

CHAPTER 49-22
ENERGY CONVERSION AND TRANSMISSION FACILITY SITING ACT

49-22-01. Short title.

Repealed by S.L. 2017, ch. 328, § 27.

49-22-02. Statement of policy.

The legislative assembly finds that the construction of energy conversion facilities and transmission facilities affects the environment and the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and upon the welfare of the citizens of this state by providing that no energy conversion facility or transmission facility shall be located, constructed, and operated within this state without a certificate of site compatibility or a route permit acquired pursuant to this chapter. The legislative assembly hereby declares it to be the policy of this state to site energy conversion facilities and to route transmission facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy, sites and routes shall be chosen which minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

49-22-03. 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 a subdivision of subsection 5 or 6 or in subsection 13 of this section and the activities are:
 - (a) Within the geographic boundaries of a previously issued certificate or permit;
 - (b) For an electric energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
 - (c) For an electric 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 electric energy conversion facility;
 - (b) Of a new electric transmission facility;
 - (c) To improve the existing electric energy conversion facility or electric transmission facility; or
 - (d) To increase or decrease the capacity of the existing electric energy conversion facility or electric 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 electric energy conversion facility;

- [2] Of a new electric transmission facility;
 - [3] To improve the existing electric energy conversion or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing electric energy conversion facility or electric 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 that:
 - (a) The activities will not affect a known exclusion area;
 - (b) The activities are for the construction:
 - [1] Of a new electric energy conversion facility;
 - [2] Of a new electric transmission facility;
 - [3] To improve the existing electric energy conversion facility or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing electric energy conversion facility or electric 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 an electric transmission facility.
- 5. "Electric energy conversion facility" means a plant, addition, or combination of plant and addition, designed for or capable of:
 - a. Generation by wind energy conversion exceeding one-half megawatt of electricity;
 - b. Generation by any means other than wind energy conversion exceeding fifty megawatts of electricity; or
 - c. Utility-scale energy storage.
- 6. "Electric transmission facility" means an electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts. "Electric transmission facility" does not include:
 - a. A temporary electric transmission line loop that is:
 - (1) Connected and adjacent to an existing electric transmission facility that was sited under this chapter;
 - (2) Within the corridor of the sited facility and does not cross known exclusion or avoidance areas; and
 - (3) In place for less than one year; or
 - b. An electric transmission line that is less than one mile [1.61 kilometers] long.
- 7. "Facility" means an electric energy conversion facility, electric transmission facility, or both.

8. "Permit" means the permit for the construction of an electric 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. "Power emergency" means an electric transmission line and associated facilities that have been damaged or destroyed by natural or manmade causes resulting in a loss of power supply to consumers of the power.
11. "Repower" means construction activities to completely or partially dismantle and replace turbine equipment at an existing wind energy conversion facility site that result in an increase of the facility's generation output potential or turbine height. The term does not include routine turbine maintenance or routine replacement of malfunctioning turbines or turbine components.
12. "Route" means the location of an electric transmission facility within a designated corridor.
13. "Site" means the location of an electric energy conversion facility.
14. "Utility" means a person engaged in and controlling the electric generation, the transmission of electric energy, or the transmission of water from or to any electric energy conversion facility.
15. "Utility-scale energy storage" means a plant, addition, or combination of plant and addition, designed for operation as a grid resource and capable of five megawatts or more of rated power capacity.

49-22-04. Ten-year plans - Contents.

1. Each utility that owns or operates, or plans within the next ten years to own, operate, or start construction on any facility shall develop a ten-year plan as specified in this section and submit the plan to the commission. Each utility shall file an updated plan on or before July first of each even-numbered year after the year of its initial submission. The ten-year plan may be appropriate portions of a single regional plan or may be jointly prepared and submitted by two or more utilities and must contain the following information:
 - a. A description of the general location, size, and type of all facilities to be owned or operated by the utility during the ensuing ten years, as well as those facilities to be removed from service during the ten-year period.
 - b. An identification of the location of the tentative preferred site for all electric energy conversion facilities and the tentative location of all electric transmission facilities on which construction is intended to be commenced within the ensuing five years and such other information as may be required by the commission. The site and corridor identification shall be made in compliance with the criteria published by the commission pursuant to section 49-22-05.1.
 - c. A description of the efforts by the utility to coordinate the plan with other utilities so as to provide a coordinated regional plan for meeting the utility needs of the region.
 - d. A description of the efforts to involve environmental protection and land-use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process.
 - e. A statement of the projected demand for the service rendered by the utility for the ensuing ten years and the underlying assumptions for the projection, with that information being as geographically specific as possible, and a description of the manner and extent to which the utility will meet the projected demands.
 - f. Any other relevant information as may be requested by the commission. Upon receipt of the ten-year plans the commission shall proceed to assess the impact of the development proposed within the state to ensure that energy conversion facilities and transmission facilities will be sited in an orderly manner compatible with environmental preservation and efficient use of resources.

2. If not previously disclosed in a ten-year plan filing pursuant to subdivision a of subsection 1, the utility owner or operator of an electric energy conversion facility shall notify the commission and the auditor of the county in which the facility is located if the owner or operator considers removing an electric energy conversion facility from service. Upon notice of the removal from service, the commission may request the owner or operator provide the commission with any applicable reliability study developed with a regional transmission organization in conjunction with the considered removal from service and may accept public comment in a format prescribed by the commission.

49-22-05. Inventory of potential sites - Criteria - Public hearings.

Repealed by S.L. 1977, ch. 447, § 16.

49-22-05.1. Exclusion and avoidance areas - Criteria.

1. The commission shall develop criteria to be used in identifying exclusion and avoidance areas and to guide the site, corridor, and route suitability evaluation and designation process. The criteria also may include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.
2. The commission may not identify prime farmland, unique farmland, or irrigated land as exclusion or avoidance areas when evaluating and designating geographical areas for site, corridor, or route suitability.
3. Except for electric transmission lines in existence before July 1, 1983, areas within five hundred feet [152.4 meters] of an inhabited rural residence must be designated avoidance areas. This criterion does not apply to a water pipeline. The five hundred foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing.
4. Areas less than one and one-tenth times the height of the turbine from the property line of a nonparticipating landowner and less than three times the height of the turbine or more from an inhabited rural residence of a nonparticipating landowner, must be excluded in the consideration of a site for a wind energy conversion area, unless a variance is granted. The commission may grant a variance if an authorized representative or agent of the permittee, the nonparticipating landowner, and affected parties with associated wind rights file a written agreement expressing the support of all parties for a variance to reduce the setback requirement in this subsection. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in chapter 17-04. A local zoning authority may require setback distances greater than those required under this subsection. For purposes of this subsection, "height of the turbine" means the distance from the base of the wind turbine to the turbine blade tip when it is in its highest position.

49-22-06. Facility development plans.

Repealed by S.L. 1977, ch. 447, § 16.

49-22-07. Certificate of site compatibility or route permit required.

1. A utility may not begin construction of an electric energy conversion facility or an electric transmission facility in the state without first having obtained a certificate of site compatibility or a route permit from the commission pursuant to this chapter. The facility must be constructed, operated, and maintained in conformity with the certificate or permit and any terms, conditions, or modifications of the certificate or permit. A certificate or permit may be transferred, subject to the approval of the commission, to any person who agrees to comply with its terms, conditions, and modifications.
2. If a power emergency exists which necessitates the relocation of a portion of an electric transmission line and associated facilities from the designated route, the owner

of the line shall give telephonic notice to the commission in advance of the relocation. The line may then be relocated to restore power as soon as practicable. After the line has been relocated, the owner shall file with the commission a request to approve the relocated route.

3. A wind energy conversion facility that has not been issued a certificate of site compatibility and exceeds five megawatts of electricity may not repower the wind energy conversion facility without first having obtained a certificate of site compatibility. A variance may be granted for impacts to exclusion and avoidance areas resulting from the repowering of existing infrastructure upon a showing of good cause. A requested variance must comply with local land use, zoning, building rules, regulations, and ordinances.

49-22-07.1. Letter of intent prior to construction.

Repealed by S.L. 2013, ch. 365, § 3.

49-22-07.2. Waiver of procedures and time schedules.

Any utility which proposes to construct an electric energy conversion facility or an electric transmission facility within the state may make an application to the commission for a waiver of any of the procedures or time schedules set forth in this chapter or in the rules adopted pursuant to this chapter. The commission, upon a finding that the proposed facility is of such length, design, location, or purpose that it will produce minimal adverse effects, or, upon a finding that a demonstrable emergency exists, may issue an order waiving specified procedures and time schedules required by this chapter or by the rules adopted pursuant to this chapter, including, but not limited to, applications, notices, and hearings, and may forthwith issue a certificate of site compatibility, a certificate of corridor compatibility, or a route permit, with such conditions as the commission may require.

49-22-08. Application for a certificate - Notice of filing - Amendment - Designation of a site or corridor.

1. An application for a certificate must be in such form as the commission may prescribe, containing the following information:
 - a. A description of the size and type of facility.
 - b. A summary of any studies which have been made of the environmental impact of the facility.
 - c. A statement explaining the need for the facility.
 - d. An identification of the location of the preferred site for any electric energy conversion facility.
 - e. An identification of the location of the preferred corridor for any electric transmission facility.
 - f. A description of the merits and detriments of any location identified and a comprehensive analysis with supporting data showing the reasons why the preferred location is best suited for the facility.
 - g. A description of mitigative measures that will be taken to minimize all foreseen adverse impacts resulting from the location, construction, and operation of the proposed facility.
 - h. An evaluation of the proposed site or corridor with regard to the applicable considerations set out in section 49-22-09 and the criteria established pursuant to section 49-22-05.1.
 - i. Such other information as the applicant may consider relevant or the commission may require.
2. After determining that the application is complete, the commission shall serve a notice of filing of the application on such persons and agencies that the commission may deem appropriate and shall publish a notice of filing of the application in the official newspaper of each county in which any portion of the site or corridor is proposed to be located.

3. A copy of the application shall be furnished to any person or agency, upon request to the commission within thirty days of either service or publication of the notice of filing.
4. Within thirty days following service of the notice of filing of a complete application by the commission, the applicant shall provide a copy of the commission's notice of filing of the application by first-class mail to the owner of record of any land located within the requested site or corridor. For purposes of this subsection, the owner of record means the owner identified by the county treasurer to receive the real estate tax statement.
5. An application for an amendment of a certificate shall be in such form and contain such information as the commission shall prescribe.
6. The commission may designate a site or corridor for a proposed facility following the study and hearings provided for in this chapter. Any designation shall be made in accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to section 49-22-05.1, and the considerations set out in section 49-22-09 in a finding with reasons for the designation, and shall be made in a timely manner no later than six months after the filing of a completed application for a certificate of site compatibility or no later than three months after the filing of a completed application for a certificate of corridor compatibility. The time for designation of a site or corridor may be extended by the commission for just cause. The failure of the commission to act within the time limits provided in this section shall not operate to divest the commission of jurisdiction in any certification proceeding. The commission shall indicate the reasons for any refusal of designation. Upon designation of a site or corridor, the commission shall issue a certificate of site compatibility or a certificate of corridor compatibility with such terms, conditions, or modifications deemed necessary. The commission may not condition the issuance of a certificate or permit on the applicant providing a mitigation payment assessed or requested by another state agency or entity to offset a negative impact on wildlife habitat.

49-22-08.1. Application for a permit - Notice of filing - Amendment - Designation of a route.

1. An application for a route permit for an electric transmission facility within a designated corridor must be filed no later than two years after the issuance of the certificate and must be in such form as the commission may prescribe, containing the following information:
 - a. A description of the type, size, and design of the proposed facility.
 - b. A description of the location of the proposed facility.
 - c. An evaluation of the proposed route with regard to the applicable considerations set out in section 49-22-09 and the criteria established pursuant to section 49-22-05.1.
 - d. A description of mitigative measures that will be taken to minimize all foreseen adverse impacts resulting from the location, construction, and operation of the proposed facility.
 - e. A description of the right-of-way preparation and construction and reclamation procedures.
 - f. A statement setting forth the manner in which:
 - (1) The utility will inform affected landowners of easement acquisition, and necessary easement conditions and restrictions.
 - (2) The utility will compensate landowners for easements, without reference to the actual consideration to be paid.
 - g. Such other information as the utility may consider relevant or the commission may require.
2. After determining that the application is complete, the commission shall serve a notice of filing of the application on such persons and agencies that the commission may deem appropriate and shall publish a notice of filing of the application in the official newspaper of each county in which any portion of the designated corridor is located.

3. A copy of the application shall be furnished to any person or agency, upon request to the commission within thirty days of either service or publication of the notice of filing.
4. An application for an amendment of a permit shall be in such form and contain such information as the commission shall prescribe.
5. The commission shall designate a route for the construction of an electric transmission facility following the study and hearings provided for in this chapter. This designation shall be made in accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to section 49-22-05.1, and the considerations set out in section 49-22-09 in a finding with reasons for the designation, and shall be made in a timely manner no later than six months after the filing of a completed application. The time for designation of a route may be extended by the commission for just cause. The failure of the commission to act within the time limit provided in this section shall not operate to divest the commission of jurisdiction in any permit proceeding. Upon designation of a route the commission shall issue a permit to the applicant with such terms, conditions, or modifications deemed necessary.

49-22-08.2. Combining application.

A utility may file a separate application for a certificate or a permit, or combined into one application.

49-22-09. Factors to be considered in evaluating applications and designation of sites, corridors, and routes.

1. The commission shall be guided by, but is not limited to, the following considerations, where applicable, to aid the evaluation and designation of sites, corridors, and routes:
 - a. Available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment.
 - b. The effects of new electric energy conversion and electric transmission technologies and systems designed to minimize adverse environmental effects.
 - c. The potential for beneficial uses of waste energy from a proposed electric energy conversion facility.
 - d. Adverse direct and indirect environmental effects that cannot be avoided should the proposed site or route be designated.
 - e. Alternatives to the proposed site, corridor, or route which are developed during the hearing process and which minimize adverse effects.
 - f. Irreversible and irretrievable commitments of natural resources should the proposed site, corridor, or route be designated.
 - g. The direct and indirect economic impacts of the proposed facility.
 - h. Existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route.
 - i. The effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites.
 - j. The effect of the proposed site or route on areas unique because of biological wealth or because the areas are habitats for rare and endangered species.
 - k. Problems raised by federal agencies, other state agencies, and local entities.
2. The commission may not condition the issuance of a certificate or permit on the applicant providing a mitigation payment assessed or requested by another state agency or entity to offset a negative impact on wildlife habitat.
3. Before the commencement of operations of the proposed facility, the applicant shall inform the commission that the applicant has executed or filed an unexecuted generation interconnection agreement, or comparable transmission services agreement, with the affected regional transmission organization or transmission owner.

49-22-09.1. Approval of hydroelectric transmission facilities by legislative assembly required.

After compliance with the applicable requirements of this chapter, any hydroelectric transmission facility that transmits hydroelectric power produced outside the United States, and which crosses any portion of this state, must have the approval of the legislative assembly by concurrent resolution. A person may not begin construction of a hydroelectric transmission facility in this state which transmits hydroelectric power produced outside the United States, or exercise the right of eminent domain in connection with such construction, without first having complied with this chapter and obtained the approval of the legislative assembly. This section does not apply to any electric transmission facility for which a route permit and certificate of corridor compatibility has been issued prior to July 1, 1985, or any extension thereof issued after July 1, 1985.

49-22-09.2. Mitigating environmental impacts.

If an applicant elects to provide a payment to mitigate the environmental impact of the construction or operation of an energy conversion or transmission facility, the payment must be made to the agriculture commissioner who shall deposit the payment into the environmental impact mitigation fund under section 4.1-01-21.1. Nothing in this section shall be construed to limit an applicant from conducting mitigation activities.

49-22-10. Designation of sites and corridors.

Repealed by S.L. 1979, ch. 504, § 15.

49-22-11. Approval of a specific transmission facility route within a designated corridor.

Repealed by S.L. 1979, ch. 504, § 15.

49-22-12. Emergency certification.

Repealed by S.L. 1977, ch. 447, § 16.

49-22-12.1. Emergency certification.

Repealed by S.L. 1979, ch. 504, § 15.

49-22-13. Public hearings - Notice.

1. The commission shall hold a public hearing in each county in which any portion of a site, corridor, or route is proposed to be located in an application for a certificate or a permit. If the commission determines there is an emergency that would prevent an in-person hearing in the county in which any portion of a site, corridor, or route is proposed, a remote public hearing may be held. At the public hearing, any person may present testimony or evidence relating to the information provided in the application, the criteria developed pursuant to section 49-22-05.1, and the factors to be considered pursuant to section 49-22-09. If the commission determines there are no adequate facilities to conduct a public hearing within the county in which any portion of a site, corridor, or route is proposed to be located in, the public hearing must be held in the nearest adequate location. When more than one county is involved, the commission may hold a consolidated hearing in one or more of the affected counties. A hearing for any county shall not be consolidated if five or more affected landowners in such county file a petition with the commission within ten days of the publication of the notice of hearing.
2. The commission shall not be required to hold a public hearing on an application for the transfer of a certificate or a permit, or an application for a waiver of procedures and time schedules, but shall publish a notice of opportunity for a public hearing in the official newspaper of each county in which any portion of the facility or the proposed site, corridor, or route is located. If requested by any interested person and good cause has been shown therefor, the commission shall hold a public hearing. Where

- more than one county is involved, the commission may hold a consolidated hearing in one or more of the affected counties.
3. One or more public hearings shall be held at a location or locations determined by the commission concerning the following matters:
 - a. A substantial or material change in the criteria established pursuant to section 49-22-05.1.
 - b. A substantial or material change in the rules adopted pursuant to section 49-22-18.
 - c. The revocation or suspension of a certificate or permit.
 4. Notice of a public hearing must be given by the commission by service on such persons and agencies that the commission may deem appropriate and twice by publication at a reasonable interval before the hearing. Notice of a public hearing and notice of opportunity for a public hearing on an application for a certificate, a permit, a transfer or amendment of a certificate or permit, or a waiver shall be given at the expense of the applicant.

49-22-14. Advisory committees - Appointment - Compensation.

The commission may appoint one or more advisory committees to assist it in carrying out its duties under this chapter. Committees appointed to evaluate sites or corridors considered for designation must be composed of as many persons as may be appointed by the commission, but must include a majority of public representatives; at least one representative from the state department of agriculture, a public or municipally owned utility, a private investor-owned utility, and a cooperatively owned utility; and one representative from each county and city in which an electric energy conversion facility or electric transmission facility is proposed to be located. Members of advisory committees are entitled to be reimbursed, within the limits of legislative appropriations, for any necessary expenses in the amounts provided by law for state officials.

49-22-14.1. Cooperation with state and federal agencies.

The commission may, and is encouraged to, cooperate with and receive and exchange technical information and assistance from and with any department, agency, or officer of any state or of the federal government to eliminate duplication of effort, to establish a common database, or for any other purpose relating to the provisions of this chapter and in furtherance of the statement of policy contained herein.

49-22-15. Public participation - Meetings - Records.

Repealed by S.L. 1979, ch. 504, § 15.

49-22-16. Effect of issuance of certificate or permit - Local land use, zoning, or building rules, regulations, or ordinances - State agency rules.

1. The issuance of a certificate of site compatibility or a route permit shall, subject to subsections 2 and 3, be the sole site or route approval required to be obtained by the utility.
2. A certificate of site compatibility for an electric energy conversion facility may not supersede or preempt any local land use, zoning, or building rules, regulations, or ordinances and a site may not be designated which violates local land use, zoning, or building rules, regulations, or ordinances.

A permit for the construction of an electric transmission facility within a designated corridor supersedes and preempts a local land use, zoning, or building rule, regulation, or ordinance, upon a finding by the commission that the rule, regulation, or ordinance, as applied to the proposed route, is unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of location. Without such a finding by the commission, a route may not be designated which violates a local land use, zoning, or building rule, regulation, or ordinance.
3. Utilities subject to this chapter shall obtain state permits that may be required to construct and operate electric energy conversion facilities and electric transmission

facilities. A state agency in processing a utility's facility permit application shall be bound to the decisions of the commission with respect to the site designation for the electric energy conversion facility or the corridor or route designation for the electric transmission facility and with respect to other matters for which authority has been granted to the commission by this chapter.

4. A site or route may not be designated which violates the rules of a state agency. A state agency with jurisdiction over any aspect of a proposed facility shall present the position of the agency at least thirty days before the public hearing on an application for a certificate, a permit, or a waiver, which position clearly must state whether the site, corridor, or route being considered for designation will be in compliance with the agency's rules. For purposes of this chapter it is presumed a proposed facility will be in compliance with a state agency's rules if the agency fails to present its position on the proposed site, corridor, or route at least thirty days before the appropriate public hearing.

49-22-16.1. Unfair tactics in acquiring land or easements for a facility - Court action - Cancellation of easement - Penalty.

1. Any person employed by a public utility to acquire easements for a facility subject to this chapter shall not use any harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics to induce the owner of the land to be affected by the facility to grant or agree to any easements.
2. If at least five landowners aggrieved by the conduct of a person or persons, acting on behalf of the same utility, acquiring easements for a site or route of a facility allege use of harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics by the person or persons acquiring or attempting to acquire the easement, an action may be brought in the appropriate district court.
3. Upon a determination by the court that the person or persons employed by the utility used harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics in acquiring or attempting to acquire an easement from at least five separate landowners, the court shall, by order, declare the easements void and may order any compensation paid therefor returned to the offending utility, or allow the landowner to retain such compensation, or award to the landowner up to three times the amount of the compensation involved as damages, punitive or compensatory. The court shall award costs and reasonable attorney's fees to the plaintiffs when the court rules in favor of the plaintiffs.
4. Upon a determination by the court that the utility involved did knowingly allow, encourage, or operate in active consort or participation with such person or persons utilizing such unfair tactic, the court shall cause a copy of its memorandum opinion or order to be filed with the commission.
5. Upon receiving a copy of a memorandum opinion or order issued by a district court pursuant to this section, the commission may revoke or suspend the permit issued with respect to the route affecting the aggrieved landowners. If a permit has not been issued with respect to a site or route affecting the aggrieved landowners, the commission may refuse to issue a permit for such portion of the route.

49-22-16.2. Easements for a facility - Terms.

Any easement for an electric transmission facility as defined in this chapter acquired contractually by a utility after July 1, 1979, shall give the landowner the option of receiving a single sum payment for the easement or receiving payment in annual installments of equal amounts including interest on the outstanding balance to be paid by the utility at a rate equal to the average rate paid during that year by the Bank of North Dakota on a certificate of deposit in an amount equal to the outstanding balance. The first annual installments shall be prorated to July first and all following annual installments shall fall due on July first. The option provided herein shall not apply to any easement providing for compensation of less than five thousand dollars. In the event the landowner elects to receive the compensation in annual payments, the benefits unpaid at the time of sale of the real estate to which the easement attaches shall

accrue to the purchaser of said real estate thereafter. The utility right-of-way agent shall inform the property owner of the owner's option to choose annual installments.

49-22-16.3. Route adjustment before or during construction for gas or liquid transmission line.

Repealed by S.L. 2017, ch. 328, § 27.

49-22-16.4. Light-mitigating technology system - Rules.

1. The commission shall adopt rules by January 1, 2019, relating to the implementation of light-mitigating technology systems on wind energy conversion facilities. The rules must be consistent with the federal aviation administration regulations [14 CFR 1.1 et seq.] and must include service and maintenance requirements, safety standards, and lighting system requirements.
2. By December 31, 2019, every wind energy conversion facility for which the commission issued a certificate of site compatibility after June 5, 2016, must be equipped with a functioning light-mitigating technology system that complies with rules adopted by the commission. After public hearing, the commission may grant a waiver or an extension of time based on technical or economic feasibility considerations.
3. By December 31, 2021, every wind energy conversion facility for which the commission issued a certificate of site compatibility before June 5, 2016, must be equipped with a functioning light-mitigating technology system that complies with the rules adopted by the commission. After public hearing, the commission may grant a waiver or an extension of time based on technical or economic feasibility considerations.
4. Any costs associated with the implementation, operation, and maintenance of light-mitigating technology systems are the sole responsibility of the wind energy conversion facility owner.

49-22-16.5. Route adjustment before or during construction for an electric transmission line.

1. Before or during construction, a utility, without any action by the commission, may adjust the route of an electric transmission line within the designated corridor if, before conducting any construction activities associated with the adjustment, the utility files with the commission certification and supporting documentation that:
 - a. The construction activities will be within the designated corridor;
 - b. The construction activities will not affect any known exclusion or avoidance areas within the designated corridor; and
 - c. The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route.
2. Before or during construction, a utility may adjust the route of an electric transmission line within the designated corridor which may affect an avoidance area if, before conducting any construction activities associated with the adjustment, the utility:
 - a. Files with the commission certification and supporting documentation that:
 - (1) The construction activities are within the designated corridor;
 - (2) The construction activities will not affect any known exclusion areas within the designated corridor;
 - (3) The construction activities are expected to impact an avoidance area with a specific description of the avoidance area expected to be impacted;
 - (4) Each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment, unless the utility previously received authorization from the commission for the impact to the avoidance area;
 - (5) For an impact for which the utility does not already have approval or has not filed the approval in paragraph 4, the utility has good cause and a specific

- reason to impact the avoidance area, and a reasonable alternative does not exist; and
- (6) The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route.
- b. Receives the commission's written authorization that the utility may impact the avoidance area. If the commission does not authorize the impact to the avoidance area, the utility must obtain siting authority for the affected portion of the route adjustment. If the commission fails to act within ten working days of receipt of the utility's filing of the certification and supporting documentation under subdivision a of subsection 2, the route adjustment is deemed approved.
3. Before or during construction, a utility, without any action by the commission, may adjust the route of an electric transmission line outside the designated corridor if, before conducting any construction activities associated with the adjustment, the utility:
 - a. Files with the commission certification and supporting documentation that:
 - (1) The construction activities will not affect any known exclusion or avoidance areas;
 - (2) The route outside the corridor is no longer than one and one-half miles [2.41 kilometers];
 - (3) The utility will comply with the commission's orders, laws, and rules designating the corridor and designating the route; and
 - (4) Each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment.
 - b. Files detailed field studies indicating exclusion and avoidance areas for an area encompassing the route outside the designated corridor equal to the length of the adjustment of the proposed corridor.
 4. Before or during construction, a utility may adjust the electric transmission line outside the designated corridor that may affect an avoidance area if, before conducting any construction activities associated with the adjustment, the utility:
 - a. Files with the commission certification and supporting documentation that:
 - (1) The construction activities will not affect any known exclusion areas;
 - (2) The construction activities are expected to impact an avoidance area with a specific description of the avoidance area expected to be impacted;
 - (3) The utility has good cause and a specific reason to impact the avoidance area, and a reasonable alternative does not exist;
 - (4) The route outside the corridor is no longer than one and one-half miles [2.41 kilometers];
 - (5) The utility will comply with the commission's orders, laws, and rules designating the corridor and designating the route; and
 - (6) Each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment.
 - b. Files detailed field studies indicating exclusion and avoidance areas for an area encompassing the route outside the designated corridor equal to the length of the adjustment of the proposed corridor.
 - c. Receives the commission's written authorization that the utility may impact the avoidance area. If the commission does not authorize the impact to the avoidance area, the utility must obtain siting authority for the affected portion of the route adjustment. If the commission fails to act within ten working days of receipt of the utility's filing of the certification and supporting documentation under subdivisions a and b of subsection 4, the route adjustment is deemed approved.
 5. The commission is not required to hold a public hearing or publish a notice of opportunity for a public hearing for any route adjustment under this section.

49-22-17. Improvement of sites or locations.

Utilities that have acquired an electric energy conversion facility site or electric transmission line route in accordance with the provisions of this chapter may proceed to construct or improve such site or route for the intended purposes at any time, subject to subsections 2 and 3 of section 49-22-16; provided, that if such construction and improvement commences more than four years after a certificate or permit for the site or route has been issued, then the utility must certify to the commission that such site or route continues to meet the conditions upon which the certificate of site compatibility or electric transmission facility construction permit was issued.

49-22-18. Rules and regulations.

The commission shall adopt rules and regulations in conformity with the provisions of this chapter and to prescribe methods and procedures required therewith.

49-22-19. Hearing - Judicial review.

Any party aggrieved by the issuance of a certificate of site compatibility or electric transmission facility construction permit from the commission, certification of continuing suitability filed by a utility with the commission, or promulgation of a final order by the commission, may request a rehearing by the commission. The hearing must be conducted pursuant to chapter 28-32. There is a right of appeal to the district court from any adverse ruling by the commission.

49-22-20. Revocation or suspension of certificate or permit.

A certificate of site compatibility or permit for the construction of an electric transmission facility may be revoked or suspended for:

1. Any material false statement in the application or in accompanying statements or studies required of the applicant.
2. Failure to comply with the certificate or permit or any terms, conditions, or modifications contained therein.
3. Violation of the provisions of this chapter or rules or regulations issued pursuant to this chapter by the commission.
4. A determination by a district court pursuant to section 49-22-16.1.

49-22-21. Penalties.

1. Any person required by this chapter to have a certificate or permit who willfully begins construction of an electric energy conversion facility or electric transmission facility without previously securing a certificate or permit as prescribed by this chapter, or who willfully constructs, operates, or maintains an electric energy conversion facility or electric transmission facility other than in compliance with the certificate or permit and any terms, conditions, and modifications contained therein is guilty of a class A misdemeanor.
2. Any person who willfully violates any regulation issued or approved pursuant to this chapter or who willfully falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this chapter shall be guilty of a class A misdemeanor.
3. Any person who willfully engages in any of the following conduct is subject to a civil penalty of not to exceed ten thousand dollars for each such violation for each day the violations persist, except that the maximum penalty may not exceed two hundred thousand dollars for any related series of violations:
 - a. Begins construction of an electric energy conversion facility or an electric transmission facility without having been issued a certificate or permit pursuant to this chapter.
 - b. Constructs, operates, or maintains an electric energy conversion facility or an electric transmission facility other than in compliance with the certificate or permit and any terms, conditions, or modifications contained therein.

- c. Violates any provision of this chapter or any rule adopted by the commission pursuant to this chapter.
- d. Falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained pursuant to a certificate or permit issued pursuant to this chapter.

The civil penalty provided for in this subsection may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise must be deposited in the general fund and, if not paid, may be recovered in a civil action in the courts of the state.

- 4. Notwithstanding any other provision of this chapter, the commission, by injunctive procedures, without bond or other undertaking, may proceed against any person who willfully engages in any conduct described in subsection 3. No liability shall accrue to the commission or its authorized representative in proceeding against any person pursuant to this section.

49-22-22. Siting process expense recovery - Deposit in special fund - Continuing appropriation.

- 1. Every applicant under this chapter shall pay to the commission an application fee:
 - a. An applicant for a certificate of site compatibility shall pay an amount equal to five hundred dollars for each one million dollars of investment in the facility.
 - b. An applicant for a certificate of corridor compatibility shall pay an amount equal to five thousand dollars for each one million dollars of investment in the facility.
 - c. An applicant for a waiver shall pay the amount which would be required for an application for a certificate of site or corridor compatibility for the proposed facility. If a waiver is not granted for a proposed facility, such application fee paid shall be allowed as a credit against fees payable under this section in connection with an application under this chapter for a certificate or permit for the proposed facility.
 - d. An applicant requesting an amendment to a certificate or permit or for a transfer of a certificate or permit shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.
 - e. An applicant certifying to the commission under subsection 3 of section 49-22-03 shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.
 - f. The application fee under subdivision a, b, or c may not be less than ten thousand dollars nor more than one hundred thousand dollars.
 - g. An applicant may agree to pay additional fees that are reasonably necessary for completion of the site, corridor, or route evaluation and designation process.
- 2. If an applicant does not agree to pay additional fees reasonably necessary for completion of the site, corridor, or route evaluation and designation process, with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the electric energy conversion facility site, electric transmission facility corridor, or electric transmission facility route evaluation and designation process by the commission. The application fee under subsection 1 and any additional fees required of the applicant under this subsection may not exceed an amount equal to one thousand dollars for each one million dollars of investment in a proposed energy conversion facility or ten thousand dollars for each one million dollars of investment in a proposed electric transmission facility.
- 3. A siting process expense recovery fund is established in the state treasury. The commission shall deposit payments received under subsections 1 and 2 in the siting process expense recovery fund. All moneys deposited in the fund are appropriated on a continuing basis to the commission to pay expenses incurred in the siting process. The commission shall specify the time and method of payment of any fees and shall refund the portion of fees collected under subsections 1 and 2 which exceeds the expenses incurred for the evaluation and designation process.
- 4. Every applicant for a certificate of site compatibility, certificate of corridor compatibility and route permit, and transfer of a certificate or permit under this chapter shall pay to

the commission an administrative fee equal to two hundred dollars for each one million dollars of original investment, not to exceed fifty thousand dollars. The administrative fee must be deposited in the public service commission program fund.

49-22-23. Transfer.

Repealed by S.L. 1977, ch. 447, § 16.

49-22-24. Safety.

Every utility that owns or operates electric generation of any size for the primary purpose of resale shall comply with the standards of the national electrical safety code in effect at the time of construction of the generation.

49-22-25. Approval for temporary operation or variance.

1. The commission may approve temporary operation of facilities or a temporary variance from approved construction, operation, or maintenance of facilities upon a showing of good cause and receipt of a utility certification that the activities will have no adverse impacts upon the welfare of the citizens of this state or the environment.
2. The commission may issue a temporary approval or variance without the necessity of notice, publication, or public hearing with any additional terms, conditions, or modifications deemed necessary to minimize impacts.

49-22-26. Protection of cultural or historic site data.

The commission may limit access to, and release of, information that contains data that specifically identifies the location of cultural, archaeological, historical, or paleontological sites.