

[N.D. Cent. Code, § 49-22.1-01](#)

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North Dakota Century Code Annotated > TITLE 49 Public Utilities (Chs. 49-01 — 49-24) > CHAPTER 49-22.1 Energy Conservation and Transmission Facilities (§§ 49-22.1-01 — 49-22.1-24)

49-22.1-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Certificate" means the certificate of site compatibility or the certificate of corridor compatibility issued under this chapter.
2. "Commission" means the North Dakota public service commission.
3. "Construction" includes a clearing of land, excavation, or other action affecting the environment of the site after April 9, 1975, but does not include activities:
 - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter, or on which a facility was constructed before April 9, 1975, if:
 - (1) The activities are for the construction of the same type of facility as the existing type of facility as identified in subsection 6 or 7 and the activities are:
 - (a) Within the geographic boundaries of a previously issued certificate or permit;
 - (b) For a gas or liquid energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
 - (c) For a gas or liquid transmission facility constructed before April 9, 1975, within a width of three hundred fifty feet [106.68 meters] on either side of the centerline;
 - (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area;
 - (3) The activities are for the construction:
 - (a) Of a new gas or liquid energy conversion facility;
 - (b) Of a new gas or liquid transmission facility;
 - (c) To improve the existing gas or liquid energy conversion facility, or gas or liquid, transmission facility; or
 - (d) To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and
 - (4) Before conducting any activities, the utility certifies in writing to the commission that:
 - (a) The activities will not affect a known exclusion or avoidance area;
 - (b) The activities are for the construction:
 - [1] Of a new gas or liquid energy conversion facility;
 - [2] Of a new gas or liquid transmission facility;
 - [3] To improve the existing gas or liquid energy conversion or gas or liquid transmission facility; or

[4] To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and

(c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.

b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:

(1) Certifies in writing to the commission:

(a) The activities will not affect any known exclusion area;

(b) The activities are for the construction:

[1] Of a new gas or liquid energy conversion facility;

[2] Of a new gas or liquid transmission facility;

[3] To improve the existing gas or liquid energy conversion facility or gas or liquid facility; or

[4] To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and

(c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;

(2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area expected to be impacted and the reasons why impact cannot be avoided; and

(3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission does not approve impacting the avoidance area, the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.

c. Incident to preliminary engineering or environmental studies.

4. "Corridor" means the area of land where a designated route may be established for a gas or liquid transmission facility.

5. "Facility" means a gas or liquid energy conversion facility, gas or liquid transmission facility, or both.

6. "Gas or liquid energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:

a. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas or hydrogen per day, regardless of the end use of the gas;

b. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or

c. Enrichment of uranium minerals.

7. "Gas or liquid transmission facility" means any of the following:

a. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, hydrogen, or carbon dioxide. This subdivision does not apply to:

(1) An oil or gas pipeline gathering system;

- (2) A natural gas distribution system;
 - (3) Carbon dioxide storage facility underground equipment, including a flow line, subject to chapter 38-22;
 - (4) A pipeline with an outside diameter of four and one-half inches [11.43 centimeters] or less which will not be trenched and will be plowed in with a power mechanism having a vertical knife or horizontally directionally drilled, and its associated facilities; or
 - (5) A pipeline that is less than one mile [1.61 kilometers] long. For purposes of this chapter, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport, or pipelines and associated facilities used to collect gas from the well to the gas processing facility at which end-use consumer-quality gas is produced, with or without the addition of odorant.
- b. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.
8. "Permit" means the permit for the construction of a gas or liquid transmission facility within a designated corridor issued under this chapter.
9. "Person" includes an individual, firm, association, partnership, cooperative, corporation, limited liability company, or any department, agency, or instrumentality of a state or of the federal government, or any subdivision thereof.
10. "Road use agreement" means permits required for extraordinary road use, road access points, approach or road crossings, public right-of-way setbacks, building rules, physical addressing, dust control measures, or road maintenance and any repair mitigation plans.
11. "Route" means the location of a gas or liquid transmission facility within a designated corridor.
12. "Site" means the location of a gas or liquid energy conversion facility.
13. "Utility" means a person engaged in and controlling the generation, manufacture, refinement, or transmission of gas, liquid hydrocarbons, or liquid hydrocarbon products, including coal gasification, coal liquefaction, petroleum refinement, uranium enrichment, and the transmission of coal, gas, liquid hydrocarbons, or liquid hydrocarbon products, or the transmission of water from or to any gas or liquid energy conversion facility.

History

[S.L. 2017, ch. 328, § 24](#), effective July 1, 2017; [2019, ch. 389, § 4](#), effective August 1, 2019; [2021, ch. 347, § 7](#), effective August 1, 2021; [2023, ch. 413, § 6](#), effective April 12, 2023.

Annotations

Notes to Decisions

Public Service Commission's Authority.

District court properly affirmed the Public Service Commission's order summarily dismissing a complaint filed by the Environmental Law and Policy Center and Dakota Resource Council—seeking a declaration that a gas company's refinery was subject to the statutory siting process—because the Commission's regulatory authority was limited to projects that met the statutory definition of "gas or liquid energy conversion facility," a refinery not designed for or

capable of refining 50,000 barrels per day (bpd) was not a “gas or liquid energy conversion facility” as that term was defined, and the gas company’s planned facility was designed for and capable of refining no more than 49,500 bpd. [Envtl. Law & Policy Ctr. v. N.D. Public Serv. Comm'n, 2020 ND 192, 948 N.W.2d 838, 2020 N.D. LEXIS 192 \(N.D. 2020\).](#)

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