



Public Service Commission
State of North Dakota

MP EXHIBIT 12
NOV 09 2012

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9 November 2012

Mr. John Walstad
Code Revisor
North Dakota Legislative Council
State Capitol
600 East Boulevard, 2nd Floor
Bismarck, ND 58505-0360

RE: Siting, Master Meter, Discovery, and NESC book
Case No. PU-12-162 and Case No. PU-12-165

Dear Mr. Walstad:

Enclosed for publication in the North Dakota Administrative Code please find a copy of amendments to N.D. Admin. Code Section 69-02-05-12 relating to Interrogatories in cases under N.D.C.C. Title 49, Section 69-09-02-35 relating to Installation and maintenance and conformance to the National Electrical Safety Code, Section 69-09-02-37 relating to electric master metering prohibited - exception, (all PSC Case No. PU-12-162) and Article 69-06 relating to Energy Conversion and Transmission Facility Siting, (PSC Case No. PU-12-165).

In support of this filing, enclosed please find copies of:

- 9 November 2012 Public Service Commission Motion with the amendments as adopted and approved;
- Letter from the Attorney General dated 29 October 2012 approving the proposed rules as to legality;
- The Public Service Commission's 10 October 2012 Order Submitting Rules to Attorney General, which includes a summary of all comments and is the written record of the agency's consideration of all comments for the captioned cases;
- Written comments: Staff testimony, email comments from Kevin Nelson, Deputy Director for Installation Support at the Minot Air Force Base, and letter comments from Otter Tail Power Company are included; and
- The rule changes as originally proposed by the Commission. After receiving comments, the Commission ordered two changes to the rules. One was to the master meter rule and the other was to a part of the siting rules.

Please note, the siting rule changes in this package include changes implementing 2011 Senate Bill 2196. The Commission currently has an implementation extension from the Administrative Rules Committee to 15 December 2012. If a further extension is necessary, please consider this letter as a request for an additional 6 months extension.

Thank you for your attention to this matter.

Best regards,

A handwritten signature in black ink, appearing to read "Illona A. Jeffcoat-Sacco". The signature is fluid and cursive, with a large initial "I" and a stylized "S" at the end.

Illona A. Jeffcoat-Sacco
General Counsel

attachments

APPROVED

DATE: 11-9-12



MOTION

November 9, 2012

**Public Service Commission
Public Utilities
Rulemaking**

Case No. PU-12-162

**Public Service Commission
Siting
Rulemaking**

Case No. PU-12-165

Having been approved by the Attorney General, I move the Commission adopt the proposed new Section 69-02-05-12, the amendment to Section 69-09-02-35, the repeal of Section 69-09-02-37, and the amendments to Article 69-06 of the North Dakota Administrative Code, and forward the rules to the Legislative Council for publication, Case No. PU-12-162, Public Utilities Rulemaking, and Case No. PU-12-165, Siting Rulemaking.

- 25 PU-12-165 Filed 11/09/2012 Pages: 1
Commission Motion adopting rules and forwarding to Legislative Council for publication
Public Service Commission
- 28 PU-12-162 Filed 11/09/2012 Pages: 1
Commission Motion adopting rules and forwarding to Legislative Council for publication
Public Service Commission

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Public Utilities
Rulemaking**

Case No. PU-12-162

**Public Service Commission
Siting
Rulemaking**

Case No. PU-12-165

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-12-166

ORDER SUBMITTING RULES TO ATTORNEY GENERAL

October 10, 2012

Appearances

Commissioners Brian P. Kalk, Kevin Cramer, and Bonny M. Fetch

Preliminary Statement

On May 30, 2012 the North Dakota Public Service Commission (Commission) issued a formal Notice of Proposed Rulemaking and an Abbreviated Notice proposing to revise several sections of the North Dakota Administrative Code. The proposed rules are summarized as follows:

Public Utilities - Case No. PU-12-162

Discovery Response Time - Section 69-02-05-12

The Commission is proposing a new section to Chapter 69-02-05 relating to discovery response time in public utility cases. The rule addition requires that interrogatory responses and objections be received in ten business days.

National Electrical Safety Code - Section 69-09-02-35

The proposed change to North Dakota Administrative Code section 69-09-02-35 adopts by reference the current National Electrical Safety Code, the 2012 Edition.

Master Metering – Sections 69-09-02-14 and 69-09-02-37

The proposal repeals North Dakota Administrative Code section 69-09-02-37 that prohibits master metering of electric service in certain multi-tenant commercial or

residential buildings unless a waiver is granted. Master metering is the practice of metering all electric service through a single meter instead of requiring separate meters and separate bills for each tenant. Landlords choosing to master meter would pay one electric bill for their entire building such that tenants in the building would not receive an electric bill from the distribution utility. The proposed change to North Dakota Administrative Code section 69-09-02-14 removes the reference to master metering. Due to repeal of the mater metering prohibition, the reference is no longer necessary.

Siting - Case No. PU-12-165 - Article 69-06

The revisions to North Dakota Administrative Code Article 69-06, Energy Conversion and Transmission Facility Siting, clarify what is required and update the process for processing siting applications heard by the North Dakota Public Service Commission. Items that are currently included in commission guidelines are incorporated into the rules. The resulting rules also address issues specific to wind energy conversion facilities and the new lower jurisdiction threshold for wind energy conversion facilities.

Reclamation - Case No. RC-12-166 - Article 69-05.2

Several changes are proposed to North Dakota Administrative Code Article 69-05.2 pertaining to surface coal mining and reclamation operations. The federal Office of Surface Mining is requiring that provisions be added for the Commission's use of the Applicant Violator System prior to the approval of mining permits, renewals and certain revisions. The Applicant Violator System is a national database of mining companies that have unabated violations or unpaid civil penalties. A mining company that is linked to an entity in this database may be ineligible to receive a new mining permit, renewal, or revision that proposes to permit or mine additional lands. The proposed rules also contain procedures for companies to use if they want to challenge information or links in the Applicant Violator System.

Two other rule changes are recommended by staff. One adds a new subsection to an existing rule on the format of electronic permit applications. The other change will make a minor correction to a provision that should have been changed more than fifteen years ago when another rule was modified to no longer require the renewal of a permit once lands in that permit are no longer being mined or used in support of mining.

Public Hearing and Comments

The Abbreviated Notice was published once in 51 official county newspapers the week of June 12 through June 18, 2012. The notices were also forwarded to the Legislative Council for publication at least 30 days in advance of the hearing.

A public hearing was noticed for and held at 10:00 a.m., July 12, 2012. The hearing was held 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 July 23, 2012, 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.

Written comments filed by Commission staff were received at the hearing. In addition to other staff testimony and written comments, Pat Fahn, Director of the Compliance and Competitive Markets Division of the North Dakota Public Service Commission, also testified regarding the need for revisions to NDAC § 69-06-01-06, the siting rule regarding siting fee refunds.

Kevin Nelson, Deputy Director for Installation Support at the Minot Air Force Base, submitted written comments suggesting the proposed language in NDAC § 69-06-08-01(1)(h) and NDAC § 69-06-08-02(1)(f) be changed from "nuclear missile launch facility" to "Intercontinental Ballistic Missile (ICBM) launch or launch control facility."

Discussion

Public Utilities - Case No. PU-12-162

Discovery Response Time - Section 69-02-05-12

Staff prepared and filed a statement regarding the regulatory analysis, takings assessment, and small entity regulatory analysis.

Staff testified that the proposed changes would establish an official time frame for responding to interrogatories related to public utility regulation so that there is no question about interrogatory response times, absent an ad hoc agreement of less than thirty days.

No other comments were received and we are not making changes to the rules as originally proposed.

National Electrical Safety Code - Section 69-09-02-35

Staff prepared and filed a statement regarding the regulatory analysis, takings assessment, and small entity regulatory analysis.

Staff testified that the proposed changes update the National Electrical Safety Code book, which needs to be updated periodically, with a new edition issued every five years. The changes proposed would simply adopt the latest NESC 2012 Edition instead of the previously adopted 2007 Edition. Staff testified that the purpose of adopting the 2012 Edition is to ensure that North Dakota safety requirements keep pace with industry standards. In practice, the utilities are very committed to safety and are already applying the 2007 Edition.

No other comments were received and we are making no changes to the rules as originally proposed.

Master Metering – Sections 69-09-02-14 and 69-09-02-37

Staff prepared and filed a statement regarding the regulatory analysis, takings assessment, and small entity regulatory analysis.

Staff testified that the proposed changes to Section 69-09-02-37, prohibiting master metering of electric service in new or substantially remodeled buildings, is proposed to be repealed because of concerns with implementation including limiting the use of real property, competitive disadvantages in rental property markets, and increased costs for construction and electric usage.

No other comments were received. We are changing the rules as originally proposed to remove the reference to master metering in North Dakota Administrative Code section 69-09-02-14, as the reference is no longer necessary.

Siting - Case No. PU-12-165 - Article 69-06

Staff prepared and filed a statement regarding the regulatory analysis, takings assessment, and small entity regulatory analysis.

Staff testified that the primary purposes for the rule changes are to update and codify the Commission's existing siting application guidelines, establish setback and other requirements for siting wind turbines, and implement abbreviated procedures for siting small wind projects with less than 20 MW of generating capacity. The proposed changes also help to clarify the process for service of siting notices by explicitly indicating that service of notices can be accomplished by electronic mail. Updates were also made to the list of agencies that need to be served with notices of filings.

Pat Fahn, Director of the Compliance and Competitive Markets Division of the North Dakota Public Service Commission, also testified regarding the need to

incorporate rules changes to NDAC § 69-06-01-06, Siting fee refund. The Commission directed that this proposed rule be discussed further at a future Commission meeting or work session if proposed, and that it be proposed in a future rules package.

Kevin Nelson, Deputy Director for Installation Support at the Minot Air Force Base, submitted written comments suggesting the proposed language in NDAC § 69-06-08-01(1)(h) and NDAC § 69-06-08-02(1)(f) be changed from "nuclear missile launch facility" to "Intercontinental Ballistic Missile (ICBM) launch or launch control facility."

No other comments were received. We are making changes to the rules as originally proposed to incorporate Mr. Nelson's request.

Reclamation - Case No. RC-12-166 - Article 69-05.2

Staff prepared and filed a statement regarding the regulatory analysis, takings assessment, and small entity regulatory analysis.

Staff testified that the proposed rules incorporate three new sections and amend several existing sections of the North Dakota Administrative Code Article 69-05.2 pertaining to surface coal mining and reclamation operations. Those changes would include procedures for mining companies to use to challenge information or links in the Applicant Violator System, general requirements for the format of electronic permit applications, and minor corrections to subsection 2 of to North Dakota Administrative Code Section 69-05.2-05-08 to no longer require the renewal of a permit once lands in that permit are no longer being mined or used in support of mining.

No other comments were received and we are not making changes to the rules as originally proposed.

Mining and reclamation rule changes adopted by the Commission must be as effective as the counterpart federal rules that have issued by the federal Office of Surface Mining (OSM) within the Department of the Interior. Before final adoption by the Commission, these rule changes will be submitted to OSM for approval as a State Program Amendment.

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



**Kevin Cramer
Commissioner**



**Brian P. Kalk
Chairman**



**Bonny M. Fetch
Commissioner**

l. Any specific provisions of law that the applicant requests the commission waive or modify, with a separate justification for each provision.

m. The factual basis demonstrating that the proposed facility is of such length, design, location, or purpose that it will produce minimal adverse effects.

n. The nature of the emergency justifying immediate authority, if the application is based on an emergency situation.

General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-07.2

69-06-06-02. Order.

- ~~1. **Requirements of order.** An order approving or denying all or part of a request shall must contain findings in support of such approval or denial supporting the decision and shall must specifically describe the procedures and time schedules that are waived.~~
- ~~2. **Time requirement.** The commission shall issue its order in response to an application containing a request for waiver within three months of the filing of a complete application.~~
- ~~3. **Extension of time.** Upon a showing of just cause or upon its own motion, the commission may extend the time within which it is required to act in response to an application containing a request for waiver.~~

General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-07.2

CHAPTER 69-06-08
CRITERIA

Section

69-06-08-01 Energy Conversion Facility Siting Criteria

69-06-08-02 Transmission Facility Corridor and Route Criteria

69-06-08-01. Energy conversion facility siting criteria. The following criteria shall 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 shall must be excluded in the consideration of a site for an energy conversion facility, and shall include a buffer zone of a reasonable width to protect the

~~integrity of the area. Natural screening may be considered in determining the width of the buffer zone.~~

- 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, ~~such~~ this exclusion shall 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 1,200 feet of the geographic center of a nuclear missile launch 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:

- (1) 1.1 times the height of the turbine from interstate or state roadway right-of-way;

- (2) 1.1 times the height of the turbine plus seventy-five (75) feet from the centerline of any county or maintained township roadway;
- (3) 1.1 times the height of the turbine from any railroad right-of-way;
- (4) 1.1 times the height of the turbine from a 115kV or higher transmission line; and
- (5) 1.1 times the height of the turbine from the property line of a non-participating landowner, unless a variance is granted. A variance may be granted if an authorized representative or agent of the permittee 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 non-participating 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 shall 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 shall will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area shall 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 100 feet of an inhabited residence or a community building will exceed 50 dBA. The sound level avoidance area criteria may be waived in writing by the owner of the occupied residence or the community building.

3.5. Selection criteria. A site shall 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) Rural residences and businesses.
 - (4) Aquifers.
 - (5) Human health and safety.
 - (6) Animal health and safety.
 - (7) Plant life.
 - (8) Temporary and permanent housing.
 - (9) 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.

4.6. 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. ~~Nonrelocation of~~ 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.

History: Amended effective August 1, 1979; July 1, 2006; _____ 2012.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1

69-06-08-02. Transmission facility corridor and route criteria. The following criteria shall must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process. Exclusion and avoidance areas may be located within a corridor, but at no given point shall may such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

1. **Exclusion areas.** The following geographical areas shall must be excluded in the consideration of a route for a transmission facility. A buffer zone of a reasonable width to protect the integrity of the area shall must be included. Natural screening may be considered in determining the width of the buffer zone.
 - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; monuments; and wilderness areas.
 - b. Designated or registered state: parks; historic sites; monuments; historical markers; archaeological sites; and nature preserves.
 - c. County parks and recreational areas; municipal parks; and parks owned or administered by other governmental subdivisions.

- d. Areas critical to the life stages of threatened or endangered animal or plant species.
- e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
- f. Areas within 1,200 feet of the geographic center of a nuclear missile launch facility.

2. **Avoidance areas.** The following geographical areas shall may not be considered in the routing of a transmission 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 routes. Economic considerations alone shall will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area shall must be included unless a distance is specified in the criteria. Natural screening may be considered in determining the width of the buffer zone.
- a. Designated or registered national: historic districts; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
 - b. Designated or registered state: wild, scenic, or recreational rivers; game refuges; game management areas; management areas; forests; forest management lands; and grasslands.
 - c. Historical resources which are not specifically designated as exclusion or avoidance areas.
 - d. Areas which are geologically unstable.
 - e. Within five hundred feet [152.4 meters] of a residence, school, or place of business. This criterion shall not apply to a water pipeline transmission facility.
 - f. Reservoirs and municipal water supplies.
 - g. Water sources for organized rural water districts.
 - h. Irrigated land. This criterion shall not apply to an underground transmission facility.

- i. Areas of recreational significance which are not designated as exclusion areas.
3. **Selection criteria.** A corridor or route shall may be designated only when it is demonstrated to the commission by the applicant that any significant adverse effects which will result from the location, construction, and maintenance of the facility 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 can demonstrate 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.
 - b. The impact upon:
 - (1) Noise Sound-sensitive land uses.
 - (2) The visual effect on the adjacent area.
 - (3) Extractive and storage resources.
 - (4) Wetlands, woodlands, and wooded areas.
 - (5) Radio and television reception, and other communication or electronic control facilities.
 - (6) Human health and safety.
 - (7) Animal health and safety.
 - (8) Plant life.
4. **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. Location and design.
- b. Training and utilization of available labor in this state for the general and specialized skills required.
- c. Economies of construction and operation.
- d. Use of citizen coordinating committees.
- e. A commitment of a portion of the transmitted product for use in this state.
- f. Labor relations.
- g. The coordination of facilities.
- h. Monitoring of impacts.
- i. Utilization of existing and proposed rights of way and corridors.
- j. Other existing or proposed transmission facilities.

History: Amended effective August 1, 1979; January 1, 1982; February 1, 1995; July 1, 2006; _____ 2012.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1

**CHAPTER 69-06-09
CONTINUING SUITABILITY OF CERTIFICATE OR PERMIT**

Section

69-06-09-01 Certification

69-06-09-02 Determination and Order

69-06-09-01. Certification. A certification of continuing suitability shall contain the following:

1. The proposed date for the commencement of construction or improvement.
2. The information relied upon in making the certification.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-17

69-06-09-02. Determination and order.

1. If the commission determines that the site or route continues to meet the evaluation requirements of the Act and this article, it shall issue an order authorizing the beginning of construction or improvement, which order shall specify the time within which the utility shall begin construction or improvement.
2. If the commission determines that the site or route does not continue to meet the evaluation requirements of the Act and this article it shall do one of the following:
 - a. Cancel the certificate or permit.
 - b. Make such modifications to the certificate or permit as it may require.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-17

69-06-XX

SMALL WIND ENERGY CONVERSION FACILITIES

Section

69-06-XX-01 Application

69-06-XX-02 Exemption

69-06-XX-03 Contents

69-06-XX-04 Hearing

69-06-XX-01. Application. Except as provided in section 60-06-XX-02 an applicant for a certificate of site compatibility for a wind energy conversion facility designed for or capable of generating no more than 20 megawatts of electricity may file an application under this chapter.

69-06-XX-02. Exemption. This chapter does not apply to a wind energy conversion facility with outer boundaries that are adjacent to or within one mile of the outer boundaries of another wind energy conversion facility.

69-06-XX-03. Contents. The application must be accompanied by:

1. An application fee as required under North Dakota Century Code section 49-22-22.
2. All supporting documentation regarding exclusion and avoidance areas.

3. Written certification that the applicant will follow all siting laws and rules.

4. Written certification that the proposed facility will not affect any known exclusion areas. If the proposed energy conversion facility will not affect any known avoidance areas, written certification that the proposed facility will not affect any known avoidance areas.

5. If a proposed energy conversion facility will affect a known avoidance area, written notice that the proposed facility will affect a known avoidance area and information on the specific avoidance area expected to be impacted and the reasons why the impact cannot be avoided.

6. Written certification that the applicant will comply with the applicable tree and shrub mitigation specifications and any other representations and covenants contained in the applicable certification relating to order provisions.

69-06-XX-04. Hearing. Upon a determination that an application is complete, the commission may issue a notice of filing and notice of opportunity to comment or request for hearing. The notice must be served in the manner provided in section 69-06-01-02 and published once in the official county newspaper of the county in which the facility is to be located. The notice must be served and published at least 20 days before the date by which interested persons may comment or request a hearing on the application. The commission may order a hearing on the application by its own motion.