

# PUBLIC UTILITIES

## CHAPTER 346

### SENATE BILL NO. 2322

(Senators Klein, Krebsbach, Robinson)  
(Representatives Delmore, Keiser, Thoreson)

AN ACT to amend and reenact sections 49-03-01, 49-03-01.4, 49-03-01.5, 49-03-02, 49-03-03, 49-03-04, and 49-03-05 of the North Dakota Century Code, relating to electric transmission providers; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 49-03-01 of the North Dakota Century Code is amended and reenacted as follows:

**49-03-01. Certificate of public convenience and necessity - Secured by electric public utility.**

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1. An electric public utility henceforth shall may not begin construction or operation of a public utility plant or system, or of an extension of a plant or system, ~~except as provided below,~~ without first obtaining from the commission a certificate that public convenience and necessity require or will require ~~such~~ the construction and operation. This section does not require an electric public utility to secure a certificate for an extension within any municipality within which ~~it~~ the electric public utility has lawfully commenced operations. If any electric public utility in constructing or extending its line, plant, or system, unreasonably interferes with or is about to interfere unreasonably with the service or system of any other electric public utility, or any electric cooperative corporation, the commission, on complaint of the electric public utility or the electric cooperative corporation claiming to be injuriously affected, after notice and hearing as provided in this title, may order enforcement of this section with respect to the offending electric public utility and prescribe just and reasonable terms and conditions.
2. An electric transmission provider may not begin construction or operation of an electric transmission line interconnecting with an existing electric transmission line owned or operated by an electric public utility without first obtaining a certificate that public convenience and necessity require or will require the construction or operation.

**SECTION 2. AMENDMENT.** Section 49-03-01.4 of the North Dakota Century Code is amended and reenacted as follows:

#### 49-03-01.4. Enforcement of act.

1. If any electric public utility or electric transmission provider violates or threatens to violate any of the provisions of sections 49-03-01 through 49-03-01.5 or interferes with or threatens to interfere with the service or system of any other electric public utility or rural electric cooperative, the commission, after complaint, notice, and hearing as provided in chapter 28-32, shall make its order restraining and enjoining ~~said~~ the electric public utility or electric transmission provider from constructing or extending its interfering lines, plant, or system. In addition to the restraint imposed, the commission shall prescribe ~~such any~~ terms and conditions as ~~it shall deem~~ the commission deems reasonable and proper.

~~Provided, further, that nothing herein contained shall be construed to~~

2. ~~This section does not~~ prohibit or limit any person, who has been injured in the person's business or property by reason of a violation of sections 49-03-01 through 49-03-01.5 by any electric public utility, electric transmission provider, or electric cooperative corporation, from bringing an action for damages in any district court of this state to recover such damages.

**SECTION 3. AMENDMENT.** Section 49-03-01.5 of the North Dakota Century Code is amended and reenacted as follows:

#### 49-03-01.5. Definitions.

As used in sections 49-03-01 through 49-03-01.5:

1. "Electric provider" means either an electric public utility or a rural electric cooperative.
2. "Electric public utility" means a privately owned supplier of electricity offering to supply or supplying electricity to the general public.
3. "Electric transmission line" means facilities for conducting electric energy at a design voltage of one hundred fifteen kilovolts or greater phase to phase and more than one mile long.
4. "Electric transmission provider" means an owner or operator, other than a rural electric cooperative, of a transmission line the costs of which are recovered directly or indirectly through transmission charges to an electric public utility.
5. "Person" includes an individual, an electric public utility, a corporation, a limited liability company, an association, or a rural electric cooperative.
- ~~4-6.~~ "Rural electric cooperative" includes any electric cooperative organized under chapter 10-13. An electric cooperative, composed of members as prescribed by law, shall not be deemed to be an electric public utility.
- ~~5-7.~~ "Service area" means a defined geographic area containing existing or future service locations established by an agreement among electric providers and approved by the commission.

- ~~6-8.~~ "Service area agreement" means an agreement between electric providers establishing service areas and designating service locations to be served by each provider under section 49-03-06.
- 7-9. "Service location" means the structures, facilities, or improvements on a parcel of real property to which electric service may be provided.

**SECTION 4. AMENDMENT.** Section 49-03-02 of the North Dakota Century Code is amended and reenacted as follows:

**49-03-02. Prerequisites to issuance of certificate of public convenience and necessity.**

1. Before any certificate may issue under this chapter, a certified copy of the articles of incorporation or charter of the utility, if the applicant is a corporation, or a certified copy of the articles of organization of the utility, if the applicant is a limited liability company, ~~shall~~must be filed with the commission. At the hearing ~~of said on the application upon~~after notice as provided in this title, the utility shall submit evidence showing that ~~such~~the applicant has received the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, if required, or has or is about to make application ~~therefor~~for authority. The commission shall have the power, after notice and hearing, to:
  4. a. Issue the certificate prayed for;
  2. b. Refuse to issue ~~such~~the certificate;
  3. c. Issue ~~the certificate~~ for the construction or operation of a portion only of the contemplated facility, line, plant, system, or extension ~~thereof~~of the same; or
  4. d. Issue ~~the certificate~~ for the partial exercise of the right or privilege sought, conditioned upon the applicant's having secured or upon the applicant's securing the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, and may attach to the exercise of the rights granted by any certificate ~~such~~ terms and conditions as in ~~its~~the judgment of the commission the public convenience and necessity may require.
2. Notwithstanding any ~~of the foregoing provisions~~other provision of this section, the commission may grant a certificate if ~~no~~an interested party, including any local electric cooperative, has not requested a hearing on ~~said~~an application after receiving at least twenty days' notice of opportunity to request such hearing. In addition, the commission may not issue a certificate to an electric transmission provider for construction or operation of an electric transmission line that will interconnect with an electric transmission line owned or operated by an electric public utility if the electric public utility is willing and able to construct and operate a similar electric transmission line.
3. The commission may impose an application fee of up to one hundred twenty-five thousand dollars for an application under this chapter. With the approval of the emergency commission, the commission may impose an additional amount. The commission shall pay the expenses of processing an application under this chapter from the application fee paid by the public utility in accordance with section 49-02-02.

**SECTION 5. AMENDMENT.** Section 49-03-03 of the North Dakota Century Code is amended and reenacted as follows:

**49-03-03. Franchise not to be exercised without certificate.**

~~No~~A public utility ~~henceforth shall~~or electric transmission provider may not exercise any right or privilege under any franchise or certificate ~~hereafter granted, or under any franchise or certificate heretofore granted,~~ the exercise of which has been suspended or discontinued for more than one year, without first obtaining from the commission a certificate that public convenience and necessity require the exercise of ~~such~~the right or privilege.

**SECTION 6. AMENDMENT.** Section 49-03-04 of the North Dakota Century Code is amended and reenacted as follows:

**49-03-04. Replacement or renewal of franchise - Certificate of public convenience and necessity not necessary.**

~~No~~A public utility or electric transmission provider does not need to secure a renewal of the certificate of public convenience and necessity under this chapter in order to exercise rights under an ordinance ~~hereafter granted where it if either~~ has not suspended operation of its plant and where ~~such~~the franchise merely replaces or renews an expiring or expired franchise.

**SECTION 7. AMENDMENT.** Section 49-03-05 of the North Dakota Century Code is amended and reenacted as follows:

**49-03-05. Complaint upon violation of chapter.**

~~Whenever~~If a public utility or electric transmission provider engages or is about to engage in construction or operation as described in this chapter without having secured a certificate of public convenience and necessity as required by the provisions of this chapter, or ~~whenever~~if a public utility or electric transmission provider constructs or extends its line, plant, or system, or supplies, or offers to supply electric service in violation of this chapter, any interested municipality, public authority, utility, electric cooperative corporation, or person, may file a complaint with the commission. The commission ~~thereupon~~acting on the complaint, or upon its own motion without complaint, with or without notice, may make its order requiring the public utility complained of to cease and desist from ~~such~~the construction or operation or other prohibited activity until the further order of the commission. Upon hearing had after due notice given, the commission shall make ~~such~~an order with respect to ~~such~~the public utility or electric transmission provider and prescribe ~~such~~ terms and conditions as are just and reasonable.

**SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 29, 2011  
Filed March 29, 2011

## CHAPTER 347

### HOUSE BILL NO. 1221

(Representatives Keiser, Vigesaa, Williams)  
(Senators Klein, Krebsbach, O'Connell)

AN ACT to amend and reenact section 49-05-16 of the North Dakota Century Code, relating to advance determination of prudence.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 49-05-16 of the North Dakota Century Code is amended and reenacted as follows:

#### **49-05-16. Advance determination of prudence.**

In this section, unless the context otherwise requires, resource addition means construction, modification, purchase, or lease of an energy conversion facility, renewable energy facility, demand response system, transmission facility, or a contract to acquire energy, capacity, or demand response for the purpose of providing electric service. A public utility ~~proposing to construct, lease, or make improvements to an energy conversion facility, renewable energy facility, transmission facility, or proposed energy purchase contract from another entity or person for the purpose of ensuring reliable electric service to its customers~~ that intends to make a resource addition may file an application with the commission for an advance determination of prudence regarding the ~~proposal~~ resource addition. The commission shall pay the expenses associated with investigating the application made by the public utility for prudence of a resource addition from the application fee paid by the public utility in accordance with section 49-02-02.

1. The commission may issue an order approving the prudence of ~~an electrica~~ resource addition if:
  - a. The public utility files with its application a projection of costs to the date of the anticipated commercial operation of the ~~electric~~ resource addition;
  - b. The public utility files with its application a fee in the amount of one hundred twenty-five thousand dollars. Upon request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the application process by the commission. The commission may waive or reduce the fee.
  - c. The commission provides notice and holds a hearing, if appropriate, in accordance with section 49-02-02; and
  - d. The commission determines that the resource addition is ~~reasonable and prudent~~. For facilities located or to be located in this state the commission, in determining whether the resource addition is ~~reasonable and prudent~~, shall consider the benefits of having the ~~energy conversion facility, renewable energy facility, transmission facility, or facility generating the energy to be purchased~~ resource addition located in this state.

2. The commission order must be rendered no later than seven months after the public utility files its application requesting a prudence determination of an electric resource addition.
3. A resource addition approved by the commission is subject to ~~annual~~ reporting requirements until commercial operation of the resource addition. The public utility shall provide periodic reports, as directed by the commission, which must include a description of the status of the resource addition and any changes in material circumstances affecting the resource addition.
4. The commission's order determining prudence of the resource ~~adjustment~~addition is binding for ratemaking purposes.
5. ~~If at any time following~~Following an initial commission order, the commission, ~~following a subsequent hearing, determines may, upon notice and hearing, if appropriate, in accordance with section 49-02-02 determine~~ determine that continuation of a ~~project~~resource addition is no longer prudent or that its prior order should be modified, ~~the~~ Expenses incurred in processing the case must be paid from the fee, including any previously made refund thereof, filed with the prudence determination application for the resource addition.
6. The public utility may recover in its rates, and in a timely manner consistent with the public utility's financial obligations, the amounts the public utility already has expensed, reasonably incurred, or obligated on a ~~project~~prudent resource addition, including interest expense and a return on equity invested in the project up to the time the new order is entered accrued allowance for funds used during construction, even though the ~~project~~resource addition may never be fully operational or used by the public utility to serve its customers. The cost amortization period for a discontinued resource addition may not exceed five years from the date commencement of the recovery is approved by the commission. No return on amounts incurred or obligated by the public utility may be authorized for the period after the resource addition is discontinued. The public utility may request an order from the commission for deferred accounting treatment for costs incurred for a discontinued resource addition.
- 6-7. There is a rebuttable presumption that ~~an energy conversion facility, renewable energy facility, transmission facility, or facility generating the energy to be purchased which is~~ a resource addition located in the state is prudent.

Approved April 11, 2011  
Filed April 11, 2011

## CHAPTER 348

### SENATE BILL NO. 2196

(Senators Wardner, Christmann, Lyson)  
(Representatives Brandenburg, DeKrey, Porter)

AN ACT to amend and reenact subsection 5 of section 49-22-03 and subsection 1 of section 49-22-22 of the North Dakota Century Code, relating to the definition of energy conversion facility and to siting application fees.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 5 of section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

5. "Energy conversion facility" means any 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 ~~sixty~~fifty megawatts of electricity;
  - ~~b-c.~~ Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas per day, regardless of the end use of the gas;
  - ~~e-d.~~ Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
  - ~~d-e.~~ Enrichment of uranium minerals.

**SECTION 2. AMENDMENT.** Subsection 1 of section 49-22-22 of the North Dakota Century Code is amended and reenacted as follows:

1. Every applicant ~~for a certificate of site compatibility under this chapter~~ shall pay to the commission an application fee in:
  - 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 proposed facility as defined in the federal energy regulatory commission uniform system of accounts. ~~Every~~
  - b. An applicant for a certificate of corridor compatibility shall pay ~~to the commission an application fee in~~ an amount equal to five thousand dollars for each one million dollars of investment in the proposed facility as defined in the federal energy regulatory commission uniform system of accounts. ~~Every~~
  - c. An applicant for a waiver shall pay ~~to the commission an application fee in~~ 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 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 this subsection shall not be less than five thousand dollars nor more than one hundred thousand dollars.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 349

### HOUSE BILL NO. 1382

(Representatives Conklin, Hatlestad, Onstad)

AN ACT to amend and reenact subsections 11 and 15 of section 49-23-01 of the North Dakota Century Code, relating to the one-call excavation notice system.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsections 11 and 15 of section 49-23-01 of the North Dakota Century Code are amended and reenacted as follows:

11. "Locate" means an operator's markings of an underground facility showing the approximate horizontal location, including all lines, line direction, intersections, tees, and lateral facilities.
15. "Underground facility" means an underground line, pipeline, cable, facility, system, and its appurtenances used to produce, store, convey, gather, transmit, or distribute communications, data, electricity, power, television signals, heat, gas, oil, petroleum products, carbon dioxide, water, steam, sewage, hazardous liquids, and other similar substances. Privately owned and operated underground facilities which do not extend beyond the boundary of the private property are excluded.

Approved April 19, 2011

Filed April 20, 2011