

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No. PU-20-422

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

October 22, 2020

The Commission is proposing amendments to Article 69-06 of the North Dakota Administrative Code, Energy Conversion Facility Siting Criteria. The purpose of the proposed amendments are to address an omission in the definition of siting rules, correct agency names and add additional agencies to notify, change siting fee refunds, change filing requirements, specify required map and GIS requirements, eliminate corridor width requirements, addition of avoidance area around intercontinental ballistic missile facilities and launch control facilities, add a waiver for water transmission facilities near residences, schools, or places of business.

The proposed rule is not the 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:

1. 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 or commission 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 or

commission 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). The proposed rule changing the avoidance area around intercontinental ballistic missile launch and control facilities from may potentially have costs associated with them. It is hard to determine if they would be over \$50,000.00 so an analysis follows.

- a. The class that would be affected is those in wind development.

The class to benefit from this is the 20th Air Force wing. The benefit they receive is increased operational safety in their security response to any threats at a missile site or launch control facility.

- b. The proposed rule would restrict the placement of towers but since this would be done in the planning state additional costs would be minimal if any.
- c. There are no perceived costs to the agency or commission of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.
- d. In the alternative placing this into an exclusion area was discussed and considered. Since this is a more restrictive and restricted development even further it was determined that an avoidance area would reduce negative impacts and any potential additional costs.

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.

The proposed amendments are not anticipated to limit the use of private property. Wind development is already affected by avoidance and exclusion areas this would not affect or limit the use of private real property any more than other avoidance and exclusion areas. Real property values would not be diminished by this proposed rule change.

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 Economic Impact Statement

The adoptions of these rules will not have an adverse impact on small entities. None of the rule changes would negatively impact them in a way that would require the commission to establish less stringent requirements, consolidation or simplification of reporting, establishing separate performance standards or exemptions from the proposed rule.