

**STATE OF NORTH DAKOTA**

**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Surface Coal Mining and Reclamation Operations  
Rulemaking**

**Case No. RC-21-329**

**ORDER SUBMITTING RULES TO ATTORNEY GENERAL**

**February 2, 2022**

**Appearances**

Commissioners Julie Fedorchak, Brian Kroshus and Randy Christmann.

**Preliminary Statement**

On November 10, 2021, Commission Staff (Staff) filed proposed rules and statements regarding the required regulatory analysis, small entity analysis, and takings assessments in preparation for the captioned case.

On November 17, 2021, 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 amend Section 69-05.2-01-02 and to amend Section 69-05.2-12-04 of the North Dakota Administrative Code.

On November 18, 2021, 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. Also on November 18, 2021, Staff sent emails enclosing the proposed Rules and Notice to legislative bill sponsors and industry.

The Abbreviated Notice was published in each of the 51 official county newspapers in the state during the weeks of November 26 through December 9, 2021.

On January 4, 2022, the Commission held the public hearing as noticed, beginning at 1:30 p.m. in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The Commission allowed a comment period until January 17, 2022, 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:

**Proposed Amendment to Section 69-05.2-01-02 Definitions**

The purpose of this amendment is to add a perfected lien or security interest in real property to the definition of collateral bond.

**Proposed Amendment to Section 69-05.2-12-04 Performance bond - Collateral bond**

The purpose of this amendment is to provide conditions for acceptance of real property pledged as a collateral bond.

The proposed amendments are 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.

Zanna Brinkman, director of the Reclamation and AML Divisions, testified on behalf of Staff to the effect of these changes. Ms. Brinkman submitted that the proposed rule changes add real property to the definition of a collateral bond and add conditions that must be met for the Commission to accept real property as a collateral bond.

No other comments were received during the hearing or during the comment period.

**Discussion**

Having reviewed the proposed rules, and considered the testimony, the Commission finds good cause for submitting the proposed rules in Case No. RC-21-329, attached to and made a part of this order, to the Attorney General for an opinion as to legality. Upon receipt of an opinion approving the administrative rules as to their legality, the rules must be approved by the Federal Office of Surface and Mining prior to submission to the administrative rules committee.

**ORDER**

The Commission orders that the proposed rules in Case No. RC-21-329, 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.

**PUBLIC SERVICE COMMISSION**

  
\_\_\_\_\_  
Randy Christmann  
Commissioner

  
\_\_\_\_\_  
Julie Fedorchak  
Chair

\_\_\_\_\_  
Vacant

**69-05.2-01-02. Definitions.**

The definitions in North Dakota Century Code section 38-14.1-02 apply to this article and the following terms have the specified meaning except where otherwise indicated:

13. "Collateral bond" means an indemnity agreement in a sum certain payable to the state of North Dakota executed by the permittee and which is supported by the deposit with the commission of cash, negotiable bonds of the United States or of North Dakota, or negotiable certificates of deposit of any bank authorized to do business in North Dakota, or an irrevocable standby letter of credit issued by a federally insured or equivalently protected bank authorized to do business in the United States, payable only to the commission upon presentation, or a perfected lien or security interest in real property.

**History:** Effective August 1, 1980; amended effective June 1, 1983; April 1, 1985; June 1, 1986; January 1, 1987; May 1, 1990; May 1, 1992; June 1, 1997; May 1, 1999; March 1, 2004, 2022.

**General Authority:** NDCC 38-14.1-03, 38-14.1-38

**Law Implemented:** NDCC 38-14.1-02, 38-14.1-03, 38-14.1-21, 38-14.1-38

**69-05.2-12-04. Performance bond - Collateral bond.**

3. Real property pledged as collateral bond shall meet the following conditions:
  - a. The applicant shall grant the commission a first mortgage, first deed of trust or perfected first-lien security interest in real property with the right to sell or otherwise dispose of the property in the event of forfeiture under section 69-05.2-12-16.
  - b. For the commission to evaluate the adequacy of the real property offered to satisfy the collateral requirements, the applicant shall submit a schedule of the real property to be mortgaged or pledged to secure the obligations under the indemnity agreement. The list must include:
    - (1) A description of the property;
    - (2) The fair market value of the property, as determined by an independent appraisal conducted by a certified appraiser; and
    - (3) Proof of possession and title to the real property.
  - c. The real property pledged as collateral may include land which is part of a permit area; however, land pledged as collateral for a bond under this section shall not be disturbed under any permit while it is serving as security under this section.
34. For a collateral bond the guarantor shall execute an indemnity agreement according to subsections 9 and 10 of section 69-05.2-12-01.
45. Persons with an interest in collateral posted as a bond, who desire notice of actions relating to the bond, shall request the notice in writing to the commission when collateral is offered.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1990; March 1, 2004; October 1, 2014, \_\_\_\_\_ 2022.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-16