

TESTIMONY

Presented by: Brian Johnson
Special Assistant Attorney General
Public Service Commission

Before: Administrative Rules Committee
Honorable Nicole Poolman, Chairman

RE: N.D. Admin. Code Article 69-09
Standards of Service - Electric
PSC Case No. PU-21-360

N.D. Admin Code New Chapter 69-09-11
Common Pipeline Carriers
PSC Case No. PU-20-398

N.D. Admin Code Article 69-06
Energy Conversion Facility Siting Criteria
PSC Case No. PU-20-422

Date: December 6, 2021

Chair Poolman and committee members, my name is Brian Johnson. I am a Special Assistant Attorney General for the North Dakota Public Service Commission. The Commission asked me to testify today concerning rules recently promulgated by the Public Service Commission.

Our responses to the questions are presented below with the question restated prior to our response. The Commission's order submitting rules to the Attorney General (Order) and the required analysis are provided and are referenced in response to these questions.

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.

The rules on Standard of electric service did result from changes made by the legislative assembly. The common pipeline carries section and energy facility siting criteria were not the result of statutory changes.

2. Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.

N.D. Admin. Code Art. 69-09-02-06. Standards of Service – Electric – No.

N.D. Admin Code Art 69-09-11 Common Pipeline Carriers – No.

N.D. Admin Code Art. 69-06 Energy Conversion Facility siting criteria - No

3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.

The rulemaking procedure used, public notice given, and the extent of the public hearings are described in the attached Orders. The rules were found to be in substantial compliance with N.D.C.C. ch. 28-32 and approved as to their legality by the Attorney General on October 29, 2021.

4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.

All written and oral comments, commission consideration, and changes made are discussed in the attached order.

5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.

The total cost for publishing notices was \$7,702.04. Other than staff time, no other significant costs were incurred.

6. An explanation of the subject matter of the rules and the reasons for adopting those rules.

Section 69-09-02-06 – 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.

Section 69-09-11 Common Pipeline Carriers

The purpose of the proposed new chapter clarifies the manner in which common pipeline carriers maintain and file their tariffs pursuant to N.D.C.C. §49-19-17.

Section 69-06 Energy Conversion Facility Siting Criteria

The purpose of the proposed amendments is to minimize impacts on Intercontinental ballistic missile facilities, launch control facilities, and strategic defense operations. The amendments also update noticed agencies, filing requirements, administration of siting fees, corridor width requirements, and clarify an owner may waive areas within 500 feet of a residence, school, or place of business as an avoidance area.

Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.

The rule amendments are not expected to impact the regulated community by an amount in excess of fifty thousand dollars. A regulatory analysis was not required but was completed. The regulatory analysis has been attached.

7. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide copies.

None of the proposed rules before you today are expected to impact small entities.

8. Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency. If so, please provide copies of a fiscal note.

There are no fiscal impacts anticipated from the rule amendments.

9. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. Please provide a copy if one was prepared.

None of the proposed rule amendments are expected to have an impact on private real property.

10. If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules. If these rules were adopted as emergency (interim final) rules, what steps were taken to make the rules known to persons who can reasonably be expected to have a substantial interest in the rules?

These rules were not adopted as emergency rules under N.D.C.C. § 28-32-03.

Chair Poolman, this completes my testimony. I would be happy to respond to any questions the committee might have.

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.

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**Public Service Commission
Standards of Service - Electric
Rulemaking**

Case No. PU-21-360

ORDER SUBMITTING RULES TO ATTORNEY GENERAL

October 21, 2021

Appearances

Commissioners Julie Fedorchak, Brian Kroshus, and Randy Christmann.

Preliminary Statement

On August 18, 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 create a proposed amendment to Article 69-09-02 of the North Dakota Administrative Code.

On August 18, 2021, Commission Staff (Staff) filed statements regarding the required regulatory analysis, small entity analysis, and takings assessments for the captioned cases.

Also on August 18, 2021, the Commission forwarded the notices to the North Dakota Newspaper Association for publication at least 20 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 August 25 through August 31, 2021.

On September 22, 2021, 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 October 4, 2021, 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-21-360 - proposed amendment to Article 69-09-02 – Standards of Service- Electric

The purpose of the proposed amended article 69-09-02 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 chapter is 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-21-360 - proposed amendment to Article 69-09-02 – Standards of Service- Electric

The Commission proposed changes to N.D. Admin. Code Ch. 69-09-02-06, amending the section. The amended section adopts reliability measurements established by the Institute of Electrical and Electronics Engineers, Inc.

Victor Schock, a Public Utility Analyst with the Public Utilities Division, testified on behalf of Staff to the effect of this amendment.

Sheila Harris and Patrick Kuretich from Xcel Energy, Travis Jacobson and Rebecca Naasland from MDU, Matt Olson from Otter Tail, and Carlee McLeod President of Utility Shareholders of North Dakota provided oral comment at the hearing.

Xcel Energy, MDU, Otter Tail and Utility Shareholders also provided written comments that incorporated their oral comments and provided what metrics are currently reported and which metrics the proposed rules would be difficult and costly to provide at this time.

Xcel Energy recommends the following for reporting reliability Metric and Statistics based on their current data collection:

- System Average Interruption Duration Index (SAIDI)
- System Average Interruption Frequency Index (SAIFI)
- Customer Average Interruption Duration Index (CAIDI)

- Average Service Availability Index (ASAI)
- Top Ten Outage Causes
- Customers Experiencing Multiple Interruptions (CEMI) at 4, 5, and 6+ outage thresholds
- Underground Cable Failures
- Top 10 Worst Performing Feeder List (69 feeders total in North Dakota)
- Major Event Days (MEDs) and Details

Xcel does not recommend the following reliability metrics for reporting based on their current data collection:

- Customer Total Average Interruption Duration Index (CTAIDI)
- Customer Average interruption frequency index (CAIFI)
- Average system interruption frequency index (ASIFI)
- Average system interruption duration index (ASIDI)
- Momentary average interruption frequency index (MAIFI)
- Customers experiencing multiple sustained interruption and momentary interruption events (CEMSMI)

MDU first comments on the proposed penalty section and recommends the following:

- (1) the Commission further define the amount of the penalty and the parameters or circumstances of when a penalty may be assessed
- (2) the Commission establish a reliability record on which to base any penalties prior to the first assessment of such penalties; and
- (3) the Commission establish timelines for the implementation of any changes under Section 69-09-02-06.

MDU states that they currently report SAIFI, SAIDI, and CAIDI is also available to be reported if required. MASIFI is another index that MDU believes they could calculate with modest cost and effort. Any other indices that would be required would likely cause MDU to implement a computerized system with hardware and software costs of \$4 million dollars and an annual cost of \$100,000.00 for annual maintenance. The implementation would require an additional 10 full time employees at a cost of \$1.5 million annually. MDU further states that significant additional cost and effort would be required to determine an individual community-based IEEE defined Major Event Day (MED) manually, and manually produce additional indices for each individual community. This process would likely necessitate hiring additional full-time employees.

Otter Tail Power states they currently track and report or could report in North Dakota:

- system average interruption frequency index (SAIFI)
- system average interruption duration index (SAIDI)
- customer average interruption duration index (CAIDI)
- customer total average interruption duration index (CTAIDI)
- customer average interruption frequency index (CAIFI)
- momentary average interruption frequency index (MAIFI)
- average service availability index (ASAI)
- customers experiencing multiple interruptions (CEMI-5, which would report
- percentage of customers experiencing 5 or more sustained interruptions)
- customers experiencing long interruption durations (CELID-s60, which would report the percentage of customers experiencing interruption >60 minutes)
- customers experiencing multiple sustained and momentary interruptions (CEMSMI-5, reports customers experiencing 5 or more sustained or momentary interruptions)
- Otter Tail also assesses Major Event Days to exclude such events from reliability metrics utilizing the IEEE 2.5 Beta Methodology.

Otter Tail Power states the following metrics are currently beyond the company's current reporting abilities:

- customers experiencing multiple interruptions CEMI at levels other than 5 would have to be calculated manually.
- customers experiencing multiple sustained interruption and momentary interruption events (CEMSMI) at levels other than 5 would have to be calculated manually.
- average system interruption frequency index (ASIFI), is not possible based our company's available data collection systems.
- average system interruption duration index (ASIDI), is not possible based our company's available data collection systems.

The above items would require additional labor for manual calculations, the Company estimates 20 hours by an engineer for each additional metric.

Otter Tail Power discussed their new advanced metering infrastructure and its ability to enhance granularity in reliability reports as power-off information will come directly from the meter.

Xcel, MDU, and Otter tail all expressed a reporting date of May 1 would be beneficial to either eliminate extra reporting or to give extra time to compile any additional data they may need to compile above what is already collected and reported.

Utility Shareholders expressed concern with the clarity of the penalty provision as it does not proscribe the method in which a penalty might be assessed and asks that it be amended to clarify major event days fall outside of the outage events which could prompt a penalty, disallowance, or requirement.

Amendments to the rules were made based on the comments. The filing date was changed to May 1 as all utilities requested that be changed, and it does not have any major impacts or effects to have the reporting date as May 1.

Required reporting indices were changed based on the comments provided and what could be reported by all the utilities. Remaining reported indices are SAIFI, SAIDI, and CAIDI. These were consistent with all utilities in their ability to report them as the information is currently collected and can be reported without excess time and costs. Indices which were removed were done so because of the utilities comments and inability to report them or the time and money that it would cost to collect and report the data.

The penalty provision was not amended based on the comments of MDU and Utility Shareholders. To eliminate MED days would be inconsistent with what the rules are trying to accomplish and limit the commission as to what it can consider when assessing disallowances, fines, or penalties. The clarity of the penalty provision is clear in what will be considered when requiring action, assessing disallowances, fines, or penalties.

The Commission adopts N.D. Admin. Code § 69-09-02-06 as amended.

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-21-360 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-21-360, 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



Brian Kroshus
Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Standards of Service - Electric
Rulemaking**

Case No. PU-21-360

69-09-02-06. Continuity of Service.

1. An electric public utility is responsible for ensuring reliable service.
- 1.2. Each utility shall make every reasonable effort to prevent interruptions of service, and when such interruptions occur shall endeavor to reestablish service within the shortest possible time. Whenever the service is necessarily interrupted or curtailed for the purpose of working on equipment, it shall be done at a time which, if at all practicable, will cause the least inconvenience to customers, except in cases of emergency.
- 2.3. Each utility shall keep a record of all interruptions to service affecting the entire distribution system of any single community or an important division of a community, and include in the record the date and time of interruption, the date and time service was restored, and, if known, the cause of each interruption. Service interruption records shall be kept for a period of six years
4. If an electric public utility fails to meet its obligation to provide reliable service to customers, the commission may require action, assess disallowances or fines, or provide a penalty. A penalty, disallowance or fine, or action will take into consideration the nature, circumstances, and gravity of the violation, degree of culpability, history of prior service interruptions, and good faith attempts to ensure reliability.
5. By May 1 each year, each electric public utility shall file with the Commission the records required by this section. The commission may at any time, upon notice to the electric public utility, require a filing of the records required by this section for a specified time period or specific interruption.
6. Each electric public utility shall include in its annual May 1 filing, reliability statistics for the previous calendar year including Institute of Electrical and Electronics Engineers Standard 1366 indices system average interruption frequency index (SAIFI), system average interruption duration index (SAIDI), Customer average interruption duration index (CAIDI), Each utility shall include with this filing the datapoints used to calculate each of the above indices and a detailed breakdown of

each major event day (MED). These statistics will be compiled by each electric public utility for its North Dakota distribution system.