



Public Service Commission
State of North Dakota

COMMISSIONERS

Julie Fedorchak
Randy Christmann
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17 August 2022

Jill Grossman
Code Revisor
North Dakota Legislative Council
State Capitol
Bismarck, ND 58505-0360

Via hand delivery

Re: Proposed New Chapter to North Dakota Administrative Code
PSC Case Numbers PU-22-163

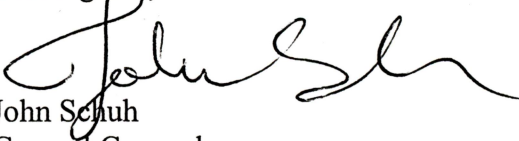
Dear Ms. Grossman:

Enclosed please find the proposed Rules to the North Dakota Administrative Code by the North Dakota Public Service Commission, proposing new Chapter 69-09-12, Resource Plans and Cyber Security. In support of this filing, enclosed please find copies of:

1. The 28 July 2022 Attorney General Opinion stating that Rules are in compliance and approved as to legality *with attached Rules as Amended*;
2. Copies of staff testimony and all other written comments;
3. The Commission's 29 June 2022 *Order Submitting Rules to Attorney General*, which includes a summary of all comments, including oral comments with attached Rules as originally proposed;
4. Statements on Regulatory Analysis, Small Entity Analysis, Small Entity Economic Impact Statement, and Takings Assessment;
5. A Fiscal Note; and
6. The 17 August 2022 Commission Motion to adopt proposed Rules as Amended and forward to Legislative Council.

Thank you for your attention to this matter. If you have any questions, please call 328-2421, or e-mail to jschuh@nd.gov.

Best regards,


John Schuh
General Counsel

attachments

Legislative Council Received
(date) **AUG 17 2022**



STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

www.attorneygeneral.nd.gov
 (701) 328-2210

Drew H. Wrigley
 ATTORNEY GENERAL

OPINION

July 28, 2022

Mr. John Schuh
 Public Service Commission
 600 E. Boulevard Ave. Dept. 408
 Bismarck, ND 58505

Dear Mr. Schuh,

The Office of Attorney General has examined the proposed new N.D.A.C. ch. 69-09-12 concerning resource plans and cybersecurity, along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was issued, 3) a takings assessment was prepared, 4) a small entity regulatory analysis and an economic impact statement were prepared, and 5) the proposed rules are within the agency's statutory authority.

These administrative rules are in substantial compliance¹ with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

Drew H. Wrigley
 Attorney General

amj
 copy Jill Grossman, Legislative Council

¹ The Public Service Commission requested publication of an abbreviated Notice of Intent to Adopt Administrative Rules and Notice of Public Hearing (Notice) in each official county newspaper in a timely manner. However, publication of the hearing notice in The Minot Daily News did not allow 20 days between the date of publication and the hearing. All other hearing notices allowed at least 20 days between the publication date and the hearing date.

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.

History: Effective October 1, 2022

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-05-04.4, 49-05-17

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.

History: Effective October 1, 2022

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-05-04.4, 49-05-17

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.

History: Effective October 1, 2022

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-05-04.4, 49-05-17

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.

History: Effective October 1, 2022

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-05-04.4, 49-05-17

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 may close the meeting to discuss the cybersecurity report, unless the commission orders otherwise.

History: Effective October 1, 2022

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-05-17

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Resource Plans and Cyber Security
Rulemaking

Case No. PU-22-163

STAFF TESTIMONY

May 26, 2022

My name is Adam Renfandt. I am a public utility analyst with the Public Service Commission. The purpose of my testimony is to explain and provide support for a new Chapter to North Dakota Administrative Code 69-09-12 regarding resource plans and cybersecurity. The purpose of this new chapter is to guide the process of resource planning and annual cybersecurity reporting 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 resource planning rules include a requirement that an investor-owned utility must file a resource plan on a three-year cycle that would identify the resources to meet its forecasted capacity and energy needs over a horizon of at least fifteen years. Such a requirement would provide a forward-looking and proactive opportunity for the Commission to assess and influence a utility's plan for power plant additions and retirements and a utility's plan for providing reliable and resilient electric service.

The proposed resource planning rules include a requirement that each utility shall identify a mix of supply- and demand-side resources that would comprise a North Dakota preferred resource plan. Such resources would be selected after weighing

several scenarios against one another and analyzing each one using a variety of sensitivities. The rules require that such a plan would be the least-cost plan for providing adequate, safe, and reliable electric service consistent with North Dakota energy policy. The proposed rules also require each utility to consider several types of generation along with the additional transmission facilities necessitated by such generation. Upon request of a utility, the Commission may approve, reject, or modify the resource plan, and if the Commission were to make such a determination, the decision could be presented as prima facie evidence in other proceedings.

The proposed resource planning rules also require a utility to assess new technologies, the availability of natural gas in meeting electricity demand, the ability to maintain system resilience and reliability, and opportunities to develop North Dakota's energy infrastructure. Furthermore, the rules require the utility to assess the reliability and resilience of its resources during extreme weather events and correlated outages of natural gas units.

The proposed resource planning rules would allow the Commission to determine the benefits and costs a resource plan offers ratepayers over several years, to participate in a utility's resource planning efforts that operate across several state jurisdictions, and to engage each utility in development of investment and retirement plans that are made years in advance.

Also included is a proposed rule requiring each utility to meet with the Commission annually to report on their cybersecurity preparedness. The report would detail information related to processes and procedures used to inform management of cybersecurity risks, activities to monitor, detect and analyze cybersecurity threats,

protections in place to secure informational and operational systems, and plans to limit potential damage while maintaining business continuity. The utility would deliver the report to the Commission in a closed meeting, unless the Commission orders otherwise.

This concludes my testimony. I would be happy to answer any questions at this time. Thank you.

215 South Cascade Street
PO Box 496
Fergus Falls, Minnesota 56538-0496
218 739-8200
www.otpc.com (web site)



May 24, 2022

Steve Kahl
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard, Dept 408
Bismarck, ND 58505-0480

**RE: In the Matter of the Public Service Commission Resource Plans and
Cyber Security Rulemaking
Case No. PU-22-163
Comments**

Dear Mr. Kahl:

Thank you for the opportunity to comment on the rules proposed in Case No. PU-22-163. Commission staff involved us early in the process and we have previously provided written and verbal feedback. We support the rules as drafted and look forward to participating in the new Integrated Resource Planning process.

Our current resource plan was filed September 1, 2021.¹ This will confirm our understanding that the current resource plan will not be subject to the proposed rules. As a multi-jurisdictional utility, our company plans its resources on a system-wide basis serving 130,000 customers across North Dakota, South Dakota, and Minnesota. Our resource planning decisions consider requirements from all jurisdictions and work to put forth one system-wide resource plan which benefits all customers through numerous efficiencies and economies of scale.

By considering a variety of scenarios, our company's goal has always been to focus on least-cost resource planning, but to also consider qualitative risks inherent in any plan under the broadest range of possible futures. Therefore, it may be more accurate to say that we have focused on finding the "least-cost / least-risk" plan.

The proposed rules will require coordination with the Commission and staff to ensure a level of detail and analysis desired by the Commission in order to fulfill these new requirements.

¹ Otter Tail's September 1, 2021, filing *In the Matter of Otter Tail Power Company's Submittal of its 2022-2036 Integrated Resource Plan* in Case No. PU-21-380.

Mr. Kahl
May 24, 2022
Page 2

Please feel free to please contact me at njensen@otpc.com or (218) 739-8989 should you have any questions related to this letter.

Respectfully,



Nathan Jensen *pp kw*
Manager, Resource Planning

kaw
Enclosures
By electronic filing



2302 Great N. Drive
Fargo, North Dakota 58102
(701) 241-8632
dave.sederquist@xcelenergy.com

June 16, 2022

Steven M. Kahl, Executive Director
North Dakota Public Service Commission
State Capitol Building, Dept. 0408
600 East Boulevard
Bismarck, ND 58505-0480

Via U.S. and Electronic Mail

RE: IN THE MATTER OF THE COMMISSION'S RESOURCE PLANS AND
CYBER SECURITY RULEMAKING
CASE NO. PU-22-163

Dear Mr. Kahl:

Thank you for the opportunity to comment on the proposed rules regarding Resource Plans and Cyber Security. We appreciate the willingness of Commission Staff to engage the electric utilities in North Dakota and solicit our feedback during the development of the proposed rules. We support the proposed rules as written and look forward to further engagement with Commission Staff during the resource planning process.

Xcel Energy plans and operates an integrated Upper Midwest system that serves customers in five states. While we believe the integrated system provides benefits to our customers across the states we serve, we have procured certain resources that have not been approved in all jurisdictions. We are hopeful that a North Dakota resource planning process will not only provide this Commission with information about our future plans, but also provide a forum to better identify and address the Commission's concerns in advance of resource acquisition decisions.

Our resource plans provide a critical guide to achieving Company goals, procuring resources, and meeting our customers' needs safely and reliably. We believe the proposed rules will allow direction from the Commission to be better incorporated in our resource decisions.

Please contact me at (612) 330-7974 or via email at christopher.j.shaw@xcelenergy.com if you have any questions regarding this filing.

Sincerely,

/s/

CHRISTOPHER SHAW
MANAGER, REGULATORY POLICY

cc: Jack Schuh
Victor Schock
Adam Renfandt

18 PU-22-163 Filed 06/16/2022 Pages: 1
Revised Comments
Northern States Power Company
Christopher Shaw

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
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

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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.
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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;
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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.
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- 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.

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- 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.

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.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No. PU-22-163

FISCAL NOTE

June 29, 2022

Adoption of the proposed rules in the captioned case is not expected to have a fiscal effect. North Dakota Century Code Section 49-05-17 provides that a fee may be assessed for the purpose of consulting or completion of an evaluation not to exceed two hundred fifty thousand dollars. As a result, no additional costs are anticipated to impact state revenue, expenditures, or agency funds.

APPROVED

DATE: 08/17/2022
FJT

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Resource Plans and Cyber Security
Rulemaking

Case No. PU-22-163

MOTION

August 17, 2022

Having been approved by the Attorney General, I move the Commission adopt the proposed Rules, as revised, to the North Dakota Administrative Code 69-09-12 and forward the proposed Rules as revised to the Legislative Council for publication, in Public Service Commission, Resource Plans and Cyber Security, Rulemaking, Case No. PU-22-163.

New Chapter 69-09-12

Resource Plans and Cybersecurity