

CHAPTER 49-02
POWERS OF COMMISSION GENERALLY

49-02-01. General jurisdiction of the public service commission over public utilities.

The general jurisdiction of the commission shall extend to and include:

1. Contract and common carriers engaged in the transportation of persons and property, excluding air carriers.
2. Telecommunications companies engaged in the furnishing of telecommunications services as provided for in chapter 49-21.
3. Pipeline utilities engaged in the transportation of gas, oil, coal, and water.
4. Electric utilities engaged in the generation and distribution of light, heat, or power.
5. Gas utilities engaged in the distribution of natural, synthetic, or artificial gas.
6. All heating utilities engaged in the distribution of heat.
7. All other public utilities engaged in business in this state or in any county, city, township, or other political subdivision of the state.

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

1. 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 a 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 eighteen thousand local exchange subscribers. However, a telecommunications utility that is operated as a nonprofit, cooperative, or mutual telecommunications company or has fewer than 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.
2. Upon receipt of a resolution from the governing body of a city not served on August 1, 2017, with natural gas distribution service from a public utility requesting an exemption, and stating its reasons for doing so, the commission shall grant the public utility an exemption from sections 49-02-03, 49-02-11, and 49-02-15, and chapters 49-03.1 and 49-04 if the public utility:
 - a. Has a franchise to supply customers within the city and the area of the extraterritorial zoning jurisdiction of the city with natural gas distribution service;
 - b. Consents to the exemption; and
 - c. Serves no more than two thousand five hundred customers within the city and the area of the extraterritorial zoning jurisdiction of the city.
3. Upon approval of the exemption, the rates, contracts, or services rendered by the public utility within the exempted area are subject to regulation by the city.
4. Notwithstanding an exemption granted under this section, the public utility remains subject to any rules of the commission governing customer service disconnections, and resale of natural gas service furnished or causing the resale of natural gas service by any customer is prohibited.
5. If a city files with the commission a resolution of its governing body rescinding the request for exemption, if the public utility serves more than two thousand five hundred customers within the city and the area of the city's extraterritorial zoning jurisdiction, or if the public utility requests rescinding the exemption for good cause, the commission may rescind the exemption granted under this section. The commission may require a public utility providing nonexempt natural gas distribution service to provide any exempted natural gas distribution service as a separate business entity.

6. Equipment covered by this section must be installed and maintained in compliance with the instructions provided by the manufacturer of any previously installed equipment to which it will be added. Appliances designed to use only a specific fuel may not be converted to use a different fuel if the manufacturer has prohibited the conversions.

49-02-01.2. Pipeline safety - Public service commission jurisdiction - Hazardous facility orders.

1. The commission, by rule, may establish and enforce minimum safety standards for the design, construction, and operation of gas distribution facilities and intrastate pipeline facilities used for the distribution and intrastate transportation of gas, liquefied natural gas, or hazardous liquids, regardless of whether they are owned or operated by a public utility, in order to ensure the reasonable safety thereof. Any rule issued under this section affecting the design, installation, construction, initial inspection, and initial testing is not applicable to pipeline facilities in existence on the date such rule is adopted. Such rules may not be more stringent than the corresponding federal regulations applicable to interstate pipelines and related facilities.
2. If the commission determines that a pipeline facility is hazardous to life or property, it may issue an order requiring the operator of the facility to take corrective action. The commission may issue such an order without notice and opportunity for hearing if the commission determines that to do otherwise would result in the likelihood of serious harm to life or property. The commission shall include in such an order an opportunity for hearing as soon as practicable after issuance of the order.

49-02-02. Powers of public service commission with reference to public utilities.

The commission shall have power to:

1. Investigate all methods and practices of public utilities or other persons, subject to the provisions of this title.
2. Require public utilities or other persons to conform to the laws of this state and to all rules, regulations, and orders of the commission not contrary to law.
3. Require copies of reports, rates, classifications, schedules, and timetables in effect and used by such utilities or other persons and all other information desired by the commission relating to such investigations and requirements to be filed with the commission.
4. Compel obedience to its lawful orders by proceedings of mandamus or injunction or other proper proceedings, in the name of the state, in any court having jurisdiction of the parties or of the subject matter.
5. Hold hearings on good cause being shown therefor or on its own motion, and to provide notice thereof and to shorten the period for which notice must be given prior to hearing, when good cause exists for such action. Such notice, however, must be reasonable in view of the nature, scope, and importance of the hearing. Whenever it appears to the satisfaction of the commission that all of the interested parties have agreed concerning the matter at hand, or that no interested party has asked for a hearing, the commission may issue its order without a hearing.
6. Employ, and fix the compensation of, rate experts, engineers, auditors, attorneys, and all other expert help and assistance for hearings or investigations on applications filed by gas or electric public utilities. The expense of any hearings or investigations and the actual expenses of any employees of the commission while engaged upon any hearing or investigation must be deducted from the application fee paid by the public utility involved. The commission shall ascertain the costs and expenditures. The application fees received by the commission under chapter 49-05 must be deposited in a special account within the public service commission. All moneys deposited in the account are appropriated on a continuing basis to the commission to pay expenses incurred in the processing of cases in which application fees are required. The commission shall refund the portion of a fee collected under chapter 49-05 which exceeds the expenses incurred for processing the case for which the fee was paid.

7. Cooperate with and receive technical and financial assistance from the United States, any state, or any department, agency, or officer thereof for any purposes relating to federal energy laws that deal with energy conservation, coal conversion, rate reform, and utilities subject to the jurisdiction of the commission. The commission shall also have the authority to file any reports, hold hearings, and promulgate regulations for any such purposes. Information received by the commission which was developed or obtained by the market monitor of the midwest independent system operator, incorporated, or its successor, is exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.
8. Cooperate with and receive technical and financial assistance from the United States, any state, or any department, agency, or officer thereof, and to file such reports and promulgate rules as required by federal law or regulation for any purposes relating to the regulation of safety standards for pipeline facilities and the transportation associated with those pipeline facilities.

49-02-02.1. Applicant to pay cost of publishing notice.

When an application is filed under this title for which there is no application fee, the applicant shall pay the cost of publishing any notice issued by the commission for the application.

49-02-03. Power of public service commission to establish rates.

The commission shall supervise the rates of all public utilities. It shall have the power, after notice and hearing, to originate, establish, modify, adjust, promulgate, and enforce tariffs, rates, joint rates, and charges of all public utilities. Whenever the commission, after hearing, shall find any existing rates, tariffs, joint rates, or schedules unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any of the provisions of this title, the commission by order shall fix reasonable rates, joint rates, charges, or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any provision of law.

49-02-03.1. Power to fix special rates - Public service commission.

Repealed by S.L. 1963, ch. 322, § 2.

49-02-04. Power of commission to regulate services.

Whenever the commission shall find, after hearing, that the rules, regulations, practices, equipment, appliances, facilities, or service of any public utility, or the methods of manufacture, distribution, transmission, storage, or supply employed by it are unjust, unreasonable, unsafe, improper, inadequate, or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate, or sufficient rules, regulations, practices, equipment, appliances, facilities, service, or methods to be observed, furnished, constructed, enforced, or employed, and, after hearing, shall fix the same by its order, rule, or regulation. The commission shall prescribe, after hearing, rules and regulations for the performance of any service, or the furnishing of any commodity, of a character furnished or supplied by any public utility. On demand and tender of rates, such public utility shall furnish such commodity and render such service within the time and upon the conditions provided in such rules.

49-02-05. Use by one utility of the facilities of another utility.

Whenever upon hearing, after due notice, the commission has found that public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes, or other equipment, or any part thereof, on, over, or under any street or highway and belonging to another public utility and that such use will not result in irreparable injury to the owner or other users of such conduits, subways, tracks, wires, poles, pipes, or other equipment, nor any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the commission, by order, may direct that such use be permitted, and may prescribe reasonable

compensation and reasonable terms and conditions for such joint use. If such use is directed, the public utility to which the use is permitted shall be liable to the owner or other users of such conduits, tracks, wires, poles, pipes, or other equipment for such damage as may result therefrom to the property of such owner or other users thereof.

49-02-05.1. Power to fix terms by which the facilities of one utility may cross those of another utility.

Whenever public convenience and necessity requires that an electric or telecommunications distribution or transmission line, pipeline, or railroad track of any public utility cross a line or track of another public utility and the public utilities have failed to agree upon the terms and conditions or compensation for the same, the commission, after notice and hearing, may prescribe reasonable terms, conditions, and compensation under which the crossing shall be permitted.

49-02-06. Entering premises of public utility by public service commission for examination purposes.

The commission and its officers and employees shall have the power to enter upon any premises occupied by any public utility for the purpose of:

1. Making examinations and tests;
2. Setting out and using on said premises any weights or appliances necessary therefor;
or
3. Exercising any of the powers provided for in this chapter.

49-02-07. Appliances tested on request of consumer - Fee for testing.

Any consumer or user of any product, commodity, or service of a public utility may have any appliance used in the measurement thereof tested by paying the fees fixed by the commission. The commission shall establish and fix reasonable fees to be paid for testing such appliances.

49-02-08. Testing meters - Gas - Electric.

The commission shall make tests, from time to time, of meters of public utilities used:

1. To measure the amount of electric current passing through such meters to consumers.
2. To measure the amount of gas passing through such meters for the use of its customers.
3. To determine the British thermal unit content of natural or artificial gas distributed by public utilities in this state.

49-02-09. Purpose of testing meters.

Tests shall be made for the purpose of determining the accuracy of the meters and shall determine whether or not the British thermal unit content of gas, either natural or artificial, distributed by public utilities, is of the standard that now or hereafter may be prescribed by the commission under its general powers and duties.

49-02-10. Rules for meters.

The commission shall make such rules as it may deem proper and necessary as to the manner in which tests of meters and heat values shall be made.

49-02-11. Standards - Classification - Examinations - Provided by public service commission.

The commission shall:

1. Ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements, or services to be furnished, imposed, observed, and followed by all public utilities.
2. Ascertain and fix adequate and serviceable standards for the measurement, quantity, quality, pressure, initial voltage, or other condition pertaining to the supply of the product, commodity, or service furnished or rendered by any such public utility.

3. Prescribe reasonable regulations for the examination and testing of such product, commodity, or service and for the measurement thereof.
4. Establish reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters and appliances for measurements.
5. Provide for the examination and testing of any and all such appliances used for the measurement of any product, commodity, or service of any public utility.

49-02-12. System of accounts, records, and memoranda established.

The commission shall:

1. Establish a system of accounts to be kept by a public utility subject to its jurisdiction.
2. Classify public utilities, establish a system of accounts for each class, and prescribe the manner in which such accounts shall be kept.
3. Prescribe the forms for accounts, records, and memoranda to be kept by such public utilities, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys, which the commission may deem necessary to carry out any of the provisions of this title.

49-02-13. Jurisdiction of commission limited as to municipal utilities.

Repealed by omission from this code.

49-02-14. Inspection of public utility accounts - Right as to examinations.

The commission, and each commissioner, and each officer or other person duly authorized by the commission, shall have the right, at any time, to inspect the accounts, books, papers, and documents of any public utility. The commission, each commissioner, any officer of the commission, or any employee authorized to administer oaths shall have the power to examine, under oath, any officer, agent, or employee of any public utility in relation to the business and affairs of such public utility.

49-02-15. Excessive or discriminatory charges - Reparation.

When complaint has been made to the commission concerning any rate or charge for any product or commodity furnished or service performed by any public utility, and the commission has found, upon a hearing after notice given as required by this title, that the public utility has charged an excessive or discriminatory amount for such product, commodity, or service, in excess of the schedules, rates, and tariffs on file with the commission, or has discriminated under said schedules against the complainant, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection, if no discrimination will result from such reparation.

49-02-16. Investigation of interstate rates.

The commission shall exercise constant diligence in informing itself of the rates, rules, and practices of common carriers engaged in:

1. The transportation of freight, express, and passengers;
2. The transportation by pipeline of crude petroleum, gas, or other petroleum products; or
3. The transmission of messages or intelligence,

from points in this state to points beyond its limits and from points in other states to points in this state and in territory wholly outside of this state.

49-02-17. Unreasonable rates, rules, and practices affecting interstate commerce.

Whenever it shall come to the knowledge of the commission, either from its own investigation or by complaint made to it in any manner whatsoever, that the rates charged by any public utility including any common carrier on interstate business are unjust or unreasonable or that the rates, rules, or practices of such utility:

1. Discriminate unjustly against the citizens, industries, or interests of this state;
2. Place any of the citizens, industries, or interests of this state at an unreasonable disadvantage as compared with those of other states; or

3. Are levied, laid, or otherwise in violation of federal law, rulings, orders, or regulations, the commission immediately shall call such facts to the attention of the officials of such public utility and urge upon them the propriety of changing such rates, rules, or practices.

49-02-18. Failure of utility to adjust rates - Action by public service commission.

Whenever discriminatory, unreasonable, or unjust, rates, rules, or practices on interstate business are not changed or adjusted so as to remove or remedy the discrimination, unreasonableness, or unjustness, within a reasonable time, the commission shall take the action necessary in an appropriate proceeding to obtain relief from such rates, rules, or practices. If the commission deems it necessary, the attorney general, with such other assistance as may be provided by law, shall prosecute any charge growing out of any such discrimination.

49-02-19. Power to fix special rates - Public service commission.

Repealed by omission from this code.

49-02-20. Notice to be given before special rate fixed.

Repealed by S.L. 1963, ch. 322, § 2.

49-02-21. Power of commission to regulate raising and lowering of electric supply and communication lines.

The public service commission shall have power:

1. To regulate the raising and lowering of electric supply and communication lines to permit the movement of buildings or other bulky objects; and to adopt and promulgate, after notice and hearing, reasonable rules and regulations pertaining thereto.
2. To require, after notice and hearing, increased clearances in specific locations where electric supply and communication lines cross public roads and streets, provided that the movement of buildings or other bulky objects thereon is sufficiently frequent to so warrant.

49-02-22. Charges for raising and lowering lines - Reimbursement for unreasonable delay.

Any party requesting the raising or lowering of electric supply and communication lines shall be required to pay not more than the actual cost reasonably and necessarily incurred therefor. The commission shall, upon application, and after notice and hearing, review and determine the reasonableness of any charges assessed for the raising and lowering of electric supply and communication lines, and if said charges are found unreasonable, the commission shall fix a just and reasonable charge; provided, however, that any person, firm, corporation, or limited liability company in charge of electric supply or communication lines, who shall fail, except for good cause, to have said lines raised or lowered to permit the movement of buildings or other bulky objects at the time agreed upon, shall be liable for reasonable costs, damages, and expenses occasioned by such unreasonable delay.

49-02-23. Consideration of environmental externality values prohibited.

The commission may not use, require the use of, or allow electric utilities to use environmental externality values in the planning, selection, or acquisition of electric resources or the setting of rates for providing electric service. Environmental externality values are numerical costs or quantified values that are assigned to represent either:

1. Environmental costs that are not internalized in the cost of production or the market price of electricity from a particular electric resource; or
2. The alleged costs of complying with future environmental laws or regulations that have not yet been enacted.

49-02-24. Renewable electricity and recycled energy credit trading and tracking system.

Notwithstanding any other provision of law, the commission by rule may establish or participate in a program to track, record, and verify the trading of credits for electricity generated from renewable and recycled heat sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states. This section applies to all public utilities, electric cooperatives, and municipal electric utilities.

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.
5. Geothermal, using energy contained in heat that continuously flows outward from the earth as the source of energy to produce electricity.
6. Hydrogen, provided that the hydrogen is generated from a source listed in this section.
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 unless the generation system consumes wellhead gas that would otherwise be flared, vented, or wasted.

49-02-26. Qualifying for renewable electricity and recycled energy credits - Exception for certain hydroelectric facilities.

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 August 1, 2007.

49-02-27. Decommissioning of renewable energy conversion facilities.

1. The commission shall adopt rules governing the decommissioning of commercial wind energy conversion facilities. The rules must address:
 - a. The anticipated life of the project;
 - b. The estimated decommissioning costs in current dollars;
 - c. The method and schedule for updating the costs of the decommissioning and restoration;
 - d. The method of ensuring that funds will be available for decommissioning and restoration;
 - e. The anticipated manner in which the project will be decommissioned and the site restored; and
 - f. Present and future natural resource development.
2. The facility owner or operator of a commercial wind energy facility shall record the location of any portion of underground foundation not removed during decommissioning with the county recorder in the county in which any such underground foundation is located.
3. The commission may adopt rules governing the decommissioning of commercial solar energy conversion facilities.

49-02-28. 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.

49-02-29. Qualifying for renewable electricity and recycled energy objective.

For purposes of qualifying for the renewable electricity and recycled energy objective contained in section 49-02-28, 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 August 1, 2007, 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.

49-02-30. Application of electricity generated from existing hydroelectric facilities in calculating the renewable and recycled energy 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.

49-02-31. 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 sections 49-02-26 and 49-02-30. Renewable energy and recycled energy certificates do not need to be acquired from an in-state facility.

49-02-32. 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.

49-02-33. 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.

49-02-34. 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. 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.