

PUBLIC UTILITIES

CHAPTER 404

HOUSE BILL NO. 1142

(Representatives Headland, D. Johnson, Kaldor)
(Senators Heitkamp, Klein, Nething)

PSC TELECOMMUNICATIONS JURISDICTION

AN ACT to amend and reenact section 49-02-01.1 of the North Dakota Century Code, relating to the jurisdiction of the public service commission over telecommunications companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

49-02-01.1. Jurisdiction of commission limited as to certain utilities.

Nothing in this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates, contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of any public utility owned and operated by the state or by any city, county, township, or other political subdivision of the state or any public utility, that is not operated for profit, that is operated as a nonprofit, cooperative, or mutual telecommunications company or is a telecommunications company having fewer than ~~eight~~ eighteen thousand local exchange subscribers. However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual telecommunications company or has fewer than ~~eight~~ eighteen thousand local exchange subscribers is subject to sections 49-21-01.4, 49-21-02.4, 49-21-23, 49-21-24, and 49-21-25, subsections 6 through 14 of section 49-21-01.7, and to sections 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access services or connection between facilities and transfer of telecommunications between two or more telecommunications companies. Nothing in this section limits the authority of the commission granted under chapters 49-03 and 49-03.1 or sections 49-04-05 and 49-04-06.

Approved March 6, 2007

Filed March 7, 2007

CHAPTER 405**HOUSE BILL NO. 1193**

(Representatives Wrangham, Kerzman, Nottestad)
(Senators Cook, Klein, O'Connell)

HYDROELECTRICITY AS RENEWABLE ENERGY

AN ACT to amend and reenact section 49-02-25 of the North Dakota Century Code, relating to hydroelectricity as a renewable electricity and recycled energy source.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰² **SECTION 1. AMENDMENT.** Section 49-02-25 of the North Dakota Century Code is amended and reenacted as follows:

49-02-25. Renewable electricity and recycled energy defined. As used in section 49-02-24, renewable electricity and recycled energy include electricity generated from facilities using the following sources:

1. Solar, using the sun as the source of energy for producing electricity.
2. Wind, using the wind as the source of energy for producing electricity.
3. Hydroelectric, using water as the source of energy for producing electricity.
4. Biomass, using agricultural crops and agricultural wastes and residues, wood and wood wastes and residues, animal wastes, and landfill gas as the fuel to produce electricity.
4. 5. Geothermal, using energy contained in heat that continuously flows outward from the earth as the source of energy to produce electricity.
5. 6. Hydrogen, provided that the hydrogen is generated from a source listed in this section.
6. 7. Recycled energy systems producing electricity from currently unused waste heat resulting from combustion or other processes into electricity and which do not use an additional combustion process. The term does not include any system whose primary purpose is the generation of electricity.

Approved March 5, 2007
Filed March 6, 2007

²⁰² Section 49-02-25 was also amended by section 2 of House Bill No. 1506, chapter 406.

CHAPTER 406**HOUSE BILL NO. 1506**

(Representatives Monson, Dahl, S. Kelsh)

(Senator Erbele)

RENEWABLE AND RECYCLED ENERGY

AN ACT to establish a state renewable and recycled energy objective; to create and enact six new sections to chapter 49-02 of the North Dakota Century Code, relating to renewable and recycled energy; and to amend and reenact sections 49-02-25 and 49-02-26 of the North Dakota Century Code, relating to electricity produced from hydroelectric sources as renewable electricity and recycled energy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. State renewable and recycled energy objective. The legislative assembly establishes a state renewable and recycled energy objective that ten percent of all electricity sold at retail within the state by the year 2015 be obtained from renewable energy and recycled energy sources. The objective must be measured by qualifying megawatt hours delivered at retail or by certificates representing credits purchased and retired to offset nonqualifying retail sales. This objective is voluntary and there is no penalty or sanction for a retail provider of electricity that fails to meet this objective. The objective applies to all retail providers of electricity in the state, regardless of the ownership status of the electricity retailer. Municipal and cooperative utilities that receive wholesale electricity through a municipal power agency or generation and transmission cooperative may aggregate their renewable and recycled energy objective resources to meet this objective.

²⁰³ **SECTION 2. AMENDMENT.** Section 49-02-25 of the North Dakota Century Code is amended and reenacted as follows:

49-02-25. Renewable electricity and recycled energy defined. As used in section 49-02-24, renewable electricity and recycled energy include electricity generated from facilities using the following sources:

1. Solar, using the sun as the source of energy for producing electricity.
2. Wind, using the wind as the source of energy for producing electricity.
3. Biomass, using agricultural crops and agricultural wastes and residues, wood and wood wastes and residues, animal wastes, and landfill gas as the fuel to produce electricity.
4. Hydroelectric, that uses water as the source of energy to produce electricity.

²⁰³ Section 49-02-25 was also amended by section 1 of House Bill No. 1193, chapter 405.

5. Geothermal, using energy contained in heat that continuously flows outward from the earth as the source of energy to produce electricity.
- ~~5-~~ 6. Hydrogen, provided that the hydrogen is generated from a source listed in this section.
- ~~6-~~ 7. Recycled energy systems producing electricity from currently unused waste heat resulting from combustion or other processes into electricity and which do not use an additional combustion process. The term does not include any system whose primary purpose is the generation of electricity.

SECTION 3. AMENDMENT. Section 49-02-26 of the North Dakota Century Code is amended and reenacted as follows:

49-02-26. Qualifying for renewable electricity and recycled energy credits - Exception for certain hydroelectric facilities. ~~For~~ Except as otherwise provided in this section, for purposes of qualifying for renewable electricity and recycled energy credits, electricity must be generated from a source identified in section 49-02-25. For electricity generated from hydroelectric facilities, the hydroelectric facility must have an inservice date of January 1, 2007, or later, or be new hydroelectric generation obtained from repowering or efficiency improvements to hydroelectric facilities existing on the effective date of this Act.

SECTION 4. A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

Qualifying for renewable electricity and recycled energy objective. For purposes of qualifying for the renewable electricity and recycled energy objective contained in section 1 of this Act, electricity, except for electricity generated from a hydroelectric facility with an inservice date before January 1, 2007, and electricity that is not obtained from repowering or efficiency improvements to a hydropower facility existing on the effective date of this Act, regardless of the source's inservice date, qualifies for meeting the statewide objective provided that the source meets the requirements of North Dakota public service commission's rules for tracking, recording, and verifying renewable energy certificates.

SECTION 5. A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

Application of electricity generated from existing hydroelectric facilities in calculating the renewable objective. For purposes of calculating the amount of electricity from renewable energy and recycled energy sources needed to meet the renewable and recycled energy objective, a retail provider may deduct from its baseline of total retail sales the proportion of electricity obtained from hydroelectric facilities with an inservice date before January 1, 2007.

SECTION 6. A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

Purchase and retirement of renewable energy and recycled energy certificates to meet the objective. A portion or all of the renewable energy and recycled energy objective may be met by the purchase and retirement of renewable energy and recycled energy certificates representing credits from qualified sources and facilities as defined in section 49-02-26 and section 5 of this Act. Renewable

energy and recycled energy certificates do not need to be acquired from an in-state facility.

SECTION 7. A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

Use of renewable and recycled energy - Economic evaluation. Before using new renewable and recycled energy after August 1, 2007, to meet the objective, the retail provider or its generation supplier shall make an economic evaluation to determine if the use of new renewable and recycled energy is cost-effective considering other electricity alternatives. After evaluating the renewable and recycled energy objective and economic evaluation, the retail provider or its generation supplier may use the electricity alternative that best meets its resource or customer needs.

SECTION 8. A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

Verification of generation and of purchase of renewable energy and recycled energy certificates. Electricity generation applied to the renewable energy and recycled energy objective, as well as certificate purchases and certificate retirements, must be independently verified through a third-party credit tracking system selected by the public service commission.

SECTION 9. A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

Public reporting on progress toward meeting the renewable energy and recycled energy objective. Commencing on June 30, 2009, retail providers shall report annually on the provider's previous calendar year's energy sales. This report must include information regarding qualifying electricity delivered and renewable energy and recycled energy certificates purchased and retired as a percentage of annual retail sales and a brief narrative report that describes steps taken to meet the objective over time and identifies any challenges or barriers encountered in meeting the objective. The last annual report must be made on June 30, 2016. Retail providers shall report to the public service commission, which shall make data and narrative reports publicly available and accessible electronically on the internet. Distribution cooperatives may aggregate their reporting through generation and transmission cooperatives and municipal utilities may aggregate their reporting through a municipal power agency.

Approved March 23, 2007
Filed March 23, 2007

CHAPTER 407**HOUSE BILL NO. 1221**

(Representatives Keiser, Delmore, Vigesaa)
(Senators Heitkamp, Klein, Wanzek)

**RATE ADJUSTMENT FOR ENVIRONMENTAL
MANDATES**

AN ACT to create and enact a new section to chapter 49-05 of the North Dakota Century Code, relating to public utility rate adjustments for recovery of costs resulting from federal environmental mandates on existing electricity generating stations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

Rate adjustment - Federal environmental mandate costs.

1. The commission may approve, reject, or modify a tariff filed under section 49-05-06, which provides for an adjustment of rates to recover jurisdictional capital costs and associated operating expenses incurred by a public utility to comply with federal environmental mandates on existing electricity generating stations. For purposes of this section, federal environmental mandates are limited to any requirements under the Clean Air Act, the Clean Water Act, or any other federal law or rule designed to protect the environment. Associated operating expenses are costs incurred by the public utility to comply with the environmental mandate. The tariff must:
 - a. Allow the public utility to recover on a timely basis its investment in capital costs and associated operating expenses incurred to meet federal environmental mandates not reflected in the utility's general rate schedule.
 - b. Allow a return on the public utility's investment made to meet federal environmental mandates at the level approved in the utility's most recent general rate case.
 - c. Provide a current return on construction work in progress to meet federal environmental mandates provided the cost recovery from retail customers of the allowance for funds used during construction is not sought through any other means.
 - d. Terminate cost recovery after the public utility's costs and expenses to meet federal environmental mandates have been recovered fully or have been reflected in the utility's general rate tariffs.
2. Rate adjustments filed under the tariff must be accompanied by:

- a. A description and quantification of the costs and expenses incurred by the public utility to meet federal environmental mandates which are subject to recovery;
 - b. A schedule for implementation of the applicable projects; and
 - c. Calculations to establish that the rate adjustment is consistent with the terms of the tariff.
3. Upon receipt of a rate adjustment filed under the tariff, the commission shall approve the rate adjustment to become effective unless, after notice and opportunity for hearing and comment, the commission determines the rate adjustment does not comply with the tariff or the incurred costs and expenses to meet federal environmental mandates are not reasonable and prudent. The commission may order the expenses of investigating rate adjustments to meet federal environmental mandates under this section be paid by the public utility in accordance with section 49-02-02. The public utility has the burden of proving that the rate adjustment complies with the tariff and that the costs and expenses incurred to meet federal environmental mandates are reasonable and prudent.

Approved March 13, 2007

Filed March 14, 2007

CHAPTER 408**SENATE BILL NO. 2031**

(Legislative Council)

(Electric Industry Competition Committee)

**RATE ADJUSTMENTS FOR TRANSMISSION
FACILITIES**

AN ACT to create and enact a new section to chapter 49-05 of the North Dakota Century Code, relating to public utility rate adjustments for recovery of transmission facility costs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

Rate adjustment - Transmission facility costs.

1. The commission may approve, reject, or modify a tariff filed under section 49-05-06 which provides for an adjustment of rates to recover jurisdictional capital and operating costs incurred by a public utility for new or modified electric transmission facilities. For purposes of this section, an electric transmission facility includes an electric transmission line as defined in chapter 49-21.1 and other transmission line equipment, including substations, transformers, and other equipment constructed to improve the power delivery capability or reliability of the electric transmission system; and operating costs include federally regulated costs charged to or incurred by the public utility to increase regional transmission capacity or reliability. The tariff must:
 - a. Allow the public utility to recover on a timely basis its investment and associated costs for new or modified electric transmission facilities not reflected in the utility's general rate schedule;
 - b. Allow a return on the public utility's investment made for new or modified electric transmission facilities at the level approved in the utility's most recent general rate case;
 - c. Provide a current return on construction work in progress for new or modified electric transmission facilities, provided the cost recovery from retail customers of the allowance for funds used during construction is not sought through any other means; and
 - d. Terminate cost recovery after the public utility's costs for new or modified electric transmission facilities have been recovered fully or have been reflected in the utility's general rate tariffs.
2. Rate adjustments filed under the tariff must be accompanied by:

- a. A description and quantification of the costs incurred by the public utility for new or modified electric transmission facilities which are subject to recovery;
 - b. A schedule for implementation of the applicable transmission facility projects; and
 - c. Calculations to establish that the rate adjustment is consistent with the terms of the tariff.
3. Upon receipt of a rate adjustment filed under the tariff, the commission shall approve the rate adjustment to become effective unless, after notice and opportunity for hearing and comment, the commission determines the rate adjustment does not comply with the tariff or the incurred costs for new or modified electric transmission facilities are not reasonable and prudent. The commission may order the public utility to pay the expenses of investigating rate adjustments for recovery of transmission facility costs under this section in accordance with section 49-02-02.

Approved March 9, 2007
Filed March 12, 2007

CHAPTER 409**SENATE BILL NO. 2188**

(Senators Fischer, Cook, Robinson)
(Representatives Haas, R. Kelsch, Wolf)

RAILROAD ACCIDENT REPORTS AND STUDY

AN ACT to create and enact a new section to chapter 49-10.1 of the North Dakota Century Code, relating to railroad accident reports; and to provide for a legislative council study of risk assessments and railroad safety.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-10.1 of the North Dakota Century Code is created and enacted as follows:

Accident report. A railroad corporation shall provide immediate notification to the department of emergency services of an accidental release of a hazardous material.

SECTION 2. LEGISLATIVE COUNCIL STUDY - RISK ASSESSMENTS AND RAILROAD SAFETY. During the 2007-08 interim, the legislative council shall study risk assessments for railroad facilities, the handling of hazardous cargo by railroads, and the ability of railroads to respond to potential accidents and emergencies, including sabotage, terrorism, and other crimes. This study must include an evaluation of whether whistleblower protection would provide a desirable response in employees to report dangerous conditions or violations of law relating to hazards, emergencies, and accidents. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved April 26, 2007
Filed April 27, 2007

CHAPTER 410**SENATE BILL NO. 2368**

(Senator Potter)

RAILROAD RIGHT OF WAY CHOICE OF LAWS VOID

AN ACT to create and enact a new section to chapter 49-16 of the North Dakota Century Code, relating to a choice-of-laws clause in an indemnification provision of a railroad right of way agreement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-16 of the North Dakota Century Code is created and enacted as follows:

Choice-of-laws clause void. To the extent a provision of any lease, license, or other agreement relating to the use or occupancy of railroad right of way or other adjoining property provides the indemnification provisions of section 49-16-01.1 do not apply, or another provision applies, the provision is void.

Approved April 26, 2007

Filed April 27, 2007

CHAPTER 411**HOUSE BILL NO. 1143**

(Representative Headland)
(Senator Wanzek)

PSC TELECOMMUNICATIONS POWERS

AN ACT to create and enact a new subsection to section 49-21-01.7 of the North Dakota Century Code, relating to the powers of the public service commission with respect to rural telephone companies under the federal Telecommunications Act of 1996.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 49-21-01.7 of the North Dakota Century Code is created and enacted as follows:

Grant suspensions or modifications under section 251(f) of the federal Act.

Approved March 7, 2007
Filed March 8, 2007

CHAPTER 412**HOUSE BILL NO. 1315**

(Representatives Brandenburg, Damschen, Headland, Klein)
(Senators Wanzek, Wardner)

**ELECTRICAL GENERATION AND TRANSMISSION
SAFETY**

AN ACT to create and enact a new section to chapter 49-22 of the North Dakota Century Code, relating to electrical generation and transmission safety.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-22 of the North Dakota Century Code is created and enacted as follows:

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.

Approved April 11, 2007
Filed April 13, 2007

CHAPTER 413**HOUSE BILL NO. 1127**

(Government and Veterans Affairs Committee)
(At the request of the Industrial Commission)

TRANSMISSION AUTHORITY RECORDS AND REPORTING

AN ACT to create and enact a new section to chapter 49-24 of the North Dakota Century Code, relating to confidentiality of transmission authority information; and to amend and reenact subsection 12 of section 49-24-05, section 49-24-13, subsection 3 of section 54-17.5-04, section 54-17.5-06, and subsection 5 of section 54-44.4-02 of the North Dakota Century Code, relating to powers of the transmission authority, procurement and borrowing by the industrial commission, reporting requirements, and confidential records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 12 of section 49-24-05 of the North Dakota Century Code is amended and reenacted as follows:

12. Consult with the public service commission, regional organizations, and any other relevant state or federal authority or persons as necessary and establish reasonable fees, rates, tariffs, or other charges for transmission facilities and all services rendered by the authority;

SECTION 2. AMENDMENT. Section 49-24-13 of the North Dakota Century Code is amended and reenacted as follows:

49-24-13. Biennial report to legislative council Reporting requirements. The authority shall deliver a written report on its activities to the legislative council each biennium. Notwithstanding chapter 54-60.1, the authority shall provide an annual report to the industrial commission detailing activities and expenditures incurred during the preceding year.

SECTION 3. A new section to chapter 49-24 of the North Dakota Century Code is created and enacted as follows:

Access to authority records - Confidentiality.

1. Materials and data submitted to, or made or received by, the authority, to the extent that the authority determines the materials or data consist of trade secrets or commercial, financial, or proprietary information of individuals or entities applying to or contracting with the authority or receiving authority services under this chapter are subject to section 44-04-18.4.
2. A person or entity must file a request with the authority to have material designated as confidential under subsection 1. A request to have material designated as confidential is exempt as defined in section

44-04-17.1. The request must contain any information required by the authority and must include at least:

- a. A general description of the nature of the information sought to be protected.
 - b. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons.
 - c. An explanation of why the information is not readily ascertainable by proper means by other persons.
 - d. A general description of any person or entity that may obtain economic value from disclosure or use of the information and how the person or entity may obtain this value.
 - e. A description of the efforts used to maintain the secrecy of the information.
3. The information submitted under subsection 2 is confidential. The authority shall examine the request and determine whether the information is relevant to the matter at hand and is a trade secret under the definition in section 47-25.1-01 or 44-04-18.4. If the authority determines the information is either not relevant or not a trade secret, the authority shall notify the requester and the requester may ask for the return of the information and request within ten days of the notice. If no return is sought, the information and request are a public record.

SECTION 4. AMENDMENT. Subsection 3 of section 54-17.5-04 of the North Dakota Century Code is amended and reenacted as follows:

3. To ~~borrow money and~~ issue evidences of indebtedness as ~~provided~~ authorized in this chapter and to borrow money in an amount not to exceed six million dollars from the Bank of North Dakota for a period not to exceed five years on the terms and conditions as the Bank of North Dakota and the industrial commission may approve without the necessity of establishing or maintaining any reserve fund as otherwise required by section 54-17.5-05.

SECTION 5. AMENDMENT. Section 54-17.5-06 of the North Dakota Century Code is amended and reenacted as follows:

54-17.5-06. Access to commission records.

1. Materials and data submitted to, or made or received by, the commission, to the extent that the commission determines the materials or data consist of trade secrets or commercial, financial, or proprietary information of individuals or entities applying to or contracting with the commission or receiving commission services under this chapter, ~~are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota, and~~ are subject to section 44-04-18.4.
2. A person or entity must file a request with the commission to have material designated as confidential under subsection 1. A request to

have material designated as confidential is exempt as defined in section 44-04-17.1. The request must contain any information required by the commission, and must include at least the following:

- a. A general description of the nature of the information sought to be protected.
 - b. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons.
 - c. An explanation of why the information is not readily ascertainable by proper means by other persons.
 - d. A general description of any person or entity that may obtain economic value from disclosure or use of the information, and how the person or entity may obtain this value.
 - e. A description of the efforts used to maintain the secrecy of the information.
3. Any ~~request~~ information submitted under subsection 2 is confidential. The commission shall examine the request and determine whether the information is relevant to the matter at hand and is a trade secret under the definition in section 47-25.1-01 or 44-04-18.4. If the commission determines the information is either not relevant or not a trade secret, the commission shall notify the requester and the requester may ask for the return of the information and request within ten days of the notice. If no return is sought, the information and request are a public record.
4. The names or identities of independent technical reviewers on any project or program and the names of individual lignite council members making recommendations are confidential; ~~and may not be disclosed by the commission, and are not public records subject to section 44-04-18 or section 6 of article XI of the Constitution of North Dakota.~~

²⁰⁴ **SECTION 6. AMENDMENT.** Subsection 5 of section 54-44.4-02 of the North Dakota Century Code is amended and reenacted as follows:

5. Procurements through a contract or other instrument executed by the industrial commission under ~~chapter~~ chapters 54-17.5 and 49-24.

Approved April 24, 2007
Filed April 25, 2007

²⁰⁴ Section 54-44.4-02 was also amended by section 6 of House Bill No. 1060, chapter 314, section 3 of House Bill No. 1128, chapter 464, and section 7 of Senate Bill No. 2019, chapter 45.