

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Practice and Procedure
Rulemaking**

Case No. AD-17-49

ORDER SUBMITTING RULES TO ATTORNEY GENERAL

April 26, 2017

Appearances

Commissioners Randy Christmann and Julie Fedorchak

Preliminary Statement

On January 31, 2017, the North Dakota Public Service Commission (Commission) proposed changes to the Commission's administrative rules and issued a formal Notice of Proposed Rulemaking and an Abbreviated Notice proposing to revise Sections 69-02-04-01, 69-02-04-02, 69-02-07-02, and Chapter 69-02-09 of the North Dakota Administrative Code.

The proposed rules are summarized as follows:

Rate Case Bill Stuffers – N.D. Admin. Code Section 69-02-04-01

The proposed change to section 69-02-04-01 adds one type of case, an advance determination of prudence case, to the list of cases in which the applicant utility must provide individual notice of the application to customers.

Formal Appearance of Staff Analysts – N.D. Admin. Code Section 69-02-04-02

The proposal is to repeal the existing rule requiring the staff analysts who work on a case to be noted in the appearances.

Proposed Rules Procedure - N.D. Admin. Code Section 69-02-07-02

One change is to eliminate the time requirement for filing proposed rules and notices with the Legislative Council. The other change is to reduce the post-hearing comment period from 30 days to 10 days.

Protection of Information - N.D. Admin. Code Chapter 69-02-09

The purpose of this rulemaking is to protect specific information filed by telecommunications companies without the need for the originator to file an application, without the need for staff analysis, and without further action by the commission.

On February 1, 2017, Staff filed statements regarding the required regulatory analyses, small entity analyses, and takings assessments.

On February 2, 2017, the notices were filed with the Legislative Council for publication at least 30 days in advance of the hearing.

The weeks of February 10 through February 23, 2017, the Abbreviated Notice was published once in each of the 52 official county newspapers in the state.

On March 15, 2017, the Commission held the public hearing as noticed, beginning at 1:30 p.m., Central Time, 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 April 17, 2017, 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.

Public Hearing and Comments

Commission staff testimony was the only comment received at the hearing. After the hearing, comments were filed by the North Dakota Association of Telecommunications Cooperatives only on the proposed changes to Chapter 69-02-09.

N.D. Admin. Code Section 69-02-04-01

Staff testified that an advance determination of prudence application has ratemaking consequences and that is the reason for requiring individual customer notice. Currently, even though the specific type of application is not mentioned in the rule, individual customer notices have been required and provided in advance determination of prudence cases because of the ratemaking impact. The proposed change will make the rule consistent with current practice and will have no fiscal or other impact on industry, customers, other stakeholders or the public.

N.D. Admin. Code Section 69-02-04-02

Staff testified that while the staff who work on a case are introduced by counsel at hearings, the rule requiring those persons to be listed in the appearances has been inconsistently followed and serves no discernable purpose. Repealing that language will have no impact on any stakeholder.

N.D. Admin. Code Section 69-02-07-02

Staff testified that both changes are proposed to make the procedure consistent with the procedure specified in North Dakota Century Code Chapter 28-32. These changes will have no impact on any stakeholder.

N.D. Admin. Code Chapter 69-02-09

Staff testified that the proposal is intended to permit certain Information to be protected without the need for the originator to file an application, without the need for staff analysis, and without further action by the commission includes detailed information concerning telecommunications infrastructure projects and detailed information regarding service outages.

The North Dakota Association of Telecommunications Cooperatives (NDATC) filed comments indicating that it fully supports the proposal. NDATC stated that adapting the proposed amendment will bring a clarity and common understanding of data that must be filed with the North Dakota Public Service Commission, as well as remove any ambiguities regarding when trade secret or confidential treatment of data must be requested by a company. Further, the NDATC stated the changed rule will continue to fully protect members and subscribers, provide the necessary protections in a highly competitive marketplace and reduce paperwork and resources for telecom companies.

Discussion

.The Commission agrees with adopting the rules as originally proposed. The rationale provided by staff and the North Dakota Association of Telecommunications Cooperatives provides a sufficient basis to adopt the rules as proposed.

Having reviewed the proposed rules, and the testimony and comments received, the Commission finds good cause for submitting the revised proposed rules, attached to and made a part of this order, to the Attorney General for an opinion as to legality.

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



Brian Kroshus
Commissioner



Randy Christmann
Chairman



Julie Fedorchak
Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Practice and Procedure
Rulemaking**

Case No. AD-17-49

Proposed Rule

January 31, 2017

**CHAPTER 69-02-04
HEARINGS**

69-02-04-01. Notice. In those proceedings in which a hearing is to be held, the commission will assign a time and place for hearing. Notice of the hearing must be posted in the office of the commission, and must be served on the parties and other persons entitled to receive notice at least twenty days prior to the date set for the hearing except in cases of emergency or as otherwise provided by law.

In any proceeding, except rulemaking proceedings, involving the rights of persons who are members of the public generally, notice of hearing must be given by legal publication in the North Dakota daily newspaper of the affected area. Notice must be published at least twenty days prior to the date of the hearing.

An electric, gas, or telecommunications public utility shall provide individual customer notice as required below by billing insert, newsletter, or other appropriate method approved by the commission. The notice must indicate the place and date of the commencement of any hearing, informal hearing, or public input session that has been ordered by the commission, and that the public is invited to attend. Subject to the power of the commission to modify its contents and when applicable, the notice must include a summary sheet describing the absolute dollar and percentage impact of any

proposed rate or price changes by the various classes of services offered by the utility and must include a list of the utility's business office locations where the proposed rate or price schedules and a comparison of present and proposed rates or prices can be examined by the public. The notice must also contain in bold type the following statement when applicable: The rate changes described in this notice have been requested by (specific utility).

For electric and gas utilities, individual customer notice is required for an application for approval of a rate increase, purchase or sale, merger, or acquisition filed by the utility, and applications by the utility for alternative regulation. For electric and gas utilities, the commission may require the utility to provide individual customer notice to potentially affected customers in other rate proceedings, complaint cases, advance determination of prudence cases, and fuel and purchased gas adjustment proceedings.

For telecommunications utilities, individual customer notice is required for an application for a certificate of public convenience and necessity resulting from the sale, merger, or acquisition of an incumbent telecommunications company. The commission may require a telecommunications utility to provide individual customer notice to potentially affected customers in complaint cases.

The individual customer notices required by this section are separate from and in addition to any other customer notices required by law or rule, unless the commission authorizes the utility to satisfy multiple notice requirements with one notice.

History: Amended effective October 1, 1980; September 1, 1982; September 1, 1992; January 1, 2001; _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-05, 28-32-08, 49-01-07

69-02-04-02. Appearances. Each interested party shall enter an appearance at the beginning of the hearing by giving the party's name and address and briefly stating the capacity in which the party appears. All appearances must be noted on the record. ~~The name and position of each member of the commission's staff participating in the hearing or investigation must be included in the record as an appearance.~~

History: Amended effective September 1, 1992;_____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-01-07

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Practice and Procedure
Rulemaking**

Case No. AD-17-49

Proposed Rule

January 31, 2017

**CHAPTER 69-02-07
RULES**

69-02-07-02. Notice.

1. The commission will issue a notice that the rules are proposed and set for hearing which will include:
 - a. A short, specific explanation of the proposed rule;
 - b. A brief explanation of the purpose of the proposed rule;
 - c. A determination of whether the proposal impacts the regulated community in excess of fifty thousand dollars;
 - d. A location where the text of the proposed rule may be reviewed;
 - e. Notice to interested persons of the opportunity to submit written comments and to appear and testify at the hearing to offer oral testimony;
 - f. The address to which written comments may be sent;
 - g. The address and telephone number at which a copy of the proposed rules and regulation analysis may be requested; and
 - h. The date, time, and place of the hearing.

2. The commission will publish an abbreviated newspaper notice in each official county newspaper in the state.
3. The commission will file the notice of hearing and a copy of the proposed rules with the legislative council ~~at least thirty days before the hearing.~~
4. The public comment period on the proposed adoption, amendment, or repeal of any rule under this article will close ~~thirty~~ten days after conclusion of the public hearing, unless extended by the commission.
5. The commission will consider all written comments and oral testimony received before adoption, amendment, or repeal of any rule under this article and make a written record of its consideration.

History: Effective December 1, 1990; amended effective January 1, 2001; _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02, 49-01-07

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**Public Service Commission
Practice and Procedure
Rulemaking**

Case No. AD-17-49

Proposed Rule

January 31, 2017

**CHAPTER 69-02-09
PROCEDURES FOR PROTECTING INFORMATION FROM DISCLOSURE**

69-02-09-01. Application to protect information.

Except as provided in section 69-02-09-13, ~~an applicant~~ a person requesting protection of information in an administrative proceeding or in a response to a commission request for information shall file an application with the commission. The application must include at least the following:

1. A general description of the nature of the information sought to be protected.
2. The specific law or rule on which protection is based.
3. If the basis for protection is that the information is trade secret:
 - a. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons;
 - b. An explanation of why the information is not readily ascertainable by proper means by other persons;
 - c. A general description of the persons or entities that would obtain

- economic value from disclosure or use of the information;
- d. A specific description of known competitors and competitors' goods and services that are pertinent to the tariff or rate filing; and
 - e. A description of the efforts used to maintain the secrecy of the information.
4. If the basis for protection is a reason other than that the information is trade secret, the specific basis or bases upon which the information qualifies for protection.
 5. A redacted public version of the information, unless this requirement is waived by the commission. The amount redacted must be as minimal as possible. If it is not possible to file a redacted public version, a specific written request for waiver of the requirement and the reasons for requesting a waiver must be filed.

History: Effective March 1, 1994; amended effective April 1, 2015; _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-02. Filing of application.

1. The application must be addressed to and filed with the executive secretary of the commission.
2. The protected material filed with the application or pursuant to section 69-02-09-13 must be separately bound and placed in a sealed envelope, or other appropriate, sealed container, which must be labeled: **PROTECTED INFORMATION - PRIVATE**. An original and seven copies of the public portion of the application must be filed unless this requirement is waived by the

commission. Only one copy of the protected material may be filed.

History: Effective March 1, 1994; amended effective April 1, 2015; _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-03. Processing the application.

When an application for protection of information is filed, the commission staff shall examine the information and application, and file and serve a response that includes a recommendation on whether the information qualifies for protection. If the basis for requesting protection is that the information is trade secret, the staff response must include a recommendation on whether the information is relevant and is trade secret, under the definition of trade secret in North Dakota Century Code section 47-25.1-01. The commission will make a determination on the application from the application, the recommendation, and any response received from those served.

History: Effective March 1, 1994; amended effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-04. Protective order.

Upon a determination that information qualifies for protection, the commission shall issue a protective order limiting disclosure.

History: Effective March 1, 1994; amended effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-05. Request for hearing - Who may request - Time - Burden of proof.

1. Upon a determination that the information does not qualify for protection,

the applicant will be notified and has seven days to request a hearing before the commission, or obtain appropriate injunctive relief from the courts. If no hearing is requested or the commission is not otherwise restrained, the information will become part of the public record without protection. The burden of proof in such a hearing is on the party seeking to prevent disclosure.

2. If any person disagrees with the designation of information as protected or with its nondisclosure, the person shall first attempt to informally dispose of the dispute with the party seeking to prevent disclosure. If the dispute cannot be resolved, any person may request a hearing before the commission to determine the protected status.

History: Effective March 1, 1994; amended effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-13. Information filed under sections 69-09-05-12 and 69-09-05-12.1 by telecommunications companies.

~~Information filed to comply with subdivision b of subsection 3 of section 69-09-05-12 or section 69-09-05-12.1~~ identified in subsections one through five of this section is protected without need for the originator to file an application and without further action by the commission, unless the commission orders otherwise. Sections ~~69-02-09-01~~ 69-02-09-01(1) through ~~69-02-09-04~~ 69-02-09-01(4), 69-02-09-02(1), 69-02-09-03, 69-02-09-04, and 69-02-09-05(1) do not apply to information filed ~~to comply with subdivision b of subsection 3 of section 69-09-05-12, or subsections 1, 2, or 3 of section 69-09-05-12.1~~ under this section.

1. Detailed information concerning telecommunications infrastructure projects.

2. Disaggregated data on provisioned volumes of local services by service type and local exchange.
3. Disaggregated data on provisioned volumes and associated revenue of switched access traffic by jurisdiction or local exchange.
4. Detailed information on service outages as defined in Title 47 Code of Federal Regulations, Part 4, Section 4.5, in effect as of January 30, 2017.
5. Financial information required by the Federal Communications Commission to be copied to the commission, accompanied by the filing of a copy of the Federal Communication Commission's Protective Order for that information.

History: Effective April 1, 2015; amended effective _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1