

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Emerging Threats
Rulemaking**

Case No. PU-23-264

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

August 28, 2023

The Commission is proposing amendments to Article 69-09-12 of the North Dakota Administrative Code, Public Utility Division, Resource Plans and Cybersecurity. The purpose of the proposed amendments is to address emerging threats and address physical as well as cyber security.

The proposed rule is the result of new legislation and is not pursuant to emergency rulemaking.

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:

1. 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.

A regulatory analysis has not been requested, and the proposal is not expected to impact the regulated community by an amount in excess of fifty thousand dollars (\$50,000.00). The proposed rule amending cyber security to include physical security is not expected to add any additional costs. If any costs are added, the costs should not be over \$50,000 as most of the data required to be reported is already collected and reported by the Electric Public Utilities.

- a. The class that would be affected is Electric Public Utilities.

The class to benefit from this is the general public.

- b. The proposed rule would require data to be submitted in an annual report from data already collected by the public utility.
- c. There are no perceived costs to the agency or commission of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.
- d. No alternatives were considered or rejected.

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 amendments are not anticipated to 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:

2. 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

The adoptions of these rules will not have an adverse impact on small entities. None of the rule changes would negatively impact them in a way that would require the commission to establish less stringent requirements, consolidation or simplification of reporting, establishing separate performance standards or exemptions from the proposed rule.