

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No. PU-21-360

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

August 18, 2021

The Commission is proposing amendment to Article 69-09-02 of the North Dakota Administrative Code, Public Utility Division, Standards of Service - Electric. The purpose of the proposed rule amendment is to address reporting requirements and criteria for a public utility's reliable service obligation pursuant to the passage of Senate Bill 2313 of the Sixty-seventh Legislative Assembly.

The proposed rule is 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 adding the requirements of reliable service obligation may potentially have costs associated with them. The costs should not be over \$50,000 as most of the data required to be reported is already collected by the Public Utilities.

- a. The class that would be affected is Public Utilities.

The class to benefit from this is the general public.

- b. The proposed rule would require data to be submitted in an annual report from data already collected by the public utility.
- 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. No alternatives were considered or rejected.

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.

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.

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.

Since the proposed rules do not impact Small Entities no regulatory analysis is required to address reducing impacts, less stringent reporting requirements, less stringent schedules or deadlines, consolidation or simplification or reporting requirements, establishment of performance standards for small entities, or exemption for small entities from the requirements of the proposed rule.