

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Pipeline Safety
Rulemaking**

Case No. GS-23-289

**Public Service Commission
Emerging Threats
Rulemaking**

Case No. PU-23-264

ORDER SUBMITTING RULES TO ATTORNEY GENERAL

January 16, 2024

Appearances

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

Preliminary Statement

On September 6, 2023, 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 proposed amendment to Article 69-09-03, and 69-09-12 of the North Dakota Administrative Code.

On September 6, 2023, the Commission forwarded the notices to the North Dakota Newspaper Association for publication at least 20 days in advance of the hearing.

On September 13, 2023, the notices, the commission motion, proposed rules and full motion were sent to Legislative Council.

The Abbreviated Notice was published in each of the official county newspapers in the state during the weeks of September 11 through September 28, 2023. The Williston Herald and the Center Republican failed to publish the administrative rules as described. The Williston Herald published originally on September 28, 2023, and the Center Republican on September 28, 2023. The Willison Herald republished on November 15, 2023, and the Center Republican republished on December 7, 2023, with comments to remain open until 10 days after publication.

On October 10, 2023, the Commission held the public hearing as noticed, beginning at 1:30 p.m. in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

No comments were received on the proposed rules, however commission staff noted there was a cybersecurity that was not changed to security. The rules were amended to correct this for continuity.

The proposed rules and amendments are summarized as follows:

Case No. GS-23-289 - Section 69-09-03-01 and Section 69-09-03-02 – Pipeline Safety

The purpose of this amendment is to adopt by reference the most recent amendments to pipeline safety regulations adopted by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA). This rule change adopts amendments to safety regulations that have been adopted by PHMSA since December 1, 2021, current to September 6, 2023.

Case No. PU-23-264 - Section 69-09-12-01 and Section 69-09-12-05 – Resource Plans and Cyber Security

The purpose of this amendment is to change cybersecurity to security, which means physical and cyber security.

Public Hearing and Comments

No comments were made by industry or the public in either case during the hearing or during the following comment period.

Amendments to PU-23-264 were made after staff addressed a missed change of cyber security to security.

The Commission adopts N.D. Admin. Code § 69-09-03 and § 69-09-12 as amended.

Discussion

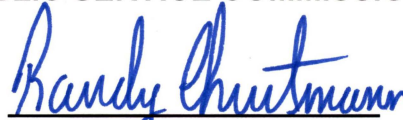
Having reviewed the proposed rules, and considered the testimony and comments received, the Commission finds good cause for submitting the proposed rule in Case No. GS-23-289 and PU-23-264 as revised after comment, attached to and made a part of this order, to the Attorney General for an opinion as to legality.

ORDER

The Commission orders that the proposed rules and amendments in Case No. GS-23-289 and PU-23-264, attached and made part of this order, be submitted to the Attorney General for an opinion that the rules are approved as to their legality, and upon approval from the Attorney General's office staff shall submit the rules as approved to Legislative Counsel.

PUBLIC SERVICE COMMISSION


Sheri Haugen-Hoffart
Sheri Haugen-Hoffart
Commissioner


Randy Christmann
Randy Christmann
Chair


Julie Fedorchak
Julie Fedorchak
Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Pipeline Safety
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Case No. GS-23-289

CHAPTER 69-09-03
PIPELINE SAFETY

Section
69-09-03-01 Safety
69-09-03-02 Adoption of Regulations

69-09-03-01. Safety.

Pipeline facilities used for the intrastate distribution and transmission of natural and other gas, liquefied natural gas, or hazardous liquids shall be designed, constructed, and operated to meet the safety standards set forth in regulations of the United States department of transportation adopted in section 69-09-03-02. The commission may require such proof of compliance as it deems necessary.

History: Amended effective July 1, 1986; January 1, 1988; April 1, 2015;_____.

General Authority: NDCC 28-32-02, 49-02-04

Law Implemented: NDCC 49-02-01.2, 49-02-04

69-09-03-02. Adoption of regulations.

The following parts of title 49, Code of Federal Regulations in effect as of ~~December 1, 2024~~ September 6, 2023, are adopted by reference:

1. Part 190 - Pipeline Safety Programs and Rulemaking Procedures.
2. Part 191 - Transportation of Natural Gas and Other Gas by Pipeline, Annual Reports, Incident Reports, and Safety-Related Condition Reports.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.
4. Part 193 - Liquefied Natural Gas Facilities: Federal Safety Standards.
5. Part 194 - Response Plans for Onshore Oil Pipelines.
6. Part 195 - Transportation of Hazardous Liquids by Pipeline.

7. Part 199 - Drug and Alcohol Testing.

Copies of these regulations may be obtained from:

Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002; November 1, 2003; May 1, 2005; July 1, 2006; April 1, 2008; January 1, 2010; April 1, 2012; April 1, 2015; October 1, 2016; July 1, 2018; July 1, 2020; January 1, 2021; October 1, 2022; _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

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CHAPTER 69-09-12

RESOURCE PLANS AND ~~CYBERSECURITY~~ SECURITY

Section

69-09-12-01 Definitions

69-09-12-02 Resource Plan Procedure

69-09-12-03 Resource Plan Attributes

69-09-12-04 Filing Requirements

69-09-12-05 Security

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.

5. "Security" means physical security and cybersecurity.

History: Effective January 1, 2023; amended effective _____.

General Authority: NDCC 49-02-04

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

69-09-12-05. Security.

1. An electric public utility shall meet with the commission annually to report on cybersecuritysecurity preparedness.

2. The report must provide:

a. Information on the policies, procedure, and process used to inform the management of cybersecuritysecurity 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 cybersecuritysecurity 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 cybersecuritysecurity 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 cybersecuritysecurity incident, contain impacts, limit potential damage, and manage consequences of a cybersecuritysecurity incident;

i. Information on any plans to maintain resilience and business continuity, timely recovery to normal operations, and corrective actions after occurrence of an incident;

j. Information or plans for asset sharing with other electric public utilities and electrical cooperatives to maintain services in the event of a security incident;

k. Information on tabletop and field training exercises regarding security;

3. The commission may close the meeting to discuss the cybersecuritysecurity report, unless the commission orders otherwise.

History: Effective January 1, 2023: amended effective _____.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-05-17