

PUBLIC UTILITIES

CHAPTER 321

SENATE BILL NO. 2124

(Industry, Business and Labor Committee)
(At the request of the Public Service Commission)

AN ACT to amend and reenact subsection 4 of section 49-03-06 of the North Dakota Century Code, relating to the issuance of a notice for an electric service area agreement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 49-03-06 of the North Dakota Century Code is amended and reenacted as follows:

4. A service area agreement shall be promptly filed with the commission which must ~~give~~issue a notice of the filing within thirty days. Upon the commission's order, or if an affected electric consumer or electric provider requests a hearing within twenty days of the notice, the commission shall hold a hearing on the service area agreement.

Approved March 19, 2015
Filed March 19, 2015

CHAPTER 322

SENATE BILL NO. 2123

(Industry, Business and Labor Committee)
(At the request of the Public Service Commission)

AN ACT to amend and reenact section 49-03.1-03 of the North Dakota Century Code, relating to imposing an application fee for a certificate of public convenience and necessity by a utility other than an electric utility.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-03.1-03 of the North Dakota Century Code is amended and reenacted as follows:

49-03.1-03. Certificate application.

Application for a certificate of public convenience and necessity shall be made upon forms prescribed by the commission. The commission shall make regulations for the filing of such application. The application must contain a financial statement, a description of the type of service to be offered, a map and description of the area to be served, and a list of all other public utilities providing similar service in the area. Upon the filing of an application for a certificate of public convenience and necessity, the commission shall set a hearing date which shall not be less than twenty days after the filing. The commission shall cause notice of the hearing to be served by certified mail, at least ten days before the day of hearing, upon every public utility which is operating, or which has applied for a certificate of public convenience and necessity, in the area proposed to be served by the applicant, and on other interested parties as determined by the commission. The commission shall impose an application fee of up to ten 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.

Approved April 8, 2015
Filed April 8, 2015

CHAPTER 323

SENATE BILL NO. 2135

(Industry, Business and Labor Committee)
(At the request of the Public Service Commission)

AN ACT to amend and reenact subsection 1 of section 49-05-06 of the North Dakota Century Code, relating to suspension period for tariff filings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 49-05-06 of the North Dakota Century Code is amended and reenacted as follows:

1. Whenever a notice or any schedule stating an individual or joint rate, classification, contract, practice, or rule, increasing or decreasing, or resulting in an increase or decrease in any rate, is filed with the commission, the commission may suspend by motion the rate, classification, contract, practice, or rule but the period of suspension may not extend more than six months beyond the time when it otherwise would go into effect unless the commission and the utility filing the notice or schedule agree to the extension. Upon complaint or upon its own initiative without complaint the commission may order a hearing, upon due notice, concerning the propriety of the rate, classification, contract, practice, or rule. On such hearing, the commission shall establish the rates, classifications, contracts, practices, or rules proposed, in whole or in part, or others in lieu thereof, which it finds to be just and reasonable. At any such hearing, the burden to show that the increased rate or proposed change of rate, classification, rule, or practice is just and reasonable is upon the public utility applying for the increase. All such rates, classifications, contracts, practices, or rules, not suspended, on the expiration of thirty days from the time of filing with the commission, or of such lesser time as the commission may grant, become effective rates, classifications, contracts, practices, or rules, subject to the power of the commission, after a hearing had on its own motion or upon complaint, to alter or modify the same.

Approved March 19, 2015
Filed March 19, 2015

CHAPTER 324

HOUSE BILL NO. 1385

(Representatives Thoreson, Beadle, Keiser)
(Senators Armstrong, Poolman)

AN ACT to create and enact a new section to chapter 49-21 of the North Dakota Century Code, relating to voice over internet protocol service and internet protocol-enabled service; and to amend and reenact section 49-21-01 of the North Dakota Century Code, relating to definitions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-21-01 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Access" means telecommunications services to connect a telecommunications customer or end user with a telecommunications company that allows for the origination or the termination, or both, of WATS, 800, and message toll telecommunications services and private line transport services.
2. "Competitive local exchange company" means any telecommunications company providing local exchange service, other than an incumbent local exchange carrier, whether by its own facilities, interconnection, or resale.
3. "Eligible telecommunications carrier" means a telecommunications company designated under section 214(e) of the federal act as eligible to receive universal service support in accordance with section 254 of the federal act.
4. "Essential telecommunications service" means the following services:
 - a. Switched access;
 - b. Installation of the service connection for other essential services from the end user's premises to the local exchange network; and
 - c. Primary flat rate residence basic telephone service including the following service elements:
 - (1) Billing and collecting of the telecommunications company's charges for the service.
 - (2) Primary directory listing.
 - (3) Access to directory assistance.

- (4) Access to emergency 911 service and emergency operator assistance in local exchange areas in which emergency 911 service is not available.
 - (5) Except as provided in section 49-02-01.1, mandatory, flat-rate extended area service to designated nearby local exchange areas.
 - (6) Transmission service necessary for the connection between the end user's premises and the local exchange central office switch including a trunk connection that has inward dialing and necessary signaling service such as touchtone used by end users for the service.
5. "Federal act" means the federal Communications Act of 1934, as amended by the federal Telecommunications Act of 1996 [47 U.S.C. 151 et seq.].
 6. "Incumbent local exchange carrier" means a telecommunications company that meets the definition of section 251(h) of the federal act.
 7. "Inside wire" and "premise cable" mean the telecommunications wire on the customer's side of a demarcation point or point of interconnection between the telecommunications facilities of the telecommunications company and the customer or premise owner established under title 47, Code of Federal Regulations, part 68, section 68.105.
 8. "Interexchange telecommunications company" means a person providing telecommunications service to end users located in separate local exchange areas.
 9. "Internet protocol-enabled service" means any service, capability, functionality, or application that uses internet protocol or any successor protocol and enables an end user to send or receive voice, data, or video communication in internet protocol format or a successor format.
 10. "Local exchange area" means a geographic territorial unit established by a telecommunications company for the administration of telecommunications services as approved and regulated in accordance with chapter 49-03.1.
 - ~~40-11.~~ "Management costs" means the reasonable direct actual costs a political subdivision incurs in exercising its police powers over the public rights of way.
 - ~~44-12.~~ "Mutual telephone company" means a telephone cooperative organized and operating subject to the provisions of this chapter, and such a cooperative shall also be subject to the general law governing cooperatives, except where such general law is in conflict with this chapter.
 - ~~42-13.~~ "Nonessential telecommunications service" means any telecommunications service, other than those essential telecommunications services listed in subsection 4 that a customer has the option to purchase either in conjunction with or separate from any essential telecommunications service.
 - ~~13-14.~~ "Price" means any charge set and collected by a telecommunications company for any telecommunications service offered by it to the public or other telecommunications companies.

- 14-15. "Private line transport service" means a telecommunications service to a customer over a circuit dedicated to the customer's exclusive use, within a local exchange area, or between or among local exchanges. Private line transport service includes services to customers who are end users and services to telecommunications companies.
- 15-16. "Public right of way" means the area on, below, or above a public roadway, highway, street, bridge, cartway, bicycle lane, or public sidewalk in which a political subdivision has a legal interest, including other dedicated rights of way for travel purposes, utility easements, and all the area within seventy-five feet [22.86 meters] of the centerline of any county or township highway right of way over which a board of county commissioners or a board of township supervisors has control under section 24-01-42. The term does not include the airwaves above a public right of way with regard to cellular or other wireless telecommunications or broadcast service or utility poles owned by a political subdivision or a municipal utility or a telecommunications company, in whole or part.
- 16-17. "Rural telephone company" means a telecommunications company that meets the definition of section 153(37) of the federal act.
- 17-18. "Service element" means a telecommunications function or service component that is not useful to the user unless it is combined with one or more other telecommunications functions or service components.
- 18-19. "Switched access" means access to include:
- a. Local exchange central office switching and signaling;
 - b. Operator and recording intercept of calls;
 - c. Termination of end user lines in the local exchange central office;
 - d. The carrier common line charge for the line between the end user's premises and the local exchange central office;
 - e. Billing and collection recording for interexchange carriers to which the local exchange carrier provides access service; and
 - f. Telecommunications service, including connections, provided to allow transmission service and termination between an interexchange company's premises and the local exchange central office switch for the origination or termination of the interexchange company's switched telecommunications services.
- 19-20. "Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.
- 20-21. "Telecommunications service" means the offering for hire of telecommunications facilities, or transmitting for hire telecommunications by means of such facilities whether by wire, radio, lightwave, or other means.
22. "Voice over internet protocol service" means any service that enables real time, two-way voice communication originating from or terminating at the user's location in internet protocol or a successor protocol, utilizes a

broadband connection at the user's location, and permits a user to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.

SECTION 2. A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

Voice over internet protocol service and internet protocol-enabled service.

1. Notwithstanding any other law, a state entity or political subdivision of the state may not by rule, order, or other means directly or indirectly regulate the entry, rates, terms, or conditions for internet protocol-enabled or voice over internet protocol service.
2. Voice over internet protocol service is subject to the following:
 - a. Any required assessments under any state high-cost universal service fund.
 - b. Any required assessment of 911 or E911 fees.
 - c. Any required surcharge under section 54-44.8-08.
 - d. Any required tax under chapter 57-34.
3. Nothing in this section affects or modifies:
 - a. Any applicable wholesale tariff or any commission authority to implement or enforce any rights, duties, or obligations of any party related to wholesale services.
 - b. Any entity's obligations or rights or commission authority under sections 251 and 252 of the federal Communications Act of 1934 [47 U.S.C. 251 and 252].
 - c. Any commission jurisdiction over intrastate switched access rates, terms and conditions, including the implementation of federal law with respect to intercarrier compensation or existing commission authority to address or affect the resolution of disputes regarding intercarrier compensation.
 - d. Any obligation for the provision of video or cable service by any entity under applicable law.
 - e. Any commission jurisdiction or authority to address federal high-cost fund or federal universal service fund issues.
 - f. Any obligation to offer essential telecommunications services.
 - g. Authority to enforce criminal or civil laws, including consumer protection and unfair or deceptive trade practice laws under title 51, which apply generally to the conduct of business.
 - h. Authority of a political subdivision of the state to exercise its zoning power under chapters 40-47, 58-03, or 11-33.
 - i. Any obligation arising out of chapter 49-23.

CHAPTER 325

HOUSE BILL NO. 1375

(Representatives Streyle, Brabandt)
(Senators Armstrong, Poolman)

AN ACT to amend and reenact section 49-21-01.3 of the North Dakota Century Code, relating to price increases for essential telecommunications services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-21-01.3 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01.3. ~~Certain price increases prohibited~~changes from surcharges - Essential telecommunications services.

~~Changes in essential telecommunications services prices are prohibited except as specifically provided for in chapter 49-21 and section 49-02-01.1.~~

1. All increases or decreases in governmentally imposed surcharges and any financial impact on cost of essential telecommunications services caused by governmentally imposed changes in taxes, accounting practices, or separations procedures or resulting in relocation, change, or removal of facilities must be fully reflected in any price for those services within thirty days of the effective date of the surcharge or change, except price changes related to the costs of relocation, change, or removal of facilities are not subject to a thirty-day implementation requirement. This section does not prohibit the lowering of a price of an essential service based on reasonable business practices in a competitive environment provided that no price change may be anticompetitive or otherwise in violation of antitrust or unfair trade practice laws.
2. Whenever a price change provided for in this section is less than three percent of the existing price, notwithstanding any time limitations in this section, a telecommunications company may accumulate such changes in price subject to the following conditions:
 - a. Price increases may be accumulated up to a percentage total of five percent.
 - b. Price decreases may be accumulated only to the extent that there is an offsetting accumulated price increase of an equal or greater percentage. Accumulated price decreases may never exceed accumulated price increases.
 - c. Price decreases may be accumulated only for two years beginning January first of the year in which the change is allowed.
 - d. Accumulated price increases may be implemented at the discretion of the telecommunications company.

- e. The effective date of implementation of an accumulated price change may be prospective only, and in accordance with the filing requirements of section 49-21-04.
3. ~~The monthly price of residence service for telecommunications companies with over fifty thousand subscribers may be up to eighteen dollars.~~
4. ~~Subject to the limitations of this section, this~~This chapter does not prohibit an incumbent local exchange carrier from deaveraging local exchange service prices provided the incumbent local exchange carrier agrees to amend its commission-approved interconnection agreements to allow for deaveraged interconnection prices effective concurrently with the deaveraged retail prices.

Approved March 26, 2015

Filed March 26, 2015

CHAPTER 326

SENATE BILL NO. 2120

(Energy and Natural Resources Committee)
(At the request of the Public Service Commission)

AN ACT to amend and reenact subsection 3 of section 49-22-03 and subsection 1 of section 49-22-22 of the North Dakota Century Code, relating to the definition of construction and energy conversion and transmission facility siting application fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

3. "Construction" includes any clearing of land, excavation, or other action that would affect 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 within the boundaries of for the construction of the same type of facility as the existing type of facility as identified in a subdivision of subsections 5 or 12 of this section and the activities are:
 - (a) Within the geographic boundaries of a previously issued certificate or permit;
 - (b) For an energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
 - (c) For a 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; and
 - (3) The activities are for the construction:
 - (a) Of a new energy conversion facility;
 - (b) Of a new gas, liquid, or electric transmission facility;
 - (c) To improve the existing energy conversion facility or gas, liquid, or electric transmission facility; or

(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.

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 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 proposed facility ~~as defined in the federal energy regulatory commission uniform system of accounts.~~
 - 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 proposed facility ~~as defined in the federal energy regulatory commission uniform system of accounts.~~
 - 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 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 or obtaining siting authority under subdivision b of subsection 2 or subdivision c of subsection 4 of section 49-22-16.3, 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~~ subdivision a, b, or c may not be less than ~~five~~ ten thousand dollars nor more than one hundred thousand dollars.

Approved April 28, 2015

Filed April 28, 2015

CHAPTER 327

HOUSE BILL NO. 1124

(Energy and Natural Resources Committee)
(At the request of the Public Service Commission)

AN ACT to amend and reenact section 49-22-04 of the North Dakota Century Code, relating to utilities' ten-year plans submitted to the public service commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-22-04 of the North Dakota Century Code is amended and reenacted as follows:

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

~~Every~~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. The utility shall update its plan every second 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:

1. 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.
2. An identification of the location of the tentative preferred site for all energy conversion facilities and the tentative location of all 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.
3. 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.
4. 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.
5. 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.
6. 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.

Approved April 9, 2015
Filed April 9, 2015

CHAPTER 328

SENATE BILL NO. 2347

(Senators Bowman, Dever, O'Connell)
(Representatives Fehr, Onstad, Steiner)

AN ACT to amend and reenact section 49-23-01 and subsection 3 of section 49-23-05 of the North Dakota Century Code, relating to the removal of marking materials at excavation sites.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-23-01 of the North Dakota Century Code is amended and reenacted as follows:

49-23-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Abandoned" means no longer in service and physically disconnected from a portion of the facility or from any other facility that is in use or still carries services.
2. "Board" means the board of directors of the nonprofit corporation governing the notification center under section 49-23-03.
3. "Careful and prudent manner" means excavating within twenty-four inches [60.96 centimeters] of the outer edges of an underground facility located manually and marked by the owner or operator by stakes, paint, or other customary manner, and supporting and protecting the uncovered facility.
4. "Damage" means:
 - a. Substantial weakening of structural or lateral support of an underground facility;
 - b. Penetration, impairment, or destruction of any underground protective coating, housing, or other protective device; or
 - c. Impact with or the partial or complete severance of an underground facility to the extent that the facility operator determines that repairs are required.
5. "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, and demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.
6. "Emergency responder" means a fire department, a law enforcement officer, or other emergency rescue service.
7. "Excavation" means any operation in which earth, rock, or other materials in or below the ground is moved or otherwise displaced by means of hand or power tools, power equipment, or explosives and includes grading, trenching,

digging, ditching, drilling, augering, tunneling, boring, scraping, and cable or pipe plowing and driving. The term does not include:

- a. Opening a grave in a cemetery.
 - b. Plowing, cultivating, planting, harvesting, and similar operations in connection with agricultural activities, unless any of these activities disturbs the soil to a depth of eighteen inches [45.72 centimeters] or more.
 - c. Gardening and landscaping unless it disturbs the soil to a depth of twelve inches [30.48 centimeters] or more.
 - d. Normal maintenance of roads and streets if the maintenance does not change the original grade and does not involve the road ditch.
 - e. Normal repair and maintenance of track and track bed by a railroad on its own right of way.
8. "Excavator" means a person who conducts excavation.
 9. "Holiday" means New Year's Day, Martin Luther King Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. When a holiday falls on a Saturday, it is observed on the preceding Friday as if the Friday were the holiday, and when a holiday falls on a Sunday, it is observed on the following Monday as if the Monday were the actual holiday.
 10. "Local governmental unit" means a county, township, or city.
 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.
 12. "Nonprofit corporation" means a corporation established under chapter 10-33.
 13. "Notification center" means a center that receives notice from an excavator of planned excavation or any other request for location and transmits this notice to a participating operator.
 14. "Tangible marking materials" means any material perceptible by touch used to mark the location of an underground facility, including flags, stakes, poles, or other materials inserted into or affixed to the ground. The term does not include paint, chalk, or other liquid ink-based materials applied to the ground.
 15. "Operator" means a person who owns or operates an underground facility, including a master meter operator with underground facilities, or a state or local governmental entity. The department of transportation is considered an operator for the department's facilities buried on the department's rights of way. A person is not considered an operator solely because the person is an owner or tenant of real property where underground facilities are located if the underground facilities are used exclusively to furnish services or commodities on that property.
- ~~45-16.~~ "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.

~~46-17.~~ "Unexpected occurrence" includes a fire, flood, earthquake or other soil or geologic movement, riot, accident, damage to a subsurface installation requiring immediate repair, or sabotage.

~~47-18.~~ "Water" includes potable water, wastewater, and storm water.

SECTION 2. AMENDMENT. Subsection 3 of section 49-23-05 of the North Dakota Century Code is amended and reenacted as follows:

3. Assume ownership of materials used to mark the facility, use reasonable efforts to maintain markings during excavation, and ~~when possible~~ remove all tangible marking materials used to mark the facility upon completion of the excavation.

Approved April 15, 2015
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