

**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69-06-07 Emergency Certificate or Permit [Repealed]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.
1012. "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 ~~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

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.

21. **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 an Intercontinental Ballistic Missile (ICBM) launch or launch control 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 an Intercontinental Ballistic Missile (ICBM) launch or launch control facility.
- g. Areas within 30 feet on either side of a direct line between Intercontinental Ballistic Missile (ICBM) launch or launch control facilities to avoid microwave interference.

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.