

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Energy Conversion Facility Siting Criteria  
Rulemaking**

**Case No. PU-19-290**

**Statements on Regulatory Analysis, Small Entity Analysis,  
and Takings Assessment**

**August 9, 2019**

The Commission is proposing amendments to Section 69-06-08-01 regarding Energy Conversion Facility Siting Criteria, exclusion and avoidance areas, that are used to guide the siting process.

The proposed rule is not result of new legislation and is not pursuant to emergency rulemaking.

**Regulatory Analysis**

N.D.C.C. § 28-32-08 requires an agency to prepare a regulatory analysis if the rule is expected to have an impact on the regulated community in excess of fifty thousand dollars, or if one is requested as provided in the law. The law provides, in part:

The regulatory analysis must contain:

- a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
- b. A description of the probable impact, including economic impact, of the proposed rule;
- c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
- d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.

A regulatory analysis has not been requested, and the proposal is not expected to impact the regulated community by an amount in excess of fifty thousand dollars (\$50,000.00). Consequently, no regulatory analysis has been prepared.

### **Takings Assessment**

N.D.C.C. § 28-32-09 requires an entity to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. It is unlikely that the proposed rule will result in a taking or regulatory taking. The purpose of the proposed rule is to accommodate concerns of siting infrastructure near ICBM missile sites and that may conflict with military flight operations. It also is intended to reduce effects of sound from wind farms from landowners that are not participating in the development of the project. This proposed rule is necessary to advance this purpose by providing exclusion areas for development and avoidance areas to require justification for placement at that location during the siting process. The Commission feels that this is the most efficient way to achieve this task and allows alternatives for placement of the sites through the siting process. The proposed rules are not anticipated to have implications, so no cost estimate, source of payment, or cost/benefit analysis is provided.

### **Small Entity Regulatory Analysis**

N.D.C.C. § 28-32-08.1 requires that before adoption of any proposed rule, the adopting agency prepare a regulatory analysis in which the agency considers options to minimize adverse impact on small entities. The law provides, in part:

2. . . . The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:
  - a. Establishment of less stringent compliance or reporting requirements for small entities;
  - b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
  - c. Consolidation or simplification of compliance or reporting requirements for small entities;
  - d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
  - e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

**Small Entity Regulatory Analysis**

No adverse impact on small entities is anticipated.

**Small Entity Economic Impact Statement**

No adverse economic impacts are anticipated for small entities.