

Hamre, John G.

From: Hamre, John G.
Sent: Tuesday, April 19, 2022 9:32 AM
To: Pollert, Chet A.; Wardner, Rich P.
Cc: Schuh, John M.; Schock, Victor F.
Subject: Proposed Rules from the North Dakota PSC
Attachments: Enrolled Senate Bill 2313.pdf; Attachment - Full Notice.pdf; Attachment - Rules as originally proposed.pdf

Senator Wardner and Representative Pollert,

Attached is the Notice and proposed Rules recently introduced by the Public Service Commission during our 13 April Commission meeting.

The purpose of proposed Rules are to produce a new Chapter to guide the process of resource planning and annual cybersecurity report for investor-owned utilities in the state. This proposed rulemaking provides further clarification for the implementation of SB 2313 enacted during the most recent legislative session.

Best regards,
John

John G. Hamre
North Dakota Public Service Commission
600 E. Blvd. Ave.
Dept. 408
Bismarck, ND 58505-0480
701-224-8091
jghamre@nd.gov

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

SENATE BILL NO. 2313
(Senator Wardner)
(Representative Pollert)

AN ACT to create and enact three new sections to chapter 49-05 of the North Dakota Century Code, relating to resource planning, planning reserve margin, and reliable service obligation; to amend and reenact sections 17-05-05 and 17-05-13 of the North Dakota Century Code, relating to the powers of the transmission authority and the transmission authority's reporting requirements; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 17-05-05 of the North Dakota Century Code is amended and reenacted as follows:

17-05-05. Powers.

The authority has all powers necessary to carry out the purposes of this chapter, including the power to:

1. Make grants or loans and to provide other forms of financial assistance as necessary or appropriate for the purposes of this chapter;
2. Make and execute contracts and all other instruments necessary or convenient for the performance of its powers and functions under this chapter;
3. Borrow money and issue evidences of indebtedness as provided in this chapter;
4. Receive and accept aid, grants, or contributions of money or other things of value from any source, including aid, grants, or contributions from any department, agency, or instrumentality of the United States, subject to the conditions upon which the aid, grants, or contributions are made and consistent with the provisions of this chapter;
5. Issue and sell evidences of indebtedness in an amount or amounts as the authority may determine, but not to exceed eight hundred million dollars, plus costs of issuance, credit enhancement, and any reserve funds required by agreements with or for the benefit of holders of the evidences of indebtedness for the purposes for which the authority is created under this chapter, provided that the amount of any refinancing shall not be counted toward such eight hundred million dollar limitation to the extent it does not exceed the outstanding amount of the obligations being refinanced;
6. Refund and refinance its evidences of indebtedness;
7. Make and execute interest rate exchange contracts;
8. Enter lease-sale contracts;
9. Pledge any and all revenues derived by the authority under this chapter or from a transmission facility, service, or activity funded under this chapter to secure payment or redemption of the evidences of indebtedness;
10. To the extent and for the period of time necessary for the accomplishment of the purposes for which the authority was created, plan, finance, develop, acquire, own in whole or in part, lease, rent, and dispose of transmission facilities;

11. Enter contracts to construct, maintain, and operate transmission facilities;
12. Consult with the public service commission, regional organizations, and any other relevant state or federal authority or persons as necessary and establish reasonable fees, rates, tariffs, or other charges for transmission facilities and all services rendered by the authority;
13. Lease, rent, and dispose of transmission facilities owned pursuant to this chapter;
14. Investigate, plan, prioritize, and propose corridors of the transmission of electricity;
15. Participate in and join regional transmission organizations; and
16. Participate in studies of transmission options for the purpose of identifying opportunities for private transmission investment or private public investment options in transmission which will increase opportunity for export from the state consistent with maintaining a stable grid for the load serving entities in North Dakota; and
17. Do any and all things necessary or expedient for the purposes of the authority provided in this chapter.

SECTION 2. AMENDMENT. Section 17-05-13 of the North Dakota Century Code is amended and reenacted as follows:

17-05-13. Reporting requirements.

1. The authority shall deliver a written report on its activities to the legislative council each biennium. Notwithstanding chapter 54-60.1, the authority shall provide an annual report to the industrial commission detailing activities and expenditures incurred during the preceding year.
2. The authority shall deliver a written report on the status of the resilience of the electric grid to the legislative council and the industrial commission by September 1, 2022, and annually thereafter. The report must be forwarded by the industrial commission to the regional transmission operators in the state.
 - a. The information for the report should be collected from publicly available information to the extent possible. If public information is unavailable, the authority shall request a generation facility and a transmission owner to provide the information needed to complete the report.
 - b. The report may be a short-term and long-term projection of the following:
 - (1) The adequacy of the state's electric grid to meet the demands of load within the state and to continue to export electricity from the state;
 - (2) The resilience of the state's electric grid, including local resilience; and
 - (3) The plans of generation owners, developers, or operators to add or remove generation assets connected to an independent system or regional transmission operator in excess of an aggregate of twenty-five megawatts.

SECTION 3. A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

Resource planning.

1. An integrated resource plan must include:
 - a. The electric public utility's forecast of demand for electric generation supply over the planning period with recommended plans for meeting the forecasted demand plus an

additional planning reserve margin for ensuring adequate and sufficient reliability of service; and

- b. Any additional information the commission requests related to how an electric public utility intends to provide sufficient electric generation service for use by retail customers within the state over the planning period.
2. An electric public utility shall include a least cost plan for providing adequate and reliable service to retail customers which is consistent with the provisions of this title and the rules and orders adopted and issued by the commission.
3. The commission may consider the qualitative benefits and provide value to a base-load generation and load-following generation resource and its proximity to load.
4. The commission may contract or consult with an expert to evaluate qualitative benefits of resources and to review reliability planning. The commission may require an electric public utility to pay a fee necessary for completion of an evaluation in an amount not to exceed two hundred fifty thousand dollars.
 - a. If additional funds are necessary for completion of the evaluation, upon approval of the emergency commission, the electric public utility shall pay the additional fees reasonably necessary for the completion.
 - b. If the evaluation applies to more than one electric public utility, the commission may assess each electric public utility the proportionate share of the fee.
5. An electric public utility shall report annually to the commission on cybersecurity preparedness, including an assessment of emerging threats and efforts taken by the electric public utility to implement cybersecurity measures. The commission may limit access to records and portions of a meeting relating to cybersecurity preparedness.

SECTION 4. A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

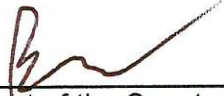
Planning reserve margin - Penalty.

The commission may require action, assess a disallowance or fine, or provide a penalty in accordance with chapter 49-07 if an electric public utility fails to meet the minimum capacity requirement and reserve margin. Unless otherwise set by the commission, the minimum capacity requirement and planning reserve margin is as set by the regional transmission organization to which the electric public utility belongs.

SECTION 5. A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

Reliable service obligation.

An electric public utility is responsible for ensuring reliable service. If an electric public utility fails to meet its obligation to provide reliable service to customers within the state, the commission may require action, assess disallowances or fines, or provide a penalty. The commission shall adopt rules and establish guidelines for assessment of penalties, fines, or disallowances which must take into consideration the nature, circumstances, and gravity of the violation, degree of culpability, history of prior outages, and good-faith attempts to ensure reliability.



President of the Senate



Speaker of the House



Secretary of the Senate



Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2313.

Senate Vote: Yeas 43 Nays 4 Absent 0

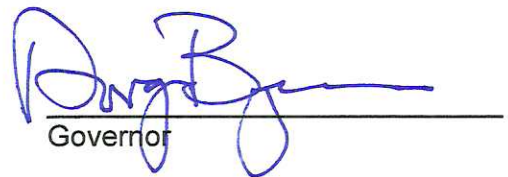
House Vote: Yeas 90 Nays 0 Absent 4



Secretary of the Senate

Received by the Governor at 1:45 PM. on April 16, 2021.

Approved at 8:26 PM. on April 19, 2021.



Governor

Filed in this office this 20th day of April, 2021,

at 9:44 o'clock A. M.



Secretary of State

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Resource Plans and Cyber Security
Rulemaking

Case No. PU-22-163

**NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES AND
NOTICE OF PUBLIC HEARING**

April 13, 2022

PLEASE TAKE NOTICE that the Public Service Commission will hold a public hearing to address a proposed new Chapter to North Dakota Administrative Code 69-09-12 regarding Resource Plans and Cybersecurity.

A public hearing will be held on the proposed rules at **9:00 a.m. Central Time on 26 May 2022, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota**. Written comments may be submitted to the Public Service Commission until the close of business on **6 June 2022**.

The proposed adoption and revisions to the North Dakota Administrative Code are as follows:

Case No. PU-22-163 – New Chapter 69-09-12 – Resource Plans and Cybersecurity

The purpose of this new Chapter is to guide the process of resource planning and annual cybersecurity report for investor-owned utilities in the state. The proposed rulemaking provides further clarification for the implementation of SB 2313 enacted during the most recent legislative session.

The proposed change is expected to have an impact on the regulated community in excess of \$50,000.

The proposed rule may be reviewed at the Public Service Commission's offices on the 12th floor of the State Capitol, 600 East Boulevard Ave, Dept. 408, Bismarck, North Dakota. A copy of the proposed rule and/or a regulatory analysis may be requested by writing the above address, emailing ndpsc@nd.gov, or calling 701-328-2400, toll free 1-877-245-6685, Relay North Dakota TTY 1-800-366-6888. This information is also available on the Commission's web site at www.psc.nd.gov under "Formal Actions/Case Search".

Interested persons may attend and submit comments at the hearing. Oral or written comments on the proposed rules may be submitted to the above address, email and phone numbers. Oral and written comments received by the close of business on **6 June 2022** will be fully considered.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please notify the Public Service Commission at the above telephone number or address at least 24 hours prior to the public hearing.

PUBLIC SERVICE COMMISSION

		
<u>Randy Christmann</u> Commissioner	<u>Julie Fedorchak</u> Chairman	<u>Sheri Haugen-Hoffart</u> Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Resource Plans and Cyber Security
Rulemaking

Case No. PU-22-163

Chapter 69-09-12
Resource Plans and Cybersecurity

69-09-12-01. Definitions

1. “Resource Plan” means a set of resource options an electric public utility plans to use to meet the electric capacity and energy requirements of the utility’s customers over a planning horizon, including an explanation of the electric supply and demand circumstances when each resource option would be used to meet the capacity and energy needs in an adequate and reliable manner.
2. “Externality” means numerical costs or quantified values assigned to represent environmental costs that are not internalized in the cost of production, or the market price of electricity from a particular electric resource or the alleged costs of complying with future environmental laws or regulations that have not yet been enacted.
3. “Renewable Integration Cost” means the cost of measures to help meet the incremental needs of the system as more renewable energy is added to the resource mix.
4. “Unserved Energy” means the amount of end-customer demand measured in megawatt-hours that cannot be supplied due to a deficiency of generation either generated or imported by the electric public utility or transmission capacity.

69-09-12-02. Resource Plan Procedure

1. An electric public utility shall file a resource plan on a three-year cycle. The electric public utility may file a supplement to the plan with necessary updates and shall file a supplement upon commission request.
2. The commission may investigate a resource plan. Foregoing an investigation or inaction upon completion of an investigation does not bind the commission in the commission’s review of a resource plan in conjunction with a rate case or bind the commission for the purpose of setting rates.
3. The commission shall issue a notice of opportunity to comment on the resource plan when opening an investigation under subsection 2. The comment period must remain open for a period of sixty days, unless ordered otherwise by the commission.

4. During an investigation, an electric public utility may request a commission determination on any issue related to the resource plan. Approval, rejection, or modification of a resource plan, or a commission determination may be presented as prima facie evidence in other proceedings.
5. The commission shall designate by order the commencement of the cycle wherein a resource plan must be filed. The commission may allow for a variance from a filing requirement or procedure upon request.

69-09-12-03. Resource Plan Attributes

1. A resource plan must identify the resources needed to meet forecasted capacity and energy needs including a reserve requirement, subject to various objectives including reliability, planning, operational, and regulatory requirements. The resource plan must provide a North Dakota Preferred Plan.
2. If an electric public utility's existing resources are inadequate to meet forecasted capacity and energy requirements, the utility shall identify in the resource plan the proposed actions to meet current and future electric capacity and energy needs, including generating facility additions of various types, sizes, fuel types, any known new transmission facilities, life extensions of existing generation facilities, load-modifying equipment, sponsored conservation programs, market purchases, power purchases from other utilities, and contracted capacity.
3. All resources must be evaluated on a consistent and comparable basis, and the resource plan must describe, and select resources representing the least-cost plan for providing adequate, safe, and reliable service to ratepayers consistent with the public interest and North Dakota energy policy.
4. The resource plan must have a planning horizon of at least fifteen years detailing both supply-side and demand-side resources.
5. The resource plan must describe how the electric public utility intends to meet the forecasted capacity and energy needs within the next five years, along with construction and in-service timelines for generation and associated interconnection and network upgrade and new transmission facilities. The resource plan also must describe how the electric public utility intends to meet the forecasted energy and capacity needs for at least a fifteen-year planning horizon.
6. Except as otherwise required by law or by order of the commission, the North Dakota Preferred Plan must not select resources based on a carbon cost, greenhouse gas reduction goals, renewable energy standards, emissions goal, or other externalities.
7. The electric public utility may provide alternative scenarios with sensitivities based on proposed and current federal, state, and utility goals and mandates relating to carbon cost, emissions goal, or other externalities.

8. The electric public utility shall describe how scenarios and sensitivities influenced the selection of the North Dakota Preferred Plan. The scenarios and sensitivities must be evaluated on a consistent and comparable basis, and the utility shall identify and assess the risks of each scenario and sensitivity.

69-09-12-04. Filing Requirements

1. The resource plan must describe the:
 - a. Key data, assumptions, model inputs, information used in producing forecasts and models, and how uncertainties in assumptions were incorporated into the analysis;
 - b. Type, cost, and relevant operating characteristics of demand-side and supply-side resources considered and a description of the type and cost of additional transmission facilities necessitated by the resources;
 - c. Modeling and methodological approach to load forecasting, an assessment of load forecast uncertainty, and the cost and effectiveness of existing and future utility and state-sponsored conservation and load management efforts;
 - d. Projected load for the electric public utility over the planning horizon and the underlying assumptions for the projection. The information must be as geographically specific as possible and describe how the electric public utility will meet the projected load; and
 - e. Criteria used in determining the appropriate level of reliability, including any required reserve or capacity margin seasonal accreditation levels and how the determinations influenced the resource plan.
2. The resource plan must include:
 - a. A robust set of scenarios and sensitivities, including changes to the resource mix, fuel prices, load, resource costs, inflation, operating and maintenance costs, capital costs, transmission interconnection and network upgrade costs, congestion costs, renewable integration costs, and resource accreditation.
 - b. Reliability and resource adequacy assessments using quantitative metrics capturing the size, frequency, duration, and timing during extreme weather events and normal weather conditions for the fifth, tenth, and final year of the planning horizon. The assessment should include the annual expected unserved energy, the annual expected cost of unserved energy, peak seasonal capacity shortfall in megawatts, number of negative capacity shortfalls, average capacity shortfall in megawatts, longest hourly capacity

shortfall, and number of hours requiring the utility to use the maximum available energy imports during a capacity shortfall.

- c. Reliability and resource adequacy assessments using quantitative metrics including expected unserved energy during correlated natural gas-fired generation fuel delivery outages for the fifth, tenth, and final year of the planning horizon.
- d. A description of energy conversion facilities and associated interconnection and network upgrade and new transmission facilities the electric public utility intends to own and operate, or from which the utility intends to purchase energy output during the ensuing planning horizon, and the energy conversion facilities to be removed from service over the planning horizon.
- e. Plans for energy conversion facility retirements, asset extensions, de-rates, market purchases and sales, and how scenarios affect cost, affordability, reliability, and resiliency.
- f. To the extent possible, qualitative benefits and quantitative value of baseload and load-following generation resources and the value of proximity of such resources to load.
- g. The estimated annual and total revenue requirement broken out by new and existing resources by cost category such as generation, transmission, fuel, and energy efficiency.
- h. Any other information as may be requested by the commission.

3. The resource plan must include information on:

- a. Expansion of, improvements to, and more efficient use of existing electric public utility generation, distribution, and transmission facilities;
- b. Opportunities for energy conversion facilities, including economic opportunities to partner with other utilities in constructing and operating new facilities and extending the useful lives of existing facilities;
- c. Opportunities to pursue power purchase agreements with or develop baseload and load-following generation within the state;
- d. Opportunities to pursue power purchase agreements, demand or supply-side resources, or develop generation;
- e. Distributed generation, including generating capacity provided by co-generation, technologies relying on renewable resources, non-utility generation, and other sources;

- f. Recent or expected changes to generation dispatch across all generation technologies;
- g. Opportunities for existing and planned transmission facilities to reduce congestion, transmission line losses, energy costs, and to increase export or import capability;
- h. The accuracy of the peak demand and energy forecasts compared to the previous integrated resource plan forecasts and an explanation for the causes of any deviation from the previous integrated resource plan forecasts;
- i. The risk of fuel supply disruption due to extreme weather or market events; and
- j. How the electric public utility intends to reconcile potential jurisdictional differences in resource selection.

69-09-12-05. Cybersecurity

- 1. An electric public utility shall meet with the Commission annually to report on cybersecurity preparedness.
- 2. The report must provide:
 - a. Information on the policies, procedure, and process used to inform the management of cybersecurity risk;
 - b. Information on any critical technology, constraints related to procurement, supply chain risk, impact of compromise to the supply chain, and controls to manage risk associated with dependency on external entities;
 - c. An assessment of emerging threats and efforts taken by the electric public utility to implement cybersecurity measures;
 - d. A description of the process used to support compliance with applicable standards, laws, regulations, and best practices;
 - e. A description of the policies and protections used to ensure the security of information and operational systems and safeguard against loss of confidential information;
 - f. Information on activities to monitor, detect, and analyze information related to cybersecurity threats;
 - g. Information on the systems used for collaboration and communication of information and intelligence sharing;

