

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**Public Service Commission
Common Pipeline Carriers
Rulemaking**

Case No. PU-20-398

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

Case No. PU-20-422

ORDER SUBMITTING RULES TO ATTORNEY GENERAL

June 9, 2021

Appearances

Commissioners Julie Fedorchak, Brian Kroshus, and Randy Christmann.

Preliminary Statement

On October 21, 2020, the North Dakota Public Service Commission (Commission) issued a formal Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing and an Abbreviated Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing, proposing to create a new Chapter 69-09-11 and proposing to amend Article 69-06 of the North Dakota Administrative Code.

On October 22, 2020, Commission Staff (Staff) filed statements regarding the required regulatory analysis, small entity analysis, and takings assessments for the captioned cases.

Also on October 22, 2020, the Commission forwarded the notices to the North Dakota Newspaper Association for publication at least 30 days in advance of the hearing and a copy of the Notices and proposed Rules were sent to the Legislative Council.

The Abbreviated Notice was published in each of the 51 official county newspapers in the state during the weeks of October 28 through November 3, 2020.

On November 24, 2020, the Commission held the public hearing as noticed, beginning at 10:00 a.m. in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The Commission allowed a comment period until December 4, 2020, during which the Commission received and considered data, views, or written and oral comments concerning the proposed rulemaking as part of the rulemaking record.

The proposed rules and amendments are summarized as follows:

Case No. PU-20-398 - proposed New Chapter 69-09-11 - Common Pipeline Carriers

The purpose of the proposed new chapter 69-09-11 is to clarify the manner in which common pipeline carriers maintain and file their tariffs pursuant to N.D.C.C. § 49-19-17. The proposed chapter is not expected to have an impact on the regulated community in excess of \$50,000.

Case No. PU-20-422 – Article 69-06 - Energy Conversion Facility Siting Criteria

The purpose of the proposed amendments to article 69-06 is to minimize impacts on intercontinental ballistic missile (ICBM) facilities, launch control facilities, and strategic defense operations. The proposed amendments also update noticed agencies, filing requirements, administration of siting fees, corridor width requirements, and clarify that an owner may waive areas within 500 ft of a residence, school, or place of business as an avoidance area. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000.

Public Hearing and Comments

The Commission reviewed and considered all comments. The written and oral comments that were received are summarized and discussed below by case number.

Case No. PU-20-398 - proposed New Chapter 69-09-11 - Common Pipeline Carriers

The Commission proposed changes to N.D. Admin. Code Ch. 69-09-11, adding a new section. The new section adds clarification to the tariff requirements of common pipeline carriers. N.D. Admin. Code § 69-09-11-01 will still require common pipeline carriers to make and publish tariffs but clarifies that common pipeline carriers will not be required to file those tariffs except upon request by the commission.

Patrick Fahn, director of the public utilities division, testified on behalf of Staff to the effect of this change. No other comment were made orally at the hearing or received in writing.

The Commission adopts N.D. Admin. Code § 69-09-11-01 as proposed.

Case No. PU-20-422 – Article 69-06 - Energy Conversion Facility Siting Criteria

The Commission proposed amendments to N.D. Admin. Code Ch. 69-06 corrected a statutory reference from the splitting of chapter 49-22 into two chapters, 49-22 and 49-

22.1, provided additional designated agencies that receive notice and updated names of agencies with titles that changed, changed administration of siting fees and refunds, eliminated physical copies required to be filed with the commission, changed GIS information to be filed, eliminated corridor width requirements, added a two nautical mile setback for wind turbines from ICBM launch sites and launch control facilities, and provided for a waiver of the avoidance areas within five hundred feet from a residence, school, or place of business.

The written and oral comments of Patrick Fahn, on behalf of Staff, were received at the hearing. During the hearing, oral and written comments were submitted by Ryan Pumford and retired Lt. General Anthony Rock of NextEra Energy.

Written Comments were submitted by: NextEra Energy, Wind Industry Of North Dakota (WIND), American Wind Energy Association (AWEA), ALLETE Clean Energy (ACE), PRC Wind (PRC), National Grid Renewables (NRG), Maynard Houlesby, Gene and Joyce Schoenberg, and 17 additional participating land owners in the Ruso Wind Project.

These comments are addressed by each section.

69-06-01-05 – Designated agencies and officers

The proposed changes to section 69-06-01-05, designated agencies and officers, ensure that the proper and necessary military stakeholders are notified and able to participate in the siting of a project that may impact their interests, adds additional agencies, and corrects some agency names that have changed.

WIND and AWEA commented and do not object to the addition of “Military Aviation and Installation Assurance Siting Clearinghouse” and “20th Airforce 91st Missile Wing”. WIND and AWEA recommended that the Commission remove “United States Department of Defense”, as the Clearinghouse is the more specific designation under the Department of Defense. PRC supported these comments.

The Commission agrees that the addition of “Military Aviation and Installation Assurance Siting Clearinghouse”, and “20th Airforce 91st Missile Wing” will ensure that the appropriate agencies are notified and allowed to contribute to the siting process and that their mission directives are able to continue in a safe and efficient manner. After discussion, the Commission also added the Grand Forks Air Force Base to ensure that the local command is notified as well.

The Commission considered the recommendation to eliminate the Department of Defense (DOD). The purpose of the amendments to 69-06-01-05 is to increase siting notification to agencies that may be impacted. Within the DOD, there are multiple tiers of authority and interests. The expansion to designations and tiers within the DOD, in

addition to the DOD itself, increases the likelihood that the various tiers and interests within the Department of Defense are notified about potential impacts. To ensure comprehensive stakeholder notification 69-06-01-05, notification to the DOD will remain at this time.

Consistent with the discussion and stated purpose, the Commission revises proposed N.D. Admin. Code. § 69-06-01-05 to add the Grand Forks Air Force Base to the list of designated agencies and officers.

69-06-01-06 – Siting fee refund

No comments were received. Amendments to N.D. Admin. Code § 69-06-01-06 are adopted as proposed.

69-06-02-02 – Filing

No comments were received. Amendments to N.D. Admin. Code. § 69-06-02-02 are adopted as proposed.

69-06-04-01 – Application and 69-06-05-01 - Application

No comments were received regarding the proposed amendments to these sections. The proposed amendments provided that an applicant shall provide paper copies upon Commission request. Upon further discussion, the Commission decided to instead reduce the number of copies received from 10 to 4 to ensure that there are physical copies available while further reducing the amount of paper retained by the Commission.

Consistent with the discussion, the Commission revises proposed N.D. Admin. Code. §§ 69-06-04-01 and 69-06-05-01.

69-06-05-02 – Designation of Corridor Route

No comments were received. Amendments to N.D. Admin. Code § 69-06-05-02 are adopted as proposed.

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

Staff testified in support of the proposed change to add areas within two nautical miles of the geographic center of an ICBM launch or launch control facility as an avoidance area under the Commission's energy conversion facility siting criteria.

NextEra provided oral and written testimony. NextEra stated that the setback is unnecessary and the Siting Clearinghouse process is sufficient to address any concerns.

Additionally, NextEra requested that, if a two nautical mile avoidance area is adopted, to include a waiver of the avoidance area if a letter is obtained from the Department of Defense in agreement with the facility placement. NextEra expressed concerns that as drafted it would exclude any non-vertical infrastructure from being built and provided some proposed language that it felt would remedy the exclusion.

WIND, AWEA, and PRC provided similar comments to NextEra's supporting the adequacy of the Siting Clearinghouse process, the preference of an avoidance area as opposed to an exclusion area if the Commission moves forward with the proposed rules, permission from the DOD as a waiver from the two nautical mile avoidance area, and the avoidance area be clarified as applying to vertical structures only.

Russo Wind Partners, LLC and ALLETE Clean energy recommended that the Commission not adopt the proposed amendment to 69-06-08-01(3), that a decision be postponed to allow a broader group of stakeholders to provide further input, and that if the proposed changes are adopted that pending applications would not be subject to the amendments to avoidance areas.

NRG provided comments regarding the difficulty of not having access to the GIS data or locational data of ICBM missile sites or Launch Control Facilities and that consultation occurs by providing proposed facilities to the Air Force to identify potential issues in relation to military assets. NRG asks the Commission to request that the Air Force make maps and other information regarding the location of ICBM launch and launch control facilities available to developers. NRG also commented that the proposed rules would apply to all energy conversion facilities, and with no concerns being expressed towards other facility siting, that this be limited in its application to wind.

17 Participating landowners in the Russo project signed onto a form letter expressing concerns with the size of the avoidance area and the impact on landowner rights to develop their land.

In Case No. PU-19-290, members of the DOD recommended that wind turbine setbacks be two nautical miles from the center of a launch control facility to avoid interference with operations, and that the developers be required to provide early notification to allow identification of any potential adverse impact to missile field operations. The Commission engaged in this subsequent rulemaking to provide further opportunity for engagement in these issues.

N.D. Admin. Code § 69-06-08-01 provides criteria, exclusion, and avoidance areas to guide and govern the site suitability process. Exclusion areas must be excluded from the sited area, and avoidance areas cannot be developed unless an applicant effectively demonstrates that there is no reasonable alternative location. An applicant must demonstrate that the effects of the location, construction, and operation of the facilities on the selection criteria will be at an acceptable minimum.

Having received further comments and considered the purpose of the proposed rulemaking, the Commission believes it is able to accomplish the concerns expressed with less restrictive measures than was set forth in the proposed rules. The Commission revises the proposed rules to add “military installations, assets, and operations” as a selection criteria instead of requiring developers to avoid the development of these areas. As a selection criteria, an applicant will be required to demonstrate that effects to military operations will be kept at an acceptable minimum and as a selection criteria, additional scrutiny is provided. This, along with the proposed addition of the local military installations, the Military Aviation and Installation Assurance Siting Clearinghouse, and continued notification of the DOD should provide ample opportunity to advise the Commission to ensure acceptable impacts while maintaining development opportunities for landowners.

The flexibility provided by this revision should inherently resolve the concerns related to vertical infrastructure, the necessity of avoidance waivers, limiting its application to wind development, and the necessity of an exemption for projects currently engaged in the siting process. Regarding the comment suggesting that the Commission request that the Air Force provide GIS and locational data to wind developers, the Air Force is best suited to determine the appropriate level of information to provide regarding national defense facilities. To the extent that development of a project requires consultation with the Air Force to identify impacts to military assets, a developer is not only encouraged, but expected, to consult with the Air Force.

Upon reviewing the comments and concerns related to N.D. Admin. Code § 68-06-08-01, the Commission has revised the proposed amendment to modify the two nautical mile ICBM avoidance area to instead be a selection criteria for consideration.

69-06-08-02 – Transmission facility corridor and route criteria

No comments were received. Amendments to N.D. Admin. Code. § 69-06-08-02 are adopted as proposed.

Discussion

Having reviewed the proposed rules, and considered the testimony and comments received, the Commission finds good cause for submitting the proposed rule in Case No. PU-20-398 and the proposed rules in Case No. PU-20-422 as revised after comment, attached to and made a part of this order, to the Attorney General for an opinion as to legality.

ORDER

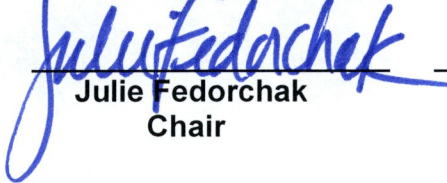
The Commission orders that the proposed rules and amendments in Case No. PU-20-398, attached and made part of this order, be submitted to the Attorney General for an opinion that the rules are approved as to their legality.

The Commission orders that the proposed rules and amendments in Case No. PU-20-422, attached to and made part of this order, be submitted to the Attorney General for an opinion that the rules are approved as to their legality.



Randy Christmann
Commissioner

PUBLIC SERVICE COMMISSION



Julie Fedorchak
Chair



Brian Kroshus
Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Common Pipeline Carriers
Rulemaking

Case No. PU-20-398

CHAPTER 69-09-11
Common Pipeline Carriers

69-09-11-01 Pipeline Carrier Tariffs.

A common pipeline carrier shall maintain its tariffs and have them available for production upon commission request.

History: Effective _____, 2020.

General Authority: NDCC 28-32-02, NDCC 49-19-17

Law Implemented: NDCC 49-19-17

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Energy Conversion Facility Siting Criteria
Rulemaking

Case No. PU-20-422

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	Request 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	Wind Energy Conversion Facility Lighting Systems

CHAPTER 69-06-01
GENERAL PROVISIONS

Section	
69-06-01-01	Definitions
69-06-01-02	Procedure for Public Hearings
69-06-01-03	Advisory Committees
69-06-01-04	Application
69-06-01-05	Designated Agencies and Officers
69-06-01-06	Siting Fee Refund

69-06-01-01. Definitions.

The terms used throughout this article have the same meanings as in North Dakota Century Code chapter 49-22, and in addition:

1. "Act" means the North Dakota Energy Conversion and Transmission Facility Siting Act, North Dakota Century Code chapter 49-22.
2. "Avoidance criteria" means criteria that remove areas from consideration for energy conversion facility sites and transmission facility routes unless it is shown that under the circumstances there are no reasonable

alternatives.

3. "Criteria" means policy statements that guide and govern the preparation of the inventory of exclusion and avoidance areas, and the energy conversion facility site and transmission facility corridor and route suitability evaluation process.
4. "Designated corridor" means a corridor for which a certificate has been issued by the commission.
5. "Designated route" means a route for which a permit has been issued by the commission.
6. "Designated site" means a site for which a certificate has been issued by the commission.
7. "Extractive resources" means natural resources that are removed during the construction of a facility, including sand, gravel, soil, rock, and other similar materials.
8. "Exclusion criteria" means criteria that remove areas from consideration for energy conversion facility sites and transmission facility routes.
9. "Height of the turbine" means the distance from the base of the wind turbine to the turbine blade tip when it is in its highest position.
10. "Historical resource" means a district, site, building, structure, or other object which possesses significance in history, archaeology, paleontology, or architecture, or has other cultural value to the state or local community.
11. "Party aggrieved" means a person who will be affected in a manner different from the effect on the general public.
12. "Policy criteria" means criteria that guide and govern the selection of energy conversion facility sites and transmission facility corridors and routes in order to maximize benefits during the construction and operation of a facility.
13. "Refinement" means the action or process of purifying.
14. "Selection criteria" means criteria that guide and govern the selection of energy conversion facility sites and transmission facility corridors and routes in order to minimize adverse human and environmental impact after the exclusion and avoidance criteria have been applied.

15. "Siting rules" means this article adopted by the commission pursuant to North Dakota Century Code chapter 49-22 and 49-22.1.
16. "Wetland" means an aquatic area important to the life stages of certain wildlife species as defined by the United States fish and wildlife service.

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

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-01, 49-22-03, 49-22-05.1, 49-22-07, 49-22-08, 49-22-08.1, 49-22-19

69-06-01-05. Designated agencies and officers.

The following are the designated state agencies and officers entitled to notice when so referred to in this article:

1. Aeronautics commission.
2. Attorney general.
3. Department of agriculture.
4. ~~State department~~ Department of health.
5. Department of human services.
6. ~~Labor department~~ Department of Labor and human rights.
7. Department of career and technical education.
8. Department of commerce.
9. ~~Energy development~~ infrastructure and impact office.
10. Game and fish department.
11. Industrial commission.
12. ~~Governor~~ Office of the Governor.
13. Department of transportation.
14. State historical society of North Dakota.

15. Indian affairs commission.
16. Job service North Dakota.
17. Department of trust lands.
18. Parks and recreation department.
19. Soil-Natural resources conservation committee-service.
20. State water commission.
21. United States department of defense.
22. United States fish and wildlife service.
23. United States army corps of engineers.
24. Federal aviation administration.
25. The county commission of the county of counties where the project is located.
26. North Dakota transmission authority.
27. North Dakota pipeline authority.
28. North Dakota department of environmental quality.
29. North Dakota geological survey.
30. North Dakota forest service.
31. Federal bureau of land management.
32. Military Aviation and Installation Assurance Siting Clearinghouse.
33. 20th Airforce 91st Missile Wing.
34. Minot Air Force Base
35. Grand Forks Air Force Base

History: Effective August 1, 1979; amended effective July 1, 2008; April 1, 2013;_____.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08, 49-22-08.1

69-06-01-06. Siting fee refund.

After all siting permits and certificates are issued by the commission and after all siting process and project inspection expenses are paid, ~~notice and hearing costs and expenses are paid, the commission will refund to the applicant all of the application fee paid by the applicant except five thousand dollars or the amount of the fee remaining if that amount is less than five thousand dollars. When construction and all postconstruction inspections are complete and when the commission has determined that any required tree mitigation is satisfactory, any remaining balance of the application fee will be refunded to the applicant. No refunds for less than fifty dollars will be processed.~~

History: Effective July 1, 2008;_____.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-22

69-06-02-02. Filing.

1. ~~Ten copies of each~~ A ten year plan must be filed with the commission, and one copy of each plan must be filed with the county auditor of each county in which any part of a site or corridor is proposed to be located.
2. Notice of the filing of each plan must be given by the utility to each agency and officer entitled to notice as designated in section 69-06-01-05.

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

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-04

**CHAPTER 69-06-04
CERTIFICATE OF SITE COMPATIBILITY**

Section	
69-06-04-01	Application
69-06-04-02	Designation of Sites

69-06-04-01. Application.

1. **Form.** An application must be reproduced and bound to eight and one-half-inch by eleven-inch size. Accompanying maps must be folded to eight and one-half inches by eleven inches with the title block appearing in the lower right-hand corner.
2. **Contents.** The application must contain:
 - a. A description of:

- (1) The type of energy conversion facility proposed;
 - (2) The gross design capacity;
 - (3) The net design capacity;
 - (4) The estimated thermal efficiency of the energy conversion process and the assumptions upon which the estimate is based;
 - (5) The number of acres that the proposed facility will occupy; and
 - (6) The anticipated time schedule for:
 - (a) Obtaining the certificate of site compatibility;
 - (b) Completing land acquisition;
 - (c) Starting construction;
 - (d) Completing construction;
 - (e) Testing operations;
 - (f) Commencing commercial production; and
 - (g) Beginning any expansions or additions.
- b. Copies of any evaluative studies or assessments of the environmental impact of the proposed facility submitted to any federal, regional, state, or local agency.
 - c. An analysis of the need for the proposed facility based on present and projected demand for the product or products to be produced by the proposed facility, including the most recent system studies supporting the analysis of the need.
 - d. A description of any feasible alternative methods of serving the need.
 - e. A study area that includes the proposed facility site, of sufficient size to enable the commission to evaluate the factors addressed in North Dakota Century Code section 49-22-09.
 - f. A discussion of the utility's policies and commitments to limit the environmental impact of its facilities, including copies of board

resolutions and management directives.

- g. A map identifying the criteria that provides the basis for the specific location of the proposed facility within the study area.
- h. A discussion of the criteria evaluated within the study area, including exclusion areas, avoidance areas, selection criteria, policy criteria, design and construction limitations, and economic considerations.
- i. A discussion of the mitigative measures that the applicant will take to minimize adverse impacts which result from the location, construction, and operation of the proposed facility.
- j. The qualifications of each person involved in the facility site location study.
- k. A map of the study area showing the location of the proposed facility and the criteria evaluated.
- l. An eight and one-half-inch by eleven-inch black and white map suitable for newspaper publication depicting the site area.
- m. A discussion of present and future natural resource development in the area.
- n. Map and GIS requirements. The applicant shall provide information that is complete, current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the commission. The information must provide the location of the proposed facilities, the proposed site, and the criteria evaluated.

Data must be submitted in the ESRI shapefile or geodatabase format. If the applicant cannot submit the data in the ESRI format, an alternate format may be submitted with written approval by commission staff. Data must include appropriate attribute data for the included features. Relevant and complete metadata in compliance with FGDC metadata standards must be provided with all files. Supporting documents such as base maps, figures, cross sections, and reports must be submitted in the portable document file (PDF). If the supporting documents were derived from GID/Cad files, the supporting GIS/Cad files must also be included in the submittal. Aerial photos (raster images) must be georeferenced and submitted in TIFF, GEOTIFF, or MrSID image file formats with the associated word files. Appropriate metadata must be provided with all files, such as the source for the raster images, dates of aerial photography, and the type of the imagery, color bands, i.e., black and white, color, color

infrared, and any other pertinent data. All GIS base map data must be referenced to a published geographic or projected coordinate system. The appropriate systems would be North Dakota coordinate system of 1983, north and/or south zones US survey feet (NAD 83), UTM zone 13N or 14N meters (NAD 83), or geographic coordinate system (WGS 84) meters. The vertical datum must be the North American vertical datum of 1988. Tabular data (i.e., laboratory analytical data, water level evaluation data, monitor well construction data, well and boring X and Y location data, grain size analysis data, hydraulic conductivity data, etc.) must be submitted in either a Microsoft Excel or Microsoft Access database format or both if both are used. Textural data may be submitted in Microsoft Word or PDF format. The application may be submitted to the commission on the following media:

Compact disc (CD-ROM (CD-R)), digital versatile disc (DVD-R or DVD+R), or other media upon commission approval.

3. **Filing.** The applicant shall file an original and ~~ten~~ four copies of an application with the commission. The applicant shall provide additional paper copies upon commission request.
4. **Notice of filing.** The commission shall serve a notice of filing of a complete application on the following:
 - a. The chairman of the board of county commissioners and the auditor of each county in which any part of the site is proposed to be located.
 - b. The chief executive officer of each city in a county in which any part of an energy conversion facility is proposed to be located.
 - c. The chief executive officer of each city within a proposed site for a transmission facility.
 - d. The agencies and officers entitled to notice as designated in section 69-06-01-05.
 - e. The state senators and representatives of each legislative district in which any part of the site is proposed to be located.
5. **Amendment of application.** The commission may allow an applicant to amend its application, consistent with North Dakota Century Code chapter 28-32 and North Dakota Administrative Code article 69-02, at any time during the pendency of an application. A rehearing may be required if the commission determines that a

proposed amendment, which is received after the hearing process has been completed, materially changes the authority sought.

6. **Reapplication.** When a certificate is denied and the commission specifies a modification that would make it acceptable, the applicant may reapply. In a reapplication:
 - a. The reapplication must be heard as specified in section 69-06-01-02.
 - b. The utility shall indicate its acceptance or rejection of the suggested modification.
 - c. If a suggested modification is rejected by the applicant, it shall propose an alternative modification.
 - d. Include a filing fee and any additional fees as specified in North Dakota Century Code chapter 49-22.
 - e. Reapplication must be made within six months of the order denying an application.

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

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08, 49-22-08.1

CHAPTER 69-06-05 TRANSMISSION FACILITY PERMIT

Section	
69-06-05-01	Application
69-06-05-02	Designation of Corridor and Route

69-06-05-01. Application.

1. **Form.** An application must be reproduced and bound to eight and one-half-inch by eleven-inch size. Accompanying maps must be folded to eight and one-half inches by eleven inches with the title block appearing in the lower right-hand corner.
2. **Contents.** The application must contain:
 - a. A description of the following:
 - (1) The type of facility proposed.

- (2) The purpose of the facility.
- (3) The technology to be deployed.
- (4) The type of product to be transmitted.
- (5) The source of the product to be transmitted.
- (6) The final destination of the product to be transmitted.
- (7) The proposed size and design and any alternate size or design that was considered, including:
 - (a) The width of right of way;
 - (b) The approximate length of facility;
 - (c) The estimated span length for electric facilities;
 - (d) The anticipated type of structure for electric facilities;
 - (e) The voltage for electric facilities;
 - (f) The requirement for and general location of any new associated facilities;
 - (g) The estimated distance between surface structures for pipeline facilities;
 - (h) The pipe size for pipeline facilities;
 - (i) The maximum design operating pressure and temperature for pipeline facilities;
 - (j) The maximum design flow rate for pipeline facilities; and
 - (k) The number and general location of compressor or pumping stations.

b. The anticipated time schedule for accomplishing major events, including:

- (1) Obtaining the certification of corridor compatibility;
- (2) Obtaining the route permit;

- (3) Completing right-of-way acquisition;
 - (4) Starting construction;
 - (5) Completing construction;
 - (6) Testing operations; and
 - (7) Commencing operations.
- c. A copy of each evaluative study or assessment of the environmental impact of the proposed facility submitted to the agencies listed in section 69-06-01-05 and each response received.
 - d. An analysis of the need for the proposed facility based on present and projected demand for the product transmitted, including the most recent system studies supporting the analysis of the need.
 - e. A description of any feasible alternative methods for serving the need
 - f. The width of a corridor must be at least ten percent of its length, but not less than one mile [1.61 kilometers] or greater than six miles [9.66 kilometers] unless another appropriate width is determined by the commission.
 - g. A study area that includes a proposed corridor of sufficient width to enable the commission to evaluate the factors addressed in North Dakota Century Code section 49-22-09.
 - h. A discussion of the factors in North Dakota Century Code section 49-22-09 to aid the commission's evaluation of the proposed route.
 - i. A discussion of the applicant's policies and commitments to limit the environmental impact of its facilities, including copies of board resolutions and management directives.
 - j. Identification and map of the criteria that led to the proposed route location within the designated corridor, including exclusion areas, avoidance areas, selection criteria, policy criteria, design construction limitations, and economic considerations.
 - k. A discussion of the relative value of each criteria and how the applicant selected the proposed corridor location, giving consideration to all criteria and how the location, construction, and operation of the facility will affect each criteria.

- l. A discussion of the general mitigative measures that the applicant will take to minimize adverse impacts that result from a route location in the proposed corridor and the construction and operation of the facility.
- m. The qualifications of each person involved in the corridor location study.
- n. A map identifying the criteria that led to the proposed route location within the designated corridor and the location of any new associated facilities. Several different criteria may be shown on each map depending on the map scale and the density and nature of the criteria.
- o. An eight and one-half-inch by eleven-inch black and white map suitable for newspaper publication depicting the site area.
- p. A discussion of present and future natural resource development in the area.
- q. Map and GIS requirements. The applicant shall provide information that is complete, current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the commission. The information must provide the location of the proposed facilities, the proposed corridor and route, and the criteria evaluated. Data must be submitted in the ESRI shapefile or geodatabase format. If the applicant cannot submit the data in the ESRI format, an alternate format may be submitted with written approval by commission staff. Data must include appropriate attribute data for the included features. Relevant and complete metadata in compliance with FGDC metadata standards must be provided with all files. Supporting documents such as base maps, figures, cross sections, and reports must be submitted in the portable document file (PDF). If the supporting documents were derived from GIS/Cad files the supporting GIS/Cad files must also be included in the submittal. Aerial photos (raster images) must be georeferenced and submitted in TIFF, GEOTIFF, or MrSID image file formats with the associated word files. Appropriate metadata must be provided with all files, such as the source for the raster images, dates of aerial photography, and the type of imagery, color bands, i.e., black and white, color, color infrared, and any other pertinent data. All GIS base map data must be referenced to a published geographic or projected coordinate system. The appropriate systems would be North Dakota coordinate system of 1983, north and/or south zones US survey feet (NAD 83). UTM zone 13N or 14N meters (NAD 83), or geographic

coordinate system (WGS 84) meters. The vertical datum must be the North American vertical datum of 1988. Tabular data (i.e., laboratory analytical data, water level evaluation data, monitor well construction data, well and boring X and Y location data, grain size analysis data, hydraulic conductivity data, etc.) must be submitted in either a Microsoft Excel or Microsoft Access database format or both if both are used. Textural data may be submitted in Microsoft Word or PDF format. The application may be submitted to the commission on the following media:

Compact disc (CD-ROM (CD-R)), digital versatile disc (DVD-R or DVD+R), or other media upon commission approval.

3. **Filing.** The applicant shall file an original and ~~ten~~ four copies of an application with the commission. The applicant shall provide additional paper copies upon commission request.
4. **Service.** The applicant shall serve one copy of a complete application on the county auditor in each county in which any part of the designated corridor is located.
5. **Notice of filing.** The commission shall serve a notice of the filing of a complete application on the following:
 - a. The chief executive officer of each city within the designated corridor.
 - b. The agencies and officers entitled to notice as designated in section 69-06-01-05.
 - c. The chairman of the board of county commissioners of each county in which any part of the designated corridor is located.
 - d. The state senators and representatives of each legislative district in which any part of the designated corridor is located.

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

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08.1

69-06-05-02. Designation of corridor and route.

1. **Issuance of a permit.** An order approving the issuance of a permit must:
 - a. Describe the authority granted.
 - b. Contain any special conditions that the commission may require.

- c. Specify any required modifications in the type, design, routing, right-of-way preparation, or construction of the facility.
 - d. Contain findings that the application, with modifications, if any, meets the corridor evaluation process requirements of the Act, and any special conditions the commission may require.
2. **Issuance of a certificate.** When a corridor is approved, the commission shall issue a certificate in accordance with the order.
 3. **Deviations.** The commission may permit a deviation from the designated route before or during construction if the deviation does not violate any of the exclusion and avoidance area criteria of this article. After construction is complete a deviation is governed by North Dakota Century Code section 49-22-03.
 4. **Variance from permit conditions.** The commission may allow a variance from any special condition upon a request demonstrating the existence of good cause.
 5. ~~**Corridor width.** The width of a corridor must be at least ten percent of its length, but not less than one mile [1.61 kilometers] or greater than six miles [9.66 kilometers] unless otherwise determined by the commission.~~

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

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08.1

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 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. 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 one thousand two hundred feet of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.
- g. Areas within thirty feet [9.14 meters] on either side of a direct line between an intercontinental ballistic missile (ICBM) launch facility and a missile alert or launch control facilities to avoid microwave interference. This restriction only applies to aboveground structures, not to surface features, such as roads, or belowground infrastructure.

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 within:
 - (1) One and one-tenth times the height of the turbine from the nearest edge of an 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 the nearest edge of railroad right of way;

- (4) One and one-tenth times the height of the turbine from the nearest edge of a one hundred fifteen kilovolt or higher transmission line right of way; 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 forty-five 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.
- e. The impact upon military installations, assets, and operations.

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; July 1, 2018; July 1, 2019; July 1, 2020; _____.

General Authority: NDCC 28-32-02, 49-22-18

Law Implemented: NDCC 49-22-05.1, 49-22.1-03

69-06-08-02. Transmission facility corridor and route criteria.

The following criteria 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 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 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 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 one thousand two hundred feet of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.
 - g. Areas within thirty feet on either side of a direct line between an intercontinental ballistic missile (ICBM) launch facility and a missile alert or launch control facilities to avoid microwave interference. This restriction only applies to aboveground structures, not to surface features, such as roads, or belowground infrastructure.
2. **Avoidance areas.** The following geographical areas 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 will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area will 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. This avoidance area may be waived by the owner.
 - 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 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) 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; April 1, 2013; July 1, 2020; _____.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1