

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Resource Plans and Cyber Security
Rulemaking**

Case No. PU-22-163

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

April 19, 2022

The Commission is proposing a new Chapter to North Dakota Administrative Code, Chapter 69-09-12 regarding Resource Plans and Cybersecurity.

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:

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.

N.D.C.C. § 49-05-17 provides that the Commission may require an electric public utility to pay a fee necessary to complete an evaluation of an integrated resource plan in an amount not to exceed \$250,000. The proposed rules implement the procedure and requirements to conduct an evaluation.

- a. The classes of persons that will be affected are North Dakota investor-owned utilities (IOUs) and the ratepayers that receive their service. The IOUs pay a fee for the commission to conduct the evaluation. The fee is ultimately paid for by the ratepayers. The evaluation of least-cost planning of generation resources is intended to ensure reliable and cost-effective service for the ratepayers.
- b. The probable economic impact of the fee will be negligible on an IOU and on an individual ratepayer basis.
- c. The authority to evaluate integrated resource plans existed within commission authority prior to the enactment of 49-05-17. There is no foreseeable impact on state revenues or costs to the agency from the implementation or enforcement of the proposed rules.
- d. The administrative rules were drafted with engagement from the IOUs. An alternative proposal would have resulted in the commission opening an investigation into every integrated resource plan. The commission opted to propose rules that would allow the commission to open an investigation and assess a fee as needed.

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 rules should have no constitutional takings implications or limit the use of private property.

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:

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.

The proposed rules impact three investor-owned utilities, Montana-Dakota Utilities Company, Otter Tail Power Company, and Northern States Power Company. No small businesses, organizations, or political subdivisions are impacted by the proposed rules.

Small Entity Economic Impact Statement

No adverse economic impact is expected for small entities, consumers or private persons, or state revenues.

Statement of No Fiscal Impact

The rules have no fiscal effect.