

## TESTIMONY

**Presented by:** John Schuh  
Legal Counsel  
Public Service Commission

**Before:** Administrative Rules Committee  
Honorable Bill Devlin, Chairman

**RE:** N.D. Admin. Code Section 69-06-08-01  
Energy Conversion Facility Siting Criteria  
PSC Case No. PU-19-36

**Date:** June 11, 2019

Mr. Chairman and committee members, my name is John Schuh. I am Counsel for the North Dakota Public Service Commission. The Commission asked me to testify today concerning rules recently promulgated by the Public Service Commission.

Our responses to the questions are presented below with the question restated prior to our response. The Commission's order submitting rules to the Attorney General (Order) and the regulatory analysis are provided and are referenced in response to these questions.

**1. Whether the rules resulted from statutory changes made by the Legislative Assembly.**

The rules were not promulgated as a result of statutory changes, however, it may be worth noting that the recently enacted HB 1383 did provide that the Commission "may not identify prime farmland, unique farmland, or irrigated land as exclusion or avoidance areas when evaluating and designating geographical areas for site, corridor, or route suitability." Our rule change is consistent the statutory change.

**2. Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.**

The rules are not related to any federal statute or regulation.

**3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.**

The rulemaking procedure used, public notice given and the extent of the public hearings are described in the attached Order. The rules were found to be in substantial compliance with N.D.C.C. ch. 28-32 and were approved as to their legality by the Attorney General on April 29, 2019.

4. **Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.**

All written and oral comments, commission consideration, and changes made are discussed in the attached Order. The Commission did not change rules as a result of testimony or comments received.

5. **The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.**

The total cost for publishing notices was \$3,732.40. Other than staff time, no other significant costs were incurred.

6. **An explanation of the subject matter of the rules and the reasons for adopting those rules.**

One pg. 1 and 2 of the attached Order provide an explanation of the subject matter and the reasons for adopting or amending those rules.

7. **Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.**

A regulatory analysis was not requested and the rules are not expected to impact the regulated community by an amount in excess of fifty thousand dollars. Consequently, no regulatory analysis has been prepared.

8. **Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide copies.**

N.D.C.C. § 28-32-08.1 did not require a small entity regulatory analysis and economic impact statement for these rule changes.

9. **Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency. If so, please provide copies of a fiscal note.**

There are no fiscal impacts anticipated from the rule changes.

10. **Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. Please provide a copy if one was prepared.**

The Commission does not anticipate that the rule change will limit the use of private property. Consequently, no takings assessment was prepared.

11. **If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules. If these rules were adopted as emergency (interim final) rules, what steps were taken to make the rules known to persons who can reasonably be expected to have a substantial interest in the rules?**

These rules were not adopted as emergency rules under N.D.C.C. § 28-32-03.

Mr. Chairman, this completes my testimony. I would be happy to respond to any questions the committee might have.