

PUBLIC UTILITIES

CHAPTER 410

HOUSE BILL NO. 1067

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

AN ACT to amend and reenact subsection 7 of section 49-02-02 of the North Dakota Century Code, relating to powers of the commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 49-02-02 of the North Dakota Century Code is amended and reenacted as follows:

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, a regional transmission organization market monitor, the organization of midwest independent system operator states, and the southwest power pool regional state committee~~ is exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

Approved March 14, 2023

Filed March 15, 2023

CHAPTER 411

HOUSE BILL NO. 1063

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

AN ACT to amend and reenact section 49-05-05 of the North Dakota Century Code, relating to tariff rate filing fee requirement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

49-05-05. Changes in tariff rates - Notice to commission - Filing fee.

~~No~~A change ~~shall~~may not be made by any public utility in any tariffs, rates, joint rates, fares, tolls, schedules, classifications, or service which have been filed and published by any public utility, except after thirty days' notice to the commission. The notice ~~shall~~must state plainly the changes proposed ~~and except for services must be accompanied by a fifty dollar filing fee.~~ The commission, for a good cause shown, may allow changes upon less than the notice ~~herein~~ specified in this section, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

Approved March 15, 2023

Filed March 16, 2023

CHAPTER 412

HOUSE BILL NO. 1353

(Representatives Satrom, Karls, Klemin, Lefor, Monson)
(Senator Conley)

AN ACT to amend and reenact section 49-05-17 of the North Dakota Century Code, relating to resource planning.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-05-17 of the North Dakota Century Code is amended and reenacted as follows:

49-05-17. Resource planning.

1. An integrated resource plan must include:
 - a. The electric public utility's forecast of demand for electric generation supply over the planning period with recommended plans for meeting the forecasted demand plus an additional planning reserve margin for ensuring adequate and sufficient reliability of service; and
 - b. Any additional information the commission requests related to how an electric public utility intends to provide sufficient electric generation service for use by retail customers within the state over the planning period.
2. An electric public utility shall include a least cost plan for providing adequate and reliable service to retail customers which is consistent with the provisions of this title and the rules and orders adopted and issued by the commission.
3. The commission may consider the qualitative benefits and provide value to a base-load generation and load-following generation resource and its proximity to load.
4. The commission may contract or consult with an expert to evaluate qualitative benefits of resources and to review reliability planning. The commission may require an electric public utility to pay a fee necessary for completion of an evaluation in an amount not to exceed two hundred fifty thousand dollars.
 - a. If additional funds are necessary for completion of the evaluation, upon approval of the emergency commission, the electric public utility shall pay the additional fees reasonably necessary for the completion.
 - b. If the evaluation applies to more than one electric public utility, the commission may assess each electric public utility the proportionate share of the fee.
5. An electric public utility shall report annually to the commission on ~~cybersecurity preparedness, including an assessment of~~ emerging threats and efforts taken by the electric public utility to implement physical security and cybersecurity measures. The commission ~~may~~shall limit access to records

and portions of a meeting relating to physical security and cybersecurity preparedness.

Approved April 11, 2023

Filed April 12, 2023

CHAPTER 413

HOUSE BILL NO. 1097

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

AN ACT to create and enact subsection 15 of section 49-22-03 and section 49-22-16.5, of the North Dakota Century Code, relating to the definition of utility-scale energy storage and route adjustments for electric transmission lines; to amend and reenact subsection 5 of section 49-22-03, subsection 4 of section 49-22-13, section 49-22-22, subsections 6 and 7 of section 49-22.1-01, subsection 4 of section 49-22.1-10, and subsection 4 of section 49-22.1-21 of the North Dakota Century Code, relating to the definition of electric energy conversion facility, the publication of notices of public hearings, payment of an administrative fee, adding hydrogen to definitions, the publication of a public hearing, and the payment of an administrative fee; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁸ **SECTION 1. AMENDMENT.** Subsection 5 of section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

5. "Electric energy conversion facility" means a 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; ~~or~~
 - b. Generation by any means other than wind energy conversion exceeding fifty megawatts of electricity; or
 - c. Utility-scale energy storage.

²¹⁹ **SECTION 2.** Subsection 15 of section 49-22-03 of the North Dakota Century Code is created and enacted as follows:

15. "Utility-scale energy storage" means a plant, addition, or combination of plant and addition, designed for operation as a grid resource and capable of five megawatts or more of rated power capacity.

SECTION 3. AMENDMENT. Subsection 4 of section 49-22-13 of the North Dakota Century Code is amended and reenacted as follows:

4. Notice of a public hearing ~~shall~~must be given by the commission by service on such persons and agencies that the commission may deem appropriate and twice by publication, ~~once at least twenty days prior to such hearing and a~~

²¹⁸ Section 49-22-03 was also amended by section 2 of House Bill No. 1097, chapter 413.

²¹⁹ Section 49-22-03 was also amended by section 1 of House Bill No. 1097, chapter 413.

~~second time within twenty days prior to such at a reasonable interval before the hearing. Notice of a public hearing and notice of opportunity for a public hearing on an application for a certificate, a permit, a transfer or amendment of a certificate or permit, or a waiver shall be given at the expense of the applicant. In an emergency the commission, in its discretion, may notice a hearing upon less than twenty days.~~

SECTION 4. Section 49-22-16.5 of the North Dakota Century Code is created and enacted as follows:

49-22-16.5. Route adjustment before or during construction for an electric transmission line.

1. Before or during construction, a utility, without any action by the commission, may adjust the route of an electric transmission line within the designated corridor if, before conducting any construction activities associated with the adjustment, the utility files with the commission certification and supporting documentation that:
 - a. The construction activities will be within the designated corridor;
 - b. The construction activities will not affect any known exclusion or avoidance areas within the designated corridor; and
 - c. The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route.
2. Before or during construction, a utility may adjust the route of an electric transmission line within the designated corridor which may affect an avoidance area if, before conducting any construction activities associated with the adjustment, the utility:
 - a. Files with the commission certification and supporting documentation that:
 - (1) The construction activities are within the designated corridor;
 - (2) The construction activities will not affect any known exclusion areas within the designated corridor;
 - (3) The construction activities are expected to impact an avoidance area with a specific description of the avoidance area expected to be impacted;
 - (4) Each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment, unless the utility previously received authorization from the commission for the impact to the avoidance area;
 - (5) For an impact for which the utility does not already have approval or has not filed the approval in paragraph 4, the utility has good cause and a specific reason to impact the avoidance area, and a reasonable alternative does not exist; and
 - (6) The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route.

- b. Receives the commission's written authorization that the utility may impact the avoidance area. If the commission does not authorize the impact to the avoidance area, the utility must obtain siting authority for the affected portion of the route adjustment. If the commission fails to act within ten working days of receipt of the utility's filing of the certification and supporting documentation under subdivision a of subsection 2, the route adjustment is deemed approved.
3. Before or during construction, a utility, without any action by the commission, may adjust the route of an electric transmission line outside the designated corridor if, before conducting any construction activities associated with the adjustment, the utility:
 - a. Files with the commission certification and supporting documentation that:
 - (1) The construction activities will not affect any known exclusion or avoidance areas;
 - (2) The route outside the corridor is no longer than one and one-half miles [2.41 kilometers];
 - (3) The utility will comply with the commission's orders, laws, and rules designating the corridor and designating the route; and
 - (4) Each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment.
 - b. Files detailed field studies indicating exclusion and avoidance areas for an area encompassing the route outside the designated corridor equal to the length of the adjustment of the proposed corridor.
4. Before or during construction, a utility may adjust the electric transmission line outside the designated corridor that may affect an avoidance area if, before conducting any construction activities associated with the adjustment, the utility:
 - a. Files with the commission certification and supporting documentation that:
 - (1) The construction activities will not affect any known exclusion areas;
 - (2) The construction activities are expected to impact an avoidance area with a specific description of the avoidance area expected to be impacted;
 - (3) The utility has good cause and a specific reason to impact the avoidance area, and a reasonable alternative does not exist;
 - (4) The route outside the corridor is no longer than one and one-half miles [2.41 kilometers];
 - (5) The utility will comply with the commission's orders, laws, and rules designating the corridor and designating the route; and

- (6) Each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment.
- b. Files detailed field studies indicating exclusion and avoidance areas for an area encompassing the route outside the designated corridor equal to the length of the adjustment of the proposed corridor.
- c. Receives the commission's written authorization that the utility may impact the avoidance area. If the commission does not authorize the impact to the avoidance area, the utility must obtain siting authority for the affected portion of the route adjustment. If the commission fails to act within ten working days of receipt of the utility's filing of the certification and supporting documentation under subdivisions a and b of subsection 4, the route adjustment is deemed approved.
5. The commission is not required to hold a public hearing or publish a notice of opportunity for a public hearing for any route adjustment under this section.

²²⁰ **SECTION 5. AMENDMENT.** Section 49-22-22 of the North Dakota Century Code is amended and reenacted as follows:

49-22-22. Siting process expense recovery - Deposit in special fund - Continuing appropriation.

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 facility.
 - 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 facility.
 - 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 requesting an amendment to a certificate or permit or 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.

²²⁰ Section 49-22-22 was also amended by section 6 of Senate Bill No. 2008, chapter 40.

- f. The application fee under subdivision a, b, or c may not be less than ten thousand dollars nor more than one hundred thousand dollars.
 - g. ~~If an application fee is less than twenty-five thousand dollars, an~~An applicant may agree to pay additional fees that are reasonably necessary for completion of the site, corridor, or route evaluation and designation process.
2. ~~At the request of the commission and~~If an applicant does not agree to pay additional fees reasonably necessary for completion of the site, corridor, or route evaluation and designation process, with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the electric energy conversion facility site, electric transmission facility corridor, or electric transmission facility route evaluation and designation process by the commission. The application fee under subsection 1 and any additional fees required of the applicant under this subsection may not exceed an amount equal to one thousand dollars for each one million dollars of investment in a proposed energy conversion facility or ten thousand dollars for each one million dollars of investment in a proposed electric transmission facility.
 3. A siting process expense recovery fund is established in the state treasury. The commission shall deposit payments received under subsections 1 and 2 in the siting process expense recovery fund. All moneys deposited in the fund are appropriated on a continuing basis to the commission to pay expenses incurred in the siting process. The commission shall specify the time and method of payment of any fees and shall refund the portion of fees collected under subsections 1 and 2 which exceeds the expenses incurred for the evaluation and designation process.
 4. Every applicant ~~for a certificate of site compatibility, certificate of corridor compatibility and route permit, and transfer of a certificate or permit~~ under this chapter shall pay to the commission an administrative fee equal to one hundred dollars for each one million dollars of original investment, not to exceed twenty-five thousand dollars. The administrative fee must be deposited in the public service commission program fund.

SECTION 6. AMENDMENT. Subsections 6 and 7 of section 49-22.1-01 of the North Dakota Century Code are amended and reenacted as follows:

6. "Gas or liquid energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:
 - a. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas or hydrogen per day, regardless of the end use of the gas;
 - b. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
 - c. Enrichment of uranium minerals.
7. "Gas or liquid transmission facility" means any of the following:

- a. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, hydrogen, or carbon dioxide. This subdivision does not apply to:
- (1) An oil or gas pipeline gathering system;
 - (2) A natural gas distribution system;
 - (3) Carbon dioxide storage facility underground equipment, including a flow line, subject to chapter 38-22;
 - (4) A pipeline with an outside diameter of four and one-half inches [11.43 centimeters] or less which will not be trenched and will be plowed in with a power mechanism having a vertical knife or horizontally directionally drilled, and its associated facilities; or
 - (5) A pipeline that is less than one mile [1.61 kilometers] long. For purposes of this chapter, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport, or pipelines and associated facilities used to collect gas from the well to the gas processing facility at which end-use consumer-quality gas is produced, with or without the addition of odorant.
- b. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.

SECTION 7. AMENDMENT. Subsection 4 of section 49-22.1-10 of the North Dakota Century Code is amended and reenacted as follows:

4. Notice of a public hearing must be given by the commission by service on those persons the commission deems appropriate and twice by publication, ~~once at least twenty days before the hearing and a second time within twenty days at a reasonable interval before the hearing.~~ Notice of a public hearing and notice of opportunity for a public hearing on an application for a certificate, a permit, a transfer or amendment of a certificate or permit, or a waiver must be given at the expense of the applicant. ~~In an emergency the commission may notice a hearing upon less than twenty days.~~

²²¹ **SECTION 8. AMENDMENT.** Subsection 4 of section 49-22.1-21 of the North Dakota Century Code is amended and reenacted as follows:

4. Every applicant for a certificate of site compatibility, certificate of corridor compatibility and route permit, and transfer of a certificate or permit under this chapter shall pay to the commission an administrative fee equal to one hundred dollars for each one million dollars of original investment, not to exceed twenty-five thousand dollars. The administrative fee must be deposited into the public service commission program fund.

SECTION 9. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 11, 2023

Filed April 12, 2023

²²¹ Section 49-22.1-21 was also amended by section 7 of Senate Bill No. 2008, chapter 40.

CHAPTER 414

HOUSE BILL NO. 1315

(Representatives Novak, Dockter, S. Olson)
(Senator Patten)

AN ACT to create and enact a new subsection to section 49-22-09 of the North Dakota Century Code, relating to factors to be considered when evaluating applications and designation for sites, corridors, and routes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 49-22-09 of the North Dakota Century Code is created and enacted as follows:

Before the commencement of operations of the proposed facility, the applicant shall inform the commission that the applicant has executed or filed an unexecuted generation interconnection agreement, or comparable transmission services agreement, with the affected regional transmission organization or transmission owner.

Approved April 11, 2023

Filed April 12, 2023

CHAPTER 415

HOUSE BILL NO. 1064

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

AN ACT to amend and reenact subsection 7 of section 49-23-01 of the North Dakota Century Code, relating to the definition of excavation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 49-23-01 of the North Dakota Century Code is amended and reenacted as follows:

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, dredging, 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.

Approved March 14, 2023

Filed March 15, 2023