

HOUSE BILL NO. 1455

Introduced by

Representatives Nehring, Toman

Senator Bell

1 A BILL ~~for an Act to create and enact two new sections to chapter 49-22 of the North Dakota~~
2 ~~Century Code, relating to the retirement of an electric energy conversion facility and site~~
3 ~~reclamation and bonding; and to amend and reenact section 49-22-03 of the North Dakota~~
4 ~~Century Code, relating to the definition of electric energy conversion facility retirement.~~for an Act
5 to amend and reenact section 49-22-04 of the North Dakota Century Code, relating to ten-year
6 plans.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 ~~— **SECTION 1. AMENDMENT.** Section 49-22-03 of the North Dakota Century Code is~~
9 ~~amended and reenacted as follows:~~

10 ~~— **49-22-03. Definitions.**~~

11 ~~— In this chapter, unless the context or subject matter otherwise requires:~~

12 ~~— 1. "Certificate" means the certificate of site compatibility or the certificate of corridor~~
13 ~~compatibility issued under this chapter.~~

14 ~~— 2. "Commission" means the North Dakota public service commission.~~

15 ~~— 3. "Construction" includes a clearing of land, excavation, or other action affecting the~~
16 ~~environment of the site after April 9, 1975, but does not include activities:~~

17 ~~— a. Conducted wholly within the geographic location for which a utility has previously~~
18 ~~obtained a certificate or permit under this chapter, or on which a facility was~~
19 ~~constructed before April 9, 1975, if:~~

20 ~~— (1) The activities are for the construction of the same type of facility as the~~
21 ~~existing type of facility as identified in a subdivision of subsections 5 or 12 of~~
22 ~~this section and the activities are:~~

23 ~~— (a) Within the geographic boundaries of a previously issued certificate or~~
24 ~~permit;~~

- 1 ~~_____ (b) For an electric energy conversion facility constructed before April 9,~~
2 ~~1975, within the geographic location on which the facility was built; or~~
3 ~~_____ (c) For an electric transmission facility constructed before April 9, 1975,~~
4 ~~within a width of three hundred fifty feet [106.68 meters] on either side~~
5 ~~of the centerline;~~
6 ~~_____ (2) Except as provided in subdivision b, the activities do not affect any known~~
7 ~~exclusion or avoidance area;~~
8 ~~_____ (3) The activities are for the construction:~~
9 ~~_____ (a) Of a new electric energy conversion facility;~~
10 ~~_____ (b) Of a new electric transmission facility;~~
11 ~~_____ (c) To improve the existing electric energy conversion facility or electric~~
12 ~~transmission facility; or~~
13 ~~_____ (d) To increase or decrease the capacity of the existing electric energy~~
14 ~~conversion facility or electric transmission facility; and~~
15 ~~_____ (4) Before conducting any activities, the utility certifies in writing to the~~
16 ~~commission that:~~
17 ~~_____ (a) The activities will not affect a known exclusion or avoidance area;~~
18 ~~_____ (b) The activities are for the construction:~~
19 ~~_____ [1] Of a new electric energy conversion facility;~~
20 ~~_____ [2] Of a new electric transmission facility;~~
21 ~~_____ [3] To improve the existing electric energy conversion or electric~~
22 ~~transmission facility; or~~
23 ~~_____ [4] To increase or decrease the capacity of the existing electric~~
24 ~~energy conversion facility or electric transmission facility; and~~
25 ~~_____ (c) The utility will comply with all applicable conditions and protections in~~
26 ~~siting laws and rules and commission orders previously issued for any~~
27 ~~part of the facility.~~
28 ~~_____ b. Otherwise qualifying for exclusion under subdivision a, except that the activities~~
29 ~~are expected to affect a known avoidance area and the utility before conducting~~
30 ~~any activities:~~
31 ~~_____ (1) Certifies in writing to the commission that:~~

- 1 ~~_____ (a) The activities will not affect a known exclusion area;~~
2 ~~_____ (b) The activities are for the construction:~~
3 ~~_____ [1] Of a new electric energy conversion facility;~~
4 ~~_____ [2] Of a new electric transmission facility;~~
5 ~~_____ [3] To improve the existing electric energy conversion facility or~~
6 ~~_____ electric transmission facility; or~~
7 ~~_____ [4] To increase or decrease the capacity of the existing electric~~
8 ~~_____ energy conversion facility or electric transmission facility; and~~
9 ~~_____ (c) The utility will comply with all applicable conditions and protections in~~
10 ~~_____ siting laws and rules and commission orders previously issued for any~~
11 ~~_____ part of the facility;~~
12 ~~_____ (2) Notifies the commission in writing that the activities are expected to impact~~
13 ~~_____ an avoidance area and provides information on the specific avoidance area~~
14 ~~_____ expected to be impacted and the reasons why impact cannot be avoided;~~
15 ~~_____ and~~
16 ~~_____ (3) Receives the commission's written approval for the impact to the avoidance~~
17 ~~_____ area, based on a determination that there is no reasonable alternative to the~~
18 ~~_____ expected impact. If the commission does not approve impacting the~~
19 ~~_____ avoidance area, the utility must obtain siting authority under this chapter for~~
20 ~~_____ the affected portion of the site or route. If the commission fails to act on the~~
21 ~~_____ notification required by this subdivision within thirty days of the utility's filing~~
22 ~~_____ the notification, the impact to the avoidance area is deemed approved.~~
23 ~~_____ c. Incident to preliminary engineering or environmental studies.~~
24 ~~_____ 4. "Corridor" means the area of land where a designated route may be established for an~~
25 ~~_____ electric transmission facility.~~
26 ~~_____ 5. "Electric energy conversion facility" means a plant, addition, or combination of plant~~
27 ~~_____ and addition, designed for or capable of:~~
28 ~~_____ a. Generation by wind energy conversion exceeding one-half megawatt of~~
29 ~~_____ electricity; or~~
30 ~~_____ b. Generation by any means other than wind energy conversion exceeding fifty~~
31 ~~_____ megawatts of electricity.~~

1 ~~6.~~ "Electric transmission facility" means an electric transmission line and associated
2 facilities with a design in excess of one hundred fifteen kilovolts. "Electric transmission
3 facility" does not include:

4 ~~a.~~ A temporary electric transmission line loop that is:

5 ~~(1)~~ Connected and adjacent to an existing electric transmission facility that was
6 sited under this chapter;

7 ~~(2)~~ Within the corridor of the sited facility and does not cross known exclusion
8 or avoidance areas; and

9 ~~(3)~~ In place for less than one year; or

10 ~~b.~~ An electric transmission line that is less than one mile [1.61 kilometers] long.

11 ~~7.~~ "Facility" means an electric energy conversion facility, electric transmission facility, or
12 both.

13 ~~8.~~ "Permit" means the permit for the construction of an electric transmission facility within
14 a designated corridor issued under this chapter.

15 ~~9.~~ "Person" includes an individual, firm, association, partnership, cooperative,
16 corporation, limited liability company, or any department, agency, or instrumentality of
17 a state or of the federal government, or any subdivision thereof.

18 ~~10.~~ "Power emergency" means an electric transmission line and associated facilities that
19 have been damaged or destroyed by natural or manmade causes resulting in a loss of
20 power supply to consumers of the power.

21 ~~11.~~ "Retire" means the complete and permanent closure of an electric energy conversion
22 facility. Retirement occurs on the date the electric energy conversion facility ceases to
23 generate electricity.

24 ~~12.~~ "Route" means the location of an electric transmission facility within a designated
25 corridor.

26 ~~12.13.~~ "Site" means the location of an electric energy conversion facility.

27 ~~13.14.~~ "Utility" means a person engaged in and controlling the electric generation, the
28 transmission of electric energy, or the transmission of water from or to any electric
29 energy conversion facility.

30 ~~SECTION 2.~~ A new section to chapter 49-22 of the North Dakota Century Code is created
31 and enacted as follows:

1 ~~— **Facility retirement - Notice and public hearing - Requirements.**~~

2 ~~— 1. Upon written notice of retirement from the owner or operator of an electric energy~~
3 ~~conversion facility, the commission may:~~

4 ~~— a. Hold two public hearings in accordance with this section to receive information~~
5 ~~concerning the planned retirement relating to:~~

6 ~~— (1) The economical impact of the retirement on the community, county, and~~
7 ~~state;~~

8 ~~— (2) The feasibility of the retirement and facility replacement;~~

9 ~~— (3) The cost and impact on electric rates from the retirement of the facility;~~

10 ~~— (4) The value of any reliability benefits associated with the operation of the~~
11 ~~facility;~~

12 ~~— (5) An analysis of alternative installations for emissions reduction, including~~
13 ~~carbon capture, utilization, and storage; and~~

14 ~~— (6) Any other factors the commission deems appropriate.~~

15 ~~— b. Request a reliability study conclusion from a regional transmission organization~~
16 ~~on the impact of the facility's retirement.~~

17 ~~— 2. The two public hearings must be held in the county in which the electric energy~~
18 ~~conversion facility is located unless the commission deems the hearings unnecessary.~~

19 ~~— a. The public hearings must be scheduled no less than six months apart.~~

20 ~~— b. The commission shall have a comment period of at least thirty days during which~~
21 ~~information concerning the planned retirement may be received and made part of~~
22 ~~the record. The thirty-day comment period must be held between the two public~~
23 ~~hearings.~~

24 ~~— c. At the public hearing, any person may present testimony or evidence relating to~~
25 ~~the planned retirement.~~

26 ~~— d. Notice of a public hearing must be given by the commission by service on the~~
27 ~~persons and agencies the commission deems appropriate.~~

28 ~~— **SECTION 3.** A new section to chapter 49-22 of the North Dakota Century Code is created~~
29 ~~and enacted as follows:~~

1 ~~Site reclamation and bonding.~~

2 ~~The commission shall adopt rules governing site reclamation and bonding of an electric~~
3 ~~energy conversion facility. The rules must address:~~

4 ~~1. The method and schedule for updating the costs of the site reclamation and~~
5 ~~restoration or site conversion to an alternate industrial use;~~

6 ~~2. The method of ensuring funds will be available for reclamation and restoration; and~~

7 ~~3. Any other factors the commission deems appropriate.~~

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

10 **49-22-04. Ten-year plans - Contents.**

11 1. Each utility that owns or operates, or plans within the next ten years to own, operate,
12 or start construction on any facility shall develop a ten-year plan as specified in this
13 section and submit the plan to the commission. Each utility shall file an updated plan
14 on or before July first of each even-numbered year after the year of its initial
15 submission. The ten-year plan may be appropriate portions of a single regional plan or
16 may be jointly prepared and submitted by two or more utilities and must contain the
17 following information:

18 ~~1.~~ a. A description of the general location, size, and type of all facilities to be owned or
19 operated by the utility during the ensuing ten years, as well as those facilities to
20 be removed from service during the ten-year period.

21 ~~2.~~ b. An identification of the location of the tentative preferred site for all electric
22 energy conversion facilities and the tentative location of all electric transmission
23 facilities on which construction is intended to be commenced within the ensuing
24 five years and such other information as may be required by the commission. The
25 site and corridor identification shall be made in compliance with the criteria
26 published by the commission pursuant to section 49-22-05.1.

27 ~~3.~~ c. A description of the efforts by the utility to coordinate the plan with other utilities
28 so as to provide a coordinated regional plan for meeting the utility needs of the
29 region.

30 ~~4.~~ d. A description of the efforts to involve environmental protection and land-use
31 planning agencies in the planning process, as well as other efforts to identify and

1 minimize environmental problems at the earliest possible stage in the planning
2 process.

3 ~~5.~~ e. A statement of the projected demand for the service rendered by the utility for the
4 ensuing ten years and the underlying assumptions for the projection, with that
5 information being as geographically specific as possible, and a description of the
6 manner and extent to which the utility will meet the projected demands.

7 ~~6.~~ f. Any other relevant information as may be requested by the commission. Upon
8 receipt of the ten-year plans the commission shall proceed to assess the impact
9 of the development proposed within the state to ensure that energy conversion
10 facilities and transmission facilities will be sited in an orderly manner compatible
11 with environmental preservation and efficient use of resources.

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