by Turcotte to recess this meeting until after the public meeting.
The meeting was reopened at 8:16.
The school does not want to pursue the water from Steve Motson until they see a drawing of how it would be done and who would pay for maintenance. Get an agreement on paper of what he is willing to do.
It was decided they are trying to get the FEMA trailers to the school.
After looking over possible school calendars, motion by Falcon to choose calendar 'D'. Lynch 2nd Motion carried with Vondal and Turcotte descending in favor of Calendar 'D'.
Motion by Turcotte that this be the 2nd reading of the Dispute resolution for the 1st, Vondal 2nd, MC.
Motion by Johnson, 2nd by Falcon to accept the teacher contracts that have been signed, including music teacher, Ashley Westvang, MC.
Business Manager evaluation: Lynch suggested doing an oral evaluation this time and getting a form for next year. Board members would like to see a more thorough discussion of items that are discussed at meetings. Find us more money. He wears many hats and it takes away from his job. He has built positive relationships with both staff and students. He shouldn't be afraid to reject requests.
Motion by Falcon to adjourn, 2nd by Lynch, MC.
Next meeting is June 5th, election day @ 5:00.
Adjourned at 9:00 (June 12, 2012)



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999. Public Notices

NOTICE OF HEARING
STATE OF NORTH DAKOTA
COUNTY OF WILLIAMS
IN DISTRICT COURT
NORTHWEST JUDICIAL DISTRICT
In the Matter of the Estate of
Anton W. Ruseell,
aka A. W. Ruseell, Deceased.
Probate No. 83-2012-PR-00219
PLEASE TAKE NOTICE that the hearing on the Petition for Appointment of a Personal Representative and Probate of a Will in the above referenced matter will be heard in the Williams County District Court, Northwest Judicial District, Williston, North Dakota, before the Honorable David W. Nelson, Judge of the District Court, on the 11th day of July, 2012, at 8:00 o'clock a.m., or as soon thereafter as counsel may be heard.
Dated this 7th day of June, 2012.
OLSON & BURNS, P.C.
BY WILLIAM E. BERGMAN
William E. Bergman (ID #03889)
Attorney for Personal Representative
17 First Avenue SE
P.O. Box 1180
Minot, ND 58702-1180
(701) 839-1740
(June 12, 18, 25, 2012)

999. Public Notices

NOTICE OF HEARING ON PETITION FOR SETTLEMENT AND CONFIRMATION OF DISTRIBUTION OF A TESTATE ESTATE BY A PERSONAL REPRESENTATIVE
IN THE DISTRICT COURT OF WILLIAMS COUNTY,
STATE OF NORTH DAKOTA
In the Matter of the Estate of
Lewis Brub, Deceased.
Probate No. 83-2012-PR-00033
NOTICE IS HEREBY GIVEN That Robin Progress has filed herein a Petition for Settlement and Confirmation of Distribution of a Testate Estate by a Personal Representative.
Hearing has been set upon said petition on the 11th day of July, 2012, at 8:00 o'clock a.m., at the Courtroom of the above-named Court in the City of Williston, County of Williams, State of North Dakota.
Dated this 23rd day of May, 2012.
LOUSER & ZENT, P.C.
BY BRENDA M. ZENT
Brenda M. Zent (P04300)
Attorneys for Personal Representative
Town & Country Center
1015 South Broadway - Suite 15
Minot, ND 58701
(701) 837-8548
Fax No. (701) 852-8782
(May 29, June 5, 12, 2012)

999. Public Notices

NOTICE TO CREDITORS
IN THE DISTRICT COURT OF WILLIAMS COUNTY,
STATE OF NORTH DAKOTA
IN THE MATTER OF THE ESTATE OF TERRY E. PETTIS, DECEASED
Probate No. 83-2012-PR-00198
NOTICE IS HEREBY GIVEN that the undersigned has been appointed personal representative of the above estate. All persons having claims against the said decedent are required to present their claims within three months after the date of the first publication of this notice or said claims will be forever barred. Claims must either be presented to Theresa Henry, personal representative of the estate, at 4205 Charter Oaks, Bismarck, ND 58108, or filed with the Court.
DATED this 5th day of June, 2012.
/s/ THERESA HENRY
Theresa Henry, Personal Representative
Address: 4205 Charter Oaks, Bismarck, ND 58108
Laurel J. Forsberg, #04373
McKinnitt Stenejem Forsberg
Hermanson & Vol, P.C.
314 First Avenue East
P.O. Box 1386
Williston, North Dakota 58902-1386
(701) 877-4771
Attorney for the Estate
(June 12, 18, 25, 2012)

STATE OF NORTH DAKOTA PUBLIC SERVICE COMMISSION

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

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

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

NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES
NOTICE OF PUBLIC HEARING

May 30, 2012

TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to the N.D. Admin. Code, relating to public utilities, energy conversion and transmission facility siting, and surface coal mining and reclamation operations.
The public hearing will be held at 10:00 a.m., July 12, 2012, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. Written comments may be submitted to the Public Service Commission until the close of business on July 23, 2012.
A copy of the proposed rules may be obtained from the Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, 701-328-2400, toll free 1-877-245-6685, Relay North Dakota TTY: 1-800-366-6888, or ndpsc.nd.gov. This information is also available to view on the Public Service Commission's web site at www.ndpsc.state.nd.us under "Formal Actions/Case Search".
If you require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify the Commission at least 24 hours in advance.

PUBLIC SERVICE COMMISSION
Kevin Cramer, Commissioner
Tony Clark, Chairman
Brian P. Kalk, Commissioner

6/12 Williston



Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark
Brian P. Kalk
Kevin Cramer

Executive Secretary
Darrell Nitschke

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

1 June 2012

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

Re: Notice of Intent to Amend Administrative Rules
Case Nos. PU-12-162, PU-12-165, and RC-12-166

Dear Mr. Walstad:

Enclosed please find copies of:

- Commission Motion Proposing Amendments, Scheduling Hearing, Issuing Notice of Intent to Amend Rules and Notice of Hearing, and Issuing an abbreviated Notice
- Notice of Intent to Amend Administrative Rules and Notice of Hearing
- Abbreviated Notice of Intent to Amend Administrative Rules and Notice of Hearing
- Proposed rule changes on the following:
 - Section 69-02-05-12 Interrogatories in cases under N.D.C.C. Title 49
 - Section 69-09-02-35 Installation and maintenance - Conformance to National Electrical Safety Code
 - Section 69-09-02-37 Electric master metering prohibited - Exception
 - Article 69-06 Energy Conversion and Transmission Facility Siting
 - Article 69-05.2 Surface Coal Mining and Reclamation Operations

If you have any questions please do not hesitate to call.

8 PU-12-165 Filed 06/01/2012 Pages: 49
Letter to Legislative Council with enclosures
Public Service Commission
Ilona Jeffcoat-Sacco

8 RC-12-166 Filed 06/01/2012 Pages: 49
Letter to Legislative Council with enclosures
Public Service Commission
Ilona Jeffcoat-Sacco

enclosures

Best Regards,

Ilona A. Jeffcoat-Sacco
General Counsel

Received by the office of the Legislative Council this 1 day of June, 2012
By:

10 PU-12-162 Filed 06/01/2012 Pages: 49
Letter to Legislative Council with enclosures
Public Service Commission
Ilona Jeffcoat-Sacco

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

AFFIDAVIT OF SERVICE BY REGULAR MAIL

**STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH**

Cara DeSaye deposes and says that:

she is over the age of 18 years and not a party to this action and, on the 7th day of June, 2012, she deposited in the United States Mail, at Bismarck, North Dakota, six envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of:

Notice of Intent to Amend Administrative Rules and Notice of Public Hearing

Proposed Rules

The envelopes were addressed as follows:

**Rich Wardner
State Senator
1042 12th Ave. W
Dickinson ND 58601-3654**

**Randel Christmann
State Senator
401 3rd Ave NE
Hazen ND 58545-4429**

**Stanley Lyson
State Senator
1608 Fourth Avenue West
Williston ND 58801-4127**

**Mike Brandenburg
State Representative
8044 County Road 34
Edgeley ND 58433-9761**

Affidavit of Service
Page 2
June 7, 2012

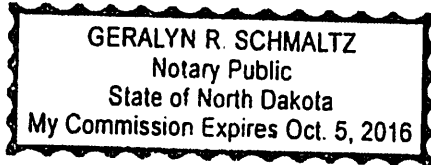
Duane DeKrey
State Representative
4323 27th St SE
Pettibone ND 58475-9357

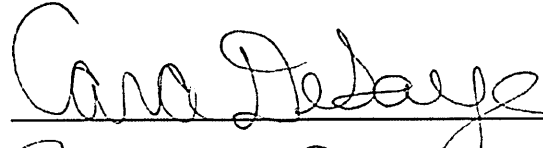

Todd Porter
State Representative
4604 Borden Harbor Drive SE
Mandan ND 58554-7961

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this 7th day of June, 2012.

SEAL





Notary Public

**State of North Dakota
Public Service Commission**

**Public Service Commission
Public Utilities
Rulemaking**

Case No. PU-12-162

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

May 30, 2012

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

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

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

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

Master Metering - Section 69-09-02-37

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

Statement on Regulatory Analysis

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

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

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

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

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

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

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

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

Master Metering - Section 69-09-02-37

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

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

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

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

Statement on Small Entity Regulatory Analysis and Economic Impact

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

2. . . . The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:
 - a. Establishment of less stringent compliance or reporting requirements for small entities;
 - b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
 - c. Consolidation or simplification of compliance or reporting requirements for small entities;
 - d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
 - e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

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

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

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

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

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

Master Metering - Section 69-09-02-37

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

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

Statement on Takings Assessment

North Dakota Century Code Section 28-32-09(1) requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private property. The law provides, in part:

1. . . . The agency's assessment must:
 - a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
 - b. Clearly and specifically identify the purpose of the proposed rule.
 - c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
 - d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
 - e. Identify the source of payment within the agency's budget for any compensation that may be ordered.
 - f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

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

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

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

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

Master Metering - Section 69-09-02-37

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

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

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

**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.

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-12-166

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

May 30, 2012

The Commission is proposing to amend the several existing rules and add three new sections 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. While the Commission has been using the Applicant Violator System for many years pursuant to a written agreement, the Office of Surface Mining is now requiring that the procedures be incorporated into rules.

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 new provisions 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 also being proposed. One adds a new subsection to an existing rule on the format of electronic permit applications and the other modifies an existing provision to make it consistent with another rule that was previously amended. It should also be noted that mining and reclamation rules adopted by the Commission must be as effective as counterpart federal rules issued by the federal Office of Surface Mining within the Department of the Interior.

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.

These proposed changes primarily pertain to the Commission's use of the federal Application Violator System before approving mining permits, renewals and certain permit revisions. In addition, a new subsection will be added to recognize that most permit application are now being submitted in an electronic format and the new subsection contains general formatting requirements for these submittals.

These 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.

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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Public Utilities
Rulemaking**

Case No. PU-12-162

PUBLIC SERVICE COMMISSION STAFF TESTIMONY
July 12, 2012

My name is Jerry Lein. I am employed as a Public Utility Analyst with the Public Service Commission. The purpose of my testimony is to explain and provide support for changes proposed to the Commission's administrative rules in section 69-09-02-35 of the North Dakota Administrative Code. This section adopts the National Electric Safety Code (NESC) by reference.

The NESC is 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. 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.

This concludes my testimony. I would be happy to answer any questions at this time. Thank you.

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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Public Utilities
Rulemaking

Case No. PU-12-162

PUBLIC SERVICE COMMISSION STAFF TESTIMONY
July 12, 2012

My name is Jerry Lein. I am a Public Utility Analyst with the Public Service Commission. I will explain the proposed change to the Commission's administrative rules which will repeal Section 69-09-02-37 of the North Dakota Administrative Code pertaining to the master metering of electric service.

Master metering is the practice of using a single meter to measure electricity consumed in a multi-tenant building, for example an apartment or business complex, where the cost of the electric service is paid by the landlord. The landlord recovers electric service costs in a manner similar to other operating expenses, most often through rent. Master metering is not the same as resale or submetering. A different section of the rules, Section 69-09-02-15, prohibits the landlord from submetering or reselling the electricity and the proposed repeal of the master metering prohibition would not change that.

Section 69-09-02-37 prohibits master metering of electric service in new or substantially remodeled buildings with certain exceptions. The rule is only applicable to electric service provided by the investor owned utilities

which are subject to the Commission's regulatory jurisdiction: Montana-Dakota Utilities Co., Northern States Power Company dba Xcel Energy and Otter Tail Power Company. The rule does not apply to cooperatives and municipal utilities as they do not fall within the Commission's regulatory jurisdiction.

A similar rule does not exist for natural gas; there is no prohibition in Commission rules against the master metering of natural gas service. Natural gas service is often paid for by the landlord in multi-tenant buildings where heat is from a central natural gas fired boiler or furnace.

It is my understanding the Commission adopted Section 69-09-02-37 following enactment of the federal Public Utilities Regulatory Policies Act of 1978 (PURPA) 16 U.S.C. § 2623 which was enacted in response to the energy crisis during the 1970's. PURPA required state regulatory agencies to consider adopting specific standards intended to encourage conservation and efficient use of energy.

One of the specific standards in PURPA was a prohibition against the master metering of electric services. The theory behind the standard is that people who directly pay their own electric bills will use less electricity. Separate metering also protects tenants who use less electricity from subsidizing the higher usage of other tenants.

The rule has always contained exceptions and the possibility of obtaining a waiver. Commercial and residential buildings not subject to the rule include hotels, motels, dormitories, nursing homes, homes for the elderly,

and low income rental housing where the cost of electricity is included in the rent and where rent is based on a tenant's ability to pay. In addition, an owner or builder of a new or substantially remodeled building may request a waiver if they are able to affirmatively demonstrate that the costs of purchasing and installing separate meters in each building would exceed the longrun benefits of separate metering.

Over the years, concerns regarding the master metering of electric services have included the following:

- **Competitive disadvantages:** Apartment buildings served by non-jurisdictional electric service providers are permitted to master meter, thus landlords receiving service from jurisdictional utilities are sometimes at a competitive disadvantage when renters prefer electricity included in their rent. Landlords with electric heat can be further disadvantaged when competitors heating with natural gas offer "heat paid" apartments.
- **Construction costs:** Separate metering requires additional space for the meters and meter sockets. Additional expenses are also incurred for wiring.
- **Multiple customer charges:** Separate metering causes each tenant to incur a monthly residential customer charge from the utility. In addition, the landlord incurs a monthly commercial customer charge for

common areas. Master metering results in a single monthly commercial customer charge for the entire building.

- **Back-up generation is not feasible with separate meters:** Back-up generation provides tenants with convenience and security and offers landlords the ability to participate in load management programs. Sometimes, back-up generation is necessary during storm related outages to ensure sump pumps work and buildings are not damaged by flooding.
- **Rewiring for tenant changes:** Separate metering can require rewiring of commercial multi-tenant buildings when reconfiguring floor space for new tenants.

Discontinuation of electric service for non-payment is another concern. Many of the customers whose services are being disconnected for non-payment owe large balances. Some of these customers have failed to keep previous payment arrangements and utilities are often unwilling to restore service without full payment of the amount due, an additional deposit payment, and reconnection charges. Customers either find the money or do without electricity. Repealing section 69-09-02-37 may provide customers in this situation with the option of renting an apartment where electric service is included.

Un-collectable accounts cause all customers to pay higher rates. If the master metering prohibition were to be repealed, perhaps the level of un-collectable accounts will decrease.

This concludes my testimony. I would be happy to answer any questions at this time.

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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Public Utilities
Rulemaking

Case No. PU-12-162

PUBLIC SERVICE COMMISSION STAFF TESTIMONY
July 12, 2012

My name is Mike Diller. I am the Director of Economic Regulation for the Public Service Commission. The purpose of my testimony is to explain the proposed change to the Commission's administrative rules which will enact section 69-09-10 of the North Dakota Administrative Code pertaining to discovery response time.

The new proposed rule entitled Discovery, section 69-09-10, is intended to canonize the practice that is already occurring; namely that written requests for information (interrogatories) are responded to within 10 business days. Currently, the commission does not have a time frame set forth by rule and therefore the allowable time for a response to an interrogatory defaults to thirty days according to Rule 33 of the North Dakota Rules of Civil Procedure. The activities of the commission and those of the utilities affected by this rule does not allow for a thirty day time frame in practice or theory. Further, the state laws governing public utilities are prescriptive requiring that certain applications be processed within tight time frames.

There will be times where 10 business days are unreasonable by virtue of the volume of interrogatories or other unrelated events. However, the rule provides latitude for such occurrences.

Again, the purpose of this rule is to 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.

This concludes my testimony. I would be happy to answer any questions you may have.

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**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Siting
Rulemaking**

Case No. PU-12-165

**PUBLIC SERVICE COMMISSION STAFF TESTIMONY
July 12, 2012**

My name is Jerry Lein. I am a Public Utility Analyst with the Public Service Commission. The purpose of my testimony is to explain the proposed changes to the Commission's administrative rules pertaining to the siting of energy conversion and transmission facilities, Article 69-06 of the North Dakota Administrative Code promulgated under N.D.C.C. Chapter 49-22. The proposed rule changes are the result of a working group of state government and industry representatives.

The major 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 to implement abbreviated procedures for siting small wind projects with less than 20 MW of generating capacity.

The Commission's existing siting application guidelines were established in 1979. Over the years, technology and procedure have evolved and the guidelines needed to be rewritten to reflect the various changes. As examples, mylar maps and stereo air photographs are no longer needed and wind turbine sitings were not considered during the development of the guidelines. Further, updated relevant guidelines should be promulgated as

rules. Amendments are proposed to do just that and there will no longer be any guidelines applicable to siting requirements.

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.

A proposed new exclusion area is included to prevent energy conversion and transmission facilities from being located within 1,200 feet of a nuclear missile launch facility.

Additional proposed exclusion areas have been added for wind turbines which prevent a wind turbine from being located within a distance of 1.1 times the turbine height (often referred to as fall down distance) from railroads, road rights-of-way, electric transmission lines and property boundaries. A new avoidance area is proposed where turbine noise 100 feet from a residence or community building will exceed 50 dBA. The proposed rules include the opportunity for a property owner to waive this avoidance area and the property line exclusion area in writing.

A proposed new chapter is added to Article 69-06 to provide an abbreviated siting process for small wind energy conversion facilities with generating capacity of 20 MW or less. In the 2011 legislative session, the legislature enacted Senate Bill 2196, lowering the siting jurisdiction threshold for wind farms to .5 MW. Rather than requiring small wind farms to following

the same application process that is applicable to larger wind farms, an abbreviated process that still protects the environment is proposed for these smaller projects. In short, an applicant for a wind farm sized between 20 MW and .5 MW would certify that the project does not affect an exclusion area, and include a description of any avoidance area impacted and the reasons it cannot be avoided. The Commission may then issue a notice of opportunity for hearing or if it deems appropriate, issue the requested permit or certificate without conducting a hearing.

This concludes my testimony. I would be happy to answer any questions at this time. Thank you.

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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-12-166

PUBLIC SERVICE COMMISSION STAFF TESTIMONY

July 12, 2012

I am Jim Deutsch, Director of the Reclamation Division of the Public Service Commission.

The Commission is proposing three new sections and amending several existing sections of North Dakota Administrative Code Article 69-05.2 pertaining to surface coal mining and reclamation operations. The federal Office of Surface Mining has required we add provisions 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. In addition to detailing procedures the Commission must follow, the proposed rule changes also affect some of the ownership and control information that mining companies submit in permit applications.

These provisions are being added to the permit application requirements under North Dakota Administrative Code Sections 69-05.2-06-01, 69-05.2-06-

02, 69-05.2-10-01, and 69-05.2-10-03 and adding new Sections 69-05.2-10-08 and 69-05.2-10-09.

The proposed rules also contain procedures for mining companies to use to challenge information or links in the Applicant Violator System. North Dakota Administrative Code Section 69-05.2-10-07 is a new rule that contains the procedures for challenging ownership or control listings and findings.

Two other rule changes are also being proposed in Case No. RC-12-166. One adds a new subsection to North Dakota Administrative Code Section 69-05.2-05-02 with general requirements for the format of electronic permit applications. Staff determined this is necessary since all recent permit applications have been filed in an electronic format and many other permits have been converted to an electronic format. The other change will make a minor correction to subsection 2 of to North Dakota Administrative Code Section 69-05.2-05-08. This change 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.

The 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.

No comments in this rulemaking case have been received. This concludes my testimony.

Hamre, John G.

From: Brandner, Tara B.
Sent: Friday, July 27, 2012 2:09 PM
To: Hamre, John G.
Subject: FW: Siting Rules for Your Review
Attachments: SitingRules.pdf; Notice.pdf

-----Original Message-----

From: NELSON, KEVIN P GS-14 USAF AFGSC 5 MSG/CD [<mailto:kevin.nelson@us.af.mil>]
Sent: Monday, July 23, 2012 2:53 PM
To: Brandner, Tara B.
Cc: NILSON, MICHAEL J GS-12 USAF AFGSC 5 CES/CEAO
Subject: FW: Siting Rules for Your Review

Tara, Thanks so much for asking for our opinions. Here are the changes we would prefer.

Paragraph 69-06-08-1.1.h and paragraph 69-06-08-02.1.f , request to read "Areas within 1200 feet of the geographical center of an Intercontinental Ballistic Missile (ICBM) launch or launch control facility."

Add paragraph 69-06-08-02.1.g , request to read "Areas within 30 feet on either side of a direct line between missile facilities to avoid microwave interference."

Again, thanks and call me 701-723-2205 or Mike Nilson, 701-723-4873 if you have any questions.

-----Original Message-----

From: Brandner, Tara B. [<mailto:tbrandner@nd.gov>]
Sent: Wednesday, July 18, 2012 4:37 PM
To: NELSON, KEVIN P GS-14 USAF AFGSC 5 MSG/CD; NILSON, MICHAEL J GS-12 USAF AFGSC 5 CES/CEAO
Cc: Lein, Jerry R.
Subject: Siting Rules for Your Review

Hello Kevin:

Please find attached Notice to Amend Administrative Rules and Notice of Public Hearing and the proposed Siting Rules. As per our conversation, the specific language we would like your review and opinion of is NDAC

69-06-08-01(h) located on page 22 of the attached Siting Rules. During the rules hearing Commissioner Kalk's primary concern was whether or not we were limiting the language too much by using "nuclear" in front of missile launch facility; in the event a new missile of some sort would be developed, the language as is would not provide for the area surrounding it as an exclusion. In addition, we would gladly accept any other opinions

you have about the language in regards areas you believe should be or possibly would like to see as exclusion areas.

Also, please note that the comment period will close at the end of business on July 23, 2012. However, I have been asked to notify you that if you would like to make comments and would like additional time, the Commission would be happy to extend the comment period.

Thank you for your time and assistance with this matter. I look forward to hearing your opinion on the proposed rules.

Sincerely,

Tara B. Brandner

Legal Intern

North Dakota Public Service Commission

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ORIGINAL

July 20, 2012

RECEIVED

JUL 23 2012



Mr. Darrel Nitschke
Executive Secretary
Public Service Commission
State Capitol - 600 East Boulevard
Bismarck, ND 58505-0480

PUBLIC SERVICE COMMISSION

RE: Electric Master Metering Rulemaking
Case No. PU-12-162 and PU-12-165

Dear Mr. Nitschke:

On May 30, 2012, the North Dakota Public Service Commission ("Commission") issued a Notice of Intent to Amend Administrative Rules concerning discovery response times, National Electrical Safety Code, master metering (Case No. PU-12-162) and Energy Conversion and Transmission Facility Siting (Case No. PU-12-165). The Commission set a written comment deadline of July 23, 2012. Otter Tail Power Company ("Otter Tail" or the "Company") does not oppose any of the proposed amendments or changes to the rules in either of the above cases. However, Otter Tail would like to provide brief comments on Commission's proposal to repeal the master metering rule, which is part of Case No. PU-12-162.

Otter Tail's current general rules and regulations Section 2.02 reference and cite the North Dakota rules 69-09-02-37, which addresses the prohibition and exceptions on electric master metering of buildings in the state of North Dakota. If the Commission chooses to repeal the rule on master metering, Otter Tail will need to submit a filing to update its general rules and regulations, Section 2.02. If the rules on master metering are repealed, Otter Tail plans to monitor the activity associated with customers served through a master meter in order to determine if in the future the Company should submit a proposal for criteria to be satisfied in order for a customer to be served through a master metering.

Otter Tail appreciates the opportunity to offer these comments for your consideration. If you have questions, don't hesitate to contact me at (218) 739-8838 or rlspangler@otpco.com.

Very truly yours,

Ron L. Spangler Jr. - jce

Ron L. Spangler Jr.
Rate Case Manager, Tariff Application and Compliance

By electronic filing and U.S. Mail

15 PU-12-165 Filed 07/23/2012 Pages: 1
Comments
Otter Tail Power Company

19 PU-12-162 Filed 07/23/2012 Pages: 1
Comments
Otter Tail Power Company