

APPROVED

DATE: 12-5-12  
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**MOTION**

**December 5, 2012**

Public Service Commission  
Sixty-third Legislative Session (2013)  
Misc. Cases

AD-12-803

I move the Commission submit the following pre-filed bill drafts to the Legislative Council for the Sixty-third Legislative Assembly of North Dakota:

- Public Utilities -** Amend and reenact subsection 3 of section 49-03-02, subsection 11 of section 49-05-04, subsection 2 of section 49-05-04.2, subsection 2 of section 49-05-04.3, and subsection 1 of section 49-05-16 of the North Dakota Century Code, relating to fees for public utility applications.
  
- Gas Pipeline Safety -** Amend and reenact section 49-07-05.1 of the North Dakota Century Code, relating to the maximum penalty for a violation of pipeline safety standards.
  
- Public Utilities, Telecom -** Amend and reenact subsection 6 of section 49-21-01.7 of the North Dakota Century Code, relating to delivery of bills for commission expenses.

Sixty-third  
Legislative Assembly  
of North Dakota

Introduced by

A BILL for an Act to amend and reenact subsection 3 of section 49-03-02, subsection 11 of section 49-05-04, subsection 2 of section 49-05-04.2, subsection 2 of section 49-05-04.3, and subsection 1 of section 49-05-16 of the North Dakota Century Code, relating to fees for public utility applications.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 3 of section 49-03-02 of the North Dakota Century Code is amended and reenacted as follows:

**49-03-02. Prerequisites to issuance of certificate of public convenience and necessity.**

3. The commission may impose an application fee of up to one hundred ~~twenty-five~~seventy-five thousand dollars for an application under this chapter. With the approval of the emergency commission, the commission may impose an additional amount. The commission shall pay the expenses of processing an application under this chapter from the application fee paid by the public utility in accordance with section 49-02-02.

**SECTION 2. AMENDMENT.** Subsection 11 of section 49-05-04 of the North Dakota Century Code is amended and reenacted as follows:

**49-05-04. Application for increase of rates - Information required - Fee.**

11. An application fee in the amount of one hundred ~~twenty-five~~seventy-five thousand dollars. Upon request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the application process by the commission. The commission shall pay the expenses of investigating a rate increase application under this section from the application fee paid by the public utility in accordance with section 49-02-02. The commission may waive or reduce the fee.

**SECTION 3. AMENDMENT.** Subsection 2 of section 49-05-04.2 of the North Dakota Century Code is amended and reenacted as follows:

**49-05-04.2. Rate adjustment - Federal environmental mandate costs.**

2. Rate adjustments filed under the tariff must be accompanied by:
  - a. A description and quantification of the costs and expenses incurred by the public utility to meet federal environmental mandates which are subject to recovery;
  - b. A schedule for implementation of the applicable projects;
  - c. Calculations to establish that the rate adjustment is consistent with the terms of the tariff; and
  - d. An application fee in the amount of ~~fifty~~one-hundred thousand dollars. Upon request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the application

process by the commission. The commission may waive or reduce the fee.

**SECTION 4. AMENDMENT.** Subsection 2 of section 49-05-04.3 of the North Dakota Century Code is amended and reenacted as follows:

**49-05-04.3. Rate adjustment - Transmission facility costs.**

2. Rate adjustments filed under the tariff must be accompanied by:
  - a. A description and quantification of the costs incurred by the public utility for new or modified electric transmission facilities which are subject to recovery;
  - b. A schedule for implementation of the applicable transmission facility projects;
  - c. Calculations to establish that the rate adjustment is consistent with the terms of the tariff; and
  - d. An application fee in the amount of ~~fifty~~one-hundred thousand dollars. Upon request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the application process by the commission. The commission may waive or reduce the fee.

**SECTION 5. AMENDMENT.** Subsection 1 of section 49-05-16 of the North Dakota Century Code is amended and reenacted as follows:

**49-05-16. Advance determination of prudence.**

In this section, unless the context otherwise requires, resource addition means construction, modification, purchase, or lease of an energy conversion facility, renewable energy facility, demand response system, transmission facility, or a contract to acquire energy, capacity, or demand response for the purpose of providing electric service. A public utility that intends to make a resource addition may file an application with the commission for an advance determination of prudence regarding the resource addition. The commission shall pay the expenses associated with investigating the application made by the public utility for prudence of a resource addition from the application fee paid by the public utility in accordance with section 49-02-02.

1. The commission may issue an order approving the prudence of a resource addition if:
  - a. The public utility files with its application a projection of costs to the date of the anticipated commercial operation of the resource addition;
  - b. The public utility files with its application a fee in the amount of one hundred ~~twenty-five~~seventy-five thousand dollars. Upon request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the application process by the commission. The commission may waive or reduce the fee.
  - c. The commission provides notice and holds a hearing, if appropriate, in accordance with section 49-02-02; and

- d. The commission determines that the resource addition is prudent. For facilities located or to be located in this state the commission, in determining whether the resource addition is prudent, shall consider the benefits of having the resource addition located in this state.

Sixty-third  
Legislative Assembly  
of North Dakota

Introduced by

A BILL for an Act to amend and reenact section 49-07-05.1 of the North Dakota Century Code, relating to the maximum penalty for a violation of pipeline safety standards.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 49-07-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**49-07-05.1. Violations of pipeline safety standards - Penalties.**

Any person who violates ~~any~~a rule or order issued ~~by~~of the commission pursuant to section 49-02-01.2 is subject to a civil penalty to be imposed by the commission of not to exceed ~~ten~~two hundred thousand dollars for each ~~such~~ violation for each day that ~~such~~the violation ~~persists~~continues, except that the maximum penalty may not exceed ~~five hundred thousand~~two million dollars for any related series of violations. ~~Any such~~A civil penalty may be compromised by the commission. In determining the amount of ~~such~~a civil penalty, or the amount agreed upon in compromise, the commission shall consider the appropriateness of ~~such~~the penalty to the size of the business of the person charged, the nature, circumstances, and gravity of the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, ~~the ability to pay the penalty~~, the good faith of the person charged in attempting to achieve compliance, after notification of a violation, and such other matters as justice may require ~~must be considered~~. The amount of ~~such~~the penalty, when finally

determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the state of North Dakota to the person charged or may be recovered in a civil action in the district court of Burleigh County.

Sixty-third  
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Introduced by

A BILL for an Act to amend and reenact subsection 6 of section 49-21-01.7 of the North Dakota Century Code, relating to delivery of bills for commission expenses.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 6 of section 49-21-01.7 of the North Dakota Century Code is amended and reenacted as follows:

**49-21-01.7. Powers in general.**

The commission has the power to:

6. Employ and fix the compensation of experts, engineers, auditors, attorneys, and other such assistance for complaints, investigations, and other proceedings relating to telecommunications companies. The expense of any hearings, and the compensation and actual expenses of any employees of the commission while engaged upon any such hearings must, ~~upon the order of the commission,~~ be paid by the telecommunications company involved in such hearings. The commission shall ascertain the exact cost and expenditure. ~~After giving the telecommunications company notice and opportunity to demand a hearing, and after a hearing, if any, is held, the commission may and~~ render a bill and make an order for payment. The bill and order must be delivered by ~~certified~~ electronic or paper mail or personal delivery to the

managing officer of the telecommunications company. Upon receipt of the bill ~~and order~~ for payment, the telecommunications company has thirty days within which to pay the amount billed. All amounts not paid within thirty days after receipt of the bill and order for payment thereafter draw interest at the rate of six percent per annum. If the telecommunications company disputes the amount of the bill, the company shall request a hearing. Amounts collected by the commission under this subsection must be deposited in a special account within the public service commission.