

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No. PU-22-163

ORDER SUBMITTING RULES TO ATTORNEY GENERAL

June 29, 2022

Appearances

Commissioners Randy Christmann, Julie Fedorchak, and Sheri Haugen-Hoffart.

Preliminary Statement

On April 13, 2022, 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 new Chapter 69-09-12 of the North Dakota Administrative Code.

On April 18 and April 19, 2022, 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 the proposed Rules were sent to the Legislative Council, the Bill sponsors of SB 2313, and to interested stakeholders.

Also on April 19, 2022, Commission Staff (Staff) filed statements regarding the required regulatory analysis, small entity analysis, and takings assessments for the captioned case.

The Abbreviated Notice was published in each of the 50 official county newspapers in the state from April 18 through April 23, 2022. Minot Daily News failed to publish the administrative rules as described. The notice was published in the Minot Daily News on May 13, 2022.

On May 26, 2022, the Commission held the public hearing as noticed, beginning at 9:00 a.m. in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The Commission extended the allowed comment period through June 16, 2022 to mitigate the possible impact of the failed publication. The Commission received and considered data, views, and 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-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.

Public Hearing and Comments

The Commission reviewed and considered all comments. The written and oral comments that were received are summarized and discussed below.

Adam Renfandt, Public Utilities Analyst, testified and filed written comments on behalf of Staff to the effect of this proposed new Chapter.

John Nagel of BEK Communications and Cybernet Security by BEK testified in support of the proposed rules and provided recommendations regarding North American Electric Reliability Corporation (NERC) Critical Infrastructure Protection (CIP) and Federal Energy Regulatory Commission (FERC) requirements. He testified specifically to the consideration of low, medium, or high impact CIP designation requirements for the existing public utilities. Although Mr. Nagel stated that the proposed rules are a good start, he recommends that NERC CIP auditing requirements for high-impact designations be extended to all reporting utilities in the future. Mr. Nagel also recommended that cooperatives should be subject to the reporting requirements in addition to investor-owned utilities due to the interconnected nature of the grid and transmission.

Darcy Neigum of Montana-Dakota Utilities testified in support of the administrative rules as drafted. Mr. Neigum provided a response to Mr. Nagel's comments that a transmission operator by default the control room is a medium impact facility and if an electric utility has medium impact generator or transmission facilities, then the control room is elevated into the high category. As a result, all the CIP standards for a high-impact designation apply to Montana-Dakota Utilities.

David Sederquist and Farah Mandich of Northern States Power Company (NSP) testified in support of the proposed rules during the public hearing. They provided that the more formal process will lead to better understanding and helpful discourse. On June 16, 2022, NSP provided written comments supporting the resource planning process.

Otter Tail Power Company (Otter Tail) provided written comments prior to the hearing describing its current integrated resource plan and providing support for the rules as drafted. Nathan Jensen of Otter Tail Power Company testified in support of the administrative rules during the public hearing.

Discussion

The comments provided during the pendency of the administrative rulemaking support the current draft of proposed rules. Mr. Nagel's comments provided helpful discussion regarding cybersecurity requirements for public utilities, however, the Commission finds Mr. Nagel's recommendations extend beyond the legislative intent of SB 2313. As a result, the proposed rules are not revised to include cybersecurity reporting for cooperatives and will not require additional auditing beyond the electric public utility's existing NERC CIP designation.

Having reviewed the proposed rules and considered testimony and comments, the Commission finds good cause for submitting the proposed rules in Case No. PU-22-163, 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 in Case No. PU-22-163 attached and made part of this order be submitted to the Attorney General for an opinion as to their legality. Proposed rules and amendments shall be submitted to the administrative rules committee upon receipt of an Attorney General approval.

PUBLIC SERVICE COMMISSION


Randy Christmann
Commissioner


Julie Fedorchak
Chair


Sheri Haugen-Hoffart
Commissioner

STATE OF NORTH DAKOTA
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Public Service Commission
Resource Plans and Cyber Security
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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. “Unserviced 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;

- h. Information on activities used to address a detected cybersecurity incident, contain impacts, limit potential damage, and manage consequences of a cyber incident; and
 - i. Information on any plans to maintain resilience and business continuity, timely recovery to normal operations, and corrective actions after occurrence of an incident.
- 3. The commission shall close the meeting to discuss the cybersecurity report, unless the commission orders otherwise.