



Public Service Commission

State of North Dakota

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4 December 2017

Vonette Richter
Code Reviser
North Dakota Legislative Council
State Capitol
600 East Boulevard, 2nd Floor
Bismarck, ND 58505-0360

Re: Notice of Intent to Amend Administrative Rules
PSC Case Numbers PU-17-339, GS-17-370 & PU-17-371


Dear Ms. Richter:

The Public Service Commission recently passed a motion to propose changes to its administrative rules and issue notices. Consequently, enclosed please find copies of:

- Commission Motion to Propose Revisions to the North Dakota Administrative Code and Issue Notices;
- Proposed rule changes that were the subject of the Motion:
 - Section 69-06-08-01 Energy Conversion Facility Siting Criteria
 - Chapter 69-06-11 Wind Energy Conversion Facility Lighting Systems
 - Section 69-09-03-02 Adoption of Regulations
 - Section 69-09-09-10 Wind Energy Conversion Facility - Waiver
- Notice of Intent to Amend Administrative Rules and Notice of Public Hearing; and
- Abbreviated Notice of Intent to Amend Administrative Rules and Notice of Public Hearing.

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

Best Regards,



Ilona A. Jeffcoat-Sacco
General Counsel

7 PU-17-371 Filed 12/04/2017 Pages: 17
Letter to Legislative Council enclosing Commission Motion, proposed Rules, & Notices

7 GS-17-370 Filed 12/04/2017 Pages: 17
Letter to Legislative Council enclosing Commission Motion, proposed Rules, & Notices

enclosures

Received by the office of the Legislative Council this 4th day of
December, 2017

By: DA

7 PU-17-339 Filed 12/04/2017 Pages: 17

Letter to Legislative Council enclosing Commission Motion, proposed Rules, & Notices

APPROVED

DATE: 11/29/17
AH

MOTION

November 29, 2017

**Public Service Commission
Siting
Rulemaking**

Case No. PU-17-339

**Public Service Commission
Pipeline Safety
Rulemaking**

Case No. GS-17-370

**Public Service Commission
Wind Decommissioning
Rulemaking**

Case No. PU-17-371

I move the Commission propose the November 29, 2017, revisions to the North Dakota Administrative Code, and issue a Notice of Intent to Amend Administrative Rules and Notice of Public Hearing and an abbreviated Notice of Intent to Amend Administrative Rules and Notice of Public Hearing for publication in each official county newspaper throughout the state as required by law, in Public Service Commission, Siting, Rulemaking, Case No. PU-17-339, Public Service Commission, Pipeline Safety, Rulemaking, Case No. GS-17-370, and Public Service Commission, Wind Decommissioning, Rulemaking, Case No. PU-17-371.

Section 69-06-08-01	Energy Conversion Facility Siting Criteria
Chapter 69-06-11	Wind Energy Conversion Facility Lighting Systems
Section 69-09-03-02	Adoption of Regulations
Section 69-09-09-10	Wind Energy Conversion Facility - Waiver

- 1 PU-17-371 Filed 11/29/2017 Pages: 11
Commission Motion to propose revisions to ND Admin. Code and issue Notices Public Service Commission
- 1 GS-17-370 Filed 11/29/2017 Pages: 11
Commission Motion to propose revisions to ND Admin. Code and issue Notices Public Service Commission
- 1 PU-17-339 Filed 11/29/2017 Pages: 11
Commission Motion to propose revisions to ND Admin. Code and issue Notices Public Service Commission

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Siting
Rulemaking

Case No. PU-17-339

ARTICLE 69-06
ENERGY CONVERSION AND TRANSMISSION FACILITY SITING

Chapter	
69-06-01	General Provisions
69-06-02	Utility Reporting Requirements
69-06-02.1	Requests for Jurisdictional Determination
69-06-03	Letter of Intent [Repealed]
69-06-04	Certificate of Site 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
69-06-10	Small Wind Energy Conversion Facilities
69-06-11	<u>Wind Energy Conversion Facility Lighting Systems</u>

69-06-08-01. Energy conversion facility siting criteria.

The following criteria 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 must be excluded in the consideration of a site for an energy conversion facility.
 - 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, this exclusion 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 one thousand two hundred 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 within:
 - (1) One and one-tenth times the height of the turbine from interstate or state roadway right of way;
 - (2) One and one-tenth times the height of the turbine plus seventy-five feet from the centerline of any county or maintained township roadway;
 - (3) One and one-tenth times the height of the turbine from any railroad right of way;
 - (4) One and one-tenth times the height of the turbine from a one hundred fifteen kilovolt or higher transmission line; and
 - (5) One and one-tenth times the height of the turbine from the property line of a nonparticipating landowner and three times the height of the turbine from an inhabited rural residence of a nonparticipating landowner, unless a variance is granted. A variance may be granted if an authorized representative or agent of the permittee, the nonparticipating landowner, 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 nonparticipating 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 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 will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area 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 one hundred feet of an inhabited residence or a community building will exceed fifty dBA. The sound level avoidance area criteria may be waived in writing by the owner of the occupied residence or the community building.
5. **Selection criteria.** A site 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) Light-sensitive land uses.
 - (4) Rural residences and businesses.
 - (5) Aquifers.
 - (6) Human health and safety.
 - (7) Animal health and safety.
 - (8) Plant life.

- (9) Temporary and permanent housing.
 - (10) 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.
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. 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.
 - n. A commitment to install lighting mitigation technology for wind energy conversion facilities subject to commercial availability and federal aviation administration approval.

History: Amended effective August 1, 1979; July 1, 2006; April 1, 2013; July 1, 2017; _____.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1

CHAPTER 69-06-11

Wind Energy Conversion Facility Lighting Systems

Section

69-06-11-01 Definitions

69-06-11-02 Implementation

69-06-11-03 Service, Maintenance, Safety, and Lighting System Standards

69-06-11-01. Definitions.

In this chapter:

- 1. "Aircraft Detection Lighting System" means a sensor-based system designed to detect aircraft as they approach a wind energy conversion facility; this system automatically activates obstruction lights until they are no longer needed.**
- 2. "Commission" means the public service commission.**
- 3. "Light Intensity Dimming Solution Technology" means obstruction lighting that provides a means of tailoring the intensity level of lights according to surrounding visibility.**
- 4. "Light-Mitigating Technology System" means aircraft detection lighting system, lighting intensity dimming solution technology, or a comparable solution capable of reducing the impact of nighttime lighting while maintaining night conspicuity sufficient to assist aircraft in identifying and avoiding collision with the facilities.**
- 5. "Owner" means a person who holds a certificate of site compatibility pursuant to North Dakota Century Code chapter 49-22.**
- 6. "Wind Energy Conversion Facility" means any plant, addition, or combination of plant and addition, designed for or capable of generation by wind energy conversion exceeding one-half megawatt of electricity.**

69-06-11-02. Implementation.

- 1. A wind energy conversion facility for which a certificate of site compatibility was issued after June 5, 2016 must be equipped with a functioning light-mitigating technology in compliance with this chapter by December 31, 2019.**

2. A wind energy conversion facility for which a certificate of site compatibility was issued before June 5, 2016 must be equipped with a functioning light-mitigation technology in compliance with this chapter by December 31,2021. The Commission may grant an extension of time based on technical or economic feasibility considerations.
3. The commission may grant a waiver of this chapter for a wind energy conversion facility designed for or capable of generating no more than five megawatts of electricity upon a motion demonstrating good cause for the waiver.
4. To allow proper conspicuity of a turbine at night during construction, a turbine may be lighted with temporary lighting until the permanent lighting configuration including the light mitigation technology is implemented.
5. Owner shall provide written notice to the commission upon implementation of light-mitigating technology in compliance with this chapter.
6. Owner is solely responsible for any costs associated with the implementation, operation, and maintenance of each light-mitigating technology system.
7. An extension request must be in writing and contain:
 - a. The purpose of the extension;
 - b. A description of the light-mitigating technologies submitted to the Federal Aviation Administration;
 - c. The technical or economic inability to implement light-mitigation technology systems;
 - d. The length of extension requested; and
 - e. Any other information requested by the commission.

69-06-11-03. Service, Maintenance, Safety, and Lighting System Standards.

Each light-mitigating technology system must be installed, operated, and maintained in accordance with United States Department of Transportation Federal Aviation Administration regulations [14 CFR 1.1. et. Seq] in effect as of [date of publishing rules] and receive Federal Aviation Administration approval prior to implementation.

History: Amended Effective 2017.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1

State of North Dakota
Public Service Commission

Public Service Commission
Pipeline Safety
Rulemaking

Case No. GS-17-370

69-09-03-02. Adoption of regulations. The following parts of title 49, Code of Federal Regulations in effect as of ~~December 31, 2015~~ December 31, 2017, are adopted by reference:

1. Part 190 - Pipeline Safety Programs and Rulemaking
Procedures.
2. Part 191 - Transportation of Natural Gas and Other Gas by
Pipeline, Annual Reports, Incident Reports, and Safety-Related
Condition Reports.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum
Federal Safety Standards.
4. Part 193 – Liquefied Natural Gas Facilities: Federal Safety Standards
- ~~4.5.~~ Part 194 – Response Plans for Onshore Oil Pipelines
- ~~5.6.~~ Part 195 - Transportation of Hazardous Liquids by Pipeline.
- ~~6.7.~~ Part 199 - Drug and Alcohol Testing.

Copies of these regulations may be obtained from:

Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002; November 1, 2003; May 1, 2005; July 1, 2006; April 1, 2008; January 1, 2010; April 1, 2012; April 1, 2015; October 1, 2016, _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Wind Decommissioning
Rulemaking

Case No. PU-17-371

CHAPTER 69-09-09
WIND FACILITY DECOMMISSIONING

Section	
69-09-01 69-09-09-01	Definitions
69-09-02 69-09-09-02	Decommissioning Responsibility
69-09-03 69-09-09-03	Abandonment and Useful Life - Certificate of Operation
69-09-09-04	Decommissioning Period
69-09-05 69-09-09-05	Decommissioning Requirements
69-09-06 69-09-09-06	Decommissioning Plan
69-09-07 69-09-09-07	Existing Facilities
69-09-08 69-09-09-08	Financial Assurance
69-09-09 69-09-09-09	Failure to Decommission

69-09-09-10. Wind Energy Conversion Facility – Waiver

The commission may grant a waiver of any requirement described in sections 69-09-09-03, 69-09-09-06, or 69-09-09-08 for a commercial wind energy conversion facility with a nameplate generating capacity of no more than five megawatts of electricity upon a motion demonstrating good cause for the waiver.

History: Effective

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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Case No. PU-17-371

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

November 29, 2017

PLEASE TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed changes to North Dakota Administrative Code to amend section 69-06-08-01, propose new Chapter 69-06-11, amend section 69-09-03-02, and proposed new section 69-09-09-10.

A hearing will be held on the proposed rules at **9:00 a.m. Central Time on January 3, 2018, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.** The proposed revisions to the North Dakota Administrative Code are as follows:

Case No. PU-17-339 - Section 69-06-08-01- Energy Conversion Facility Siting Criteria

The Commission is proposing to amend North Dakota Administrative Code section 69-06-08-01 to reflect changes to North Dakota Century Code section 49-22-05.1 enacted during the 2017 legislative session regarding setbacks from the property line of a nonparticipating landowner and from the inhabited residence of a nonparticipating landowner.

The proposed changes are not expected to have an impact on the regulated community in the excess of \$50,000.

- 3 PU-17-371 Filed 11/29/2017 Pages: 3
Notice of Intent to Amend Admin. Rules and Notice of Public Hearing
- 3 GS-17-370 Filed 11/29/2017 Pages: 3
Notice of Intent to Amend Admin. Rules and Notice of Public Hearing
- 3 PU-17-339 Filed 11/29/2017 Pages: 3
Notice of Intent to Amend Admin. Rules and Notice of Public Hearing

Case No. PU-17-339 – New Chapter 69-06-11 - Wind Energy Conversion Facility Lighting Systems

The Commission is proposing new Chapter 69-06-11 to implement 2017 House Bill 1378 enacted during the Sixty-fifth legislative session as North Dakota Century Code section 49-22-16.4, providing that the North Dakota Public Service Commission “shall adopt rules relating to the implementation of light-mitigating technology systems on wind energy conversion facilities.”

The addition of Chapter 69-06-11 is expected to have an impact in excess of \$50,000.

Case No. GS-17-370 – Section 69-09-03-02 - Pipeline Safety

The purpose of this rulemaking is to adopt by reference the most recent amendments to pipeline safety regulations adopted by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA).

This rule change adopts amendments to safety regulations that have been adopted by PHMSA since December 31, 2015, current to December 31, 2017.

For Title 49 Code of Federal Regulations Part 193 – Liquefied Natural Gas Facilities: Federal Safety Standards, the Public Service Commission currently has statutory authority concerning pipeline safety of liquefied natural gas (LNG) facilities and was recently informed of a jurisdictional LNG facility located in North Dakota. The Public Service Commission must adopt all pipeline safety rules adopted by PHMSA regarding LNG facilities and the Commission is proposing to adopt Title 49 Code of Federal Regulations Part 193 in effect as of December 31, 2017.

The proposed changes are not expected to have an impact on the regulated community in excess of \$50,000.

Case No. PU-17-371 - Section 69-09-09-10 - Wind Decommissioning

The purpose of the proposed rule is to add section 69-09-09-10 providing that the Commission may grant a waiver of requirements under N.D. Admin. Code Section 69-09-09-03, Section 69-09-09-06, and Section 69-09-09-08 for a commercial wind energy conversion facility with a nameplate generating capacity of no more than five megawatts of electricity upon a motion demonstrating good cause for the waiver.

The proposed rule is not expected to have an impact on the regulated community in excess of \$50,000.

The proposed rule changes, any Regulatory or other analyses, 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 on the commission's web site at www.psc.nd.gov under "Formal Actions/Case Search".


Interested persons may attend the hearing and may submit oral or written comments on the proposed rules. Oral or Written comments should be sent to 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 January 18, 2018.

If you plan to attend the public hearing and 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



Brian Kroshus
Commissioner



Randy Christmann
Chairman



Julie Fedorchak
Commissioner

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Siting
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November 29, 2017

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A public hearing will be held at 9:00 a .m. Central Time, January 3, 2018, 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 January 18, 2018.

A copy of the proposed rules, analyses, and statements 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.nd.gov under "Formal Actions/Case Search".

- 4 PU-17-371 Filed 11/29/2017 Pages: 2
Abbreviated Notice of Intent to Amend Admin. Rules and Notice of Public Hearing
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- 4 GS-17-370 Filed 11/29/2017 Pages: 2
Abbreviated Notice of Intent to Amend Admin. Rules and Notice of Public Hearing
Public Service Commission
- 4 PU-17-339 Filed 11/29/2017 Pages: 2
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PUBLIC SERVICE COMMISSION



**Brian Kroshus
Commissioner**



**Randy Christmann
Chairman**



**Julie Fedorchak
Commissioner**