

**SENATE BILL NO. 2387**

Introduced by

Senators Tollefson, Mutch, Schobinger

Representatives Bellew, Keiser, Ruby

1 A BILL for an Act to amend and reenact subsection 3 of section 49-01-01 and sections  
2 49-02-01, 49-02-01.1, 49-03-01, 49-03-01.3, 49-03-01.4, 49-03-01.5, 49-03-02, 49-03-05, and  
3 49-20-12.1 of the North Dakota Century Code, relating to jurisdiction of the public service  
4 commission over electric cooperatives.

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

6 **SECTION 1. AMENDMENT.** Subsection 3 of section 49-01-01 of the North Dakota  
7 Century Code is amended and reenacted as follows:

8 3. "Public utility" includes any association, person, firm, corporation, electric  
9 cooperative, limited liability company, or agency engaged or employed in any  
10 business enumerated in this title.

11 **SECTION 2. AMENDMENT.** Section 49-02-01 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **49-02-01. General jurisdiction of the public service commission ~~over public~~**  
14 **~~utilities.~~** The general jurisdiction of the commission ~~shall extend~~ extends to and ~~include~~  
15 includes:

- 16 1. Contract and common carriers engaged in the transportation of persons and  
17 property, excluding air carriers.
- 18 2. Telecommunications companies engaged in the furnishing of telecommunications  
19 services as provided for in chapter 49-21.
- 20 3. Pipeline utilities engaged in the transportation of gas, oil, coal, and water.
- 21 4. Electric utilities engaged in the generation and distribution of light, heat, or power.
- 22 5. Electric cooperatives engaged in the generation and distribution of light, heat, or  
23 power.
- 24 6. Gas utilities engaged in the distribution of natural, synthetic, or artificial gas.

1       ~~6.~~ 7. All heating utilities engaged in the distribution of heat.

2       ~~7.~~ 8. Warehouse companies engaged in the marketing, storage, or handling of  
3           agricultural products.

4       ~~8.~~ 9. All other public utilities engaged in business in this state or in any county, city,  
5           township, or other political subdivision of the state.

6           **SECTION 3. AMENDMENT.** Section 49-02-01.1 of the North Dakota Century Code is  
7   amended and reenacted as follows:

8           **49-02-01.1. Jurisdiction of commission limited as to certain utilities.** Nothing in  
9   this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates,  
10   contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of  
11   any public utility owned and operated by the state or by any city, county, township, or other  
12   political subdivision of the state or any telecommunications public utility, that is not operated for  
13   profit, that is operated as a nonprofit, cooperative, or mutual telecommunications company or is  
14   a telecommunications company having fewer than eight thousand local exchange subscribers.  
15   However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual  
16   telecommunications company or has fewer than eight thousand local exchange subscribers is  
17   subject to sections 49-21-01.4, 49-21-02.4, 49-21-08, 49-21-23, 49-21-24, and 49-21-25,  
18   subsections 6 through 14 of section 49-21-01.7, and to sections 49-21-01.2, 49-21-01.3,  
19   49-21-06, 49-21-07, 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access  
20   services or connection between facilities and transfer of telecommunications between two or  
21   more telecommunications companies. Nothing in this section limits the authority of the  
22   commission under chapter 49-03.1 or sections 49-04-05 and 49-04-06.

23           **SECTION 4. AMENDMENT.** Section 49-03-01 of the North Dakota Century Code is  
24   amended and reenacted as follows:

25           **49-03-01. Certificate of public convenience and necessity - Secured by electric**  
26   **public utility.** ~~No~~ An electric public utility ~~henceforth shall~~ may not begin construction or  
27   operation of a public utility plant or system, or of an extension of a plant or system, except as  
28   provided below, without first obtaining from the commission a certificate that public convenience  
29   and necessity require or will require ~~such~~ the construction and operation. This section does not  
30   require an electric public utility to secure a certificate for an extension within ~~any~~ a municipality  
31   within which it has lawfully commenced operations. If ~~any~~ an electric public utility in

1 constructing or extending its line, plant, or system, unreasonably interferes with or is about to  
2 interfere unreasonably with the service or system of ~~any other~~ another electric public utility, ~~or~~  
3 ~~any electric cooperative corporation~~, the commission, on complaint of the electric public utility  
4 ~~or the electric cooperative corporation~~ claiming to be injuriously affected, after notice and  
5 hearing as provided in this title, may order enforcement of this section with respect to the  
6 offending electric public utility and prescribe just and reasonable terms and conditions.

7 **SECTION 5. AMENDMENT.** Section 49-03-01.3 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **49-03-01.3. Exclusions from limitations on electric distribution lines, extension,**  
10 **and service and on issuance of certificates of public convenience and necessity.**

11 Sections 49-03-01 through 49-03-01.5 ~~shall~~ may not be construed to require ~~any such an~~  
12 electric public utility to secure ~~such an~~ order or certificate for an extension of its electric  
13 distribution lines within the corporate limits of ~~any a~~ municipality within which it has lawfully  
14 commenced operations; provided, however, that ~~such the extension or extensions shall~~ does  
15 not interfere with existing services provided by ~~a rural electric cooperative or another~~ an electric  
16 public utility within ~~such the~~ municipality; and provided duplication of services is not deemed  
17 unreasonable by the commission.

18 Sections 49-03-01 through 49-03-01.5 ~~shall~~ may not be construed to require an electric  
19 public utility to discontinue service to its customers ~~thereof~~ whose places receiving service are  
20 located outside the corporate limits of a municipality on July 1, 1965; provided, however, that  
21 within ninety days after July 1, 1965, ~~any an~~ electric public utility furnishing service to  
22 customers whose places receiving service are located outside the corporate limits of a  
23 municipality shall file with the commission a complete map or maps of its electric distribution  
24 system showing all places in North Dakota which are located outside the corporate limits of a  
25 municipality and which are receiving its service as of July 1, 1965. After ninety days from  
26 July 1, 1965, unless a customer whose place being served is located outside the corporate  
27 limits of a municipality is shown on ~~said the~~ the map or maps, it ~~shall be~~ is conclusively presumed  
28 that ~~such the~~ customer was not being served on July 1, 1965, and cannot be served until after  
29 compliance with the provisions of section 49-03-01.1.

30 **SECTION 6. AMENDMENT.** Section 49-03-01.4 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1           **49-03-01.4. Enforcement of act.** If ~~any~~ an electric public utility violates or threatens to  
2 violate any of the provisions of sections 49-03-01 through 49-03-01.5 or interferes with or  
3 threatens to interfere with the service or system of any other electric public utility ~~or rural~~  
4 ~~electric cooperative~~, the commission, after complaint, notice, and hearing as provided in  
5 chapter 28-32, shall make its order restraining and enjoining ~~said~~ the electric public utility from  
6 constructing or extending its interfering lines, plant, or system. In addition to the restraint  
7 imposed, the commission shall prescribe such terms and conditions as it shall deem reasonable  
8 and proper.

9           Provided, further, that nothing herein contained ~~shall~~ may be construed to prohibit or  
10 limit ~~any~~ a person, who has been injured in the person's business or property by reason of a  
11 violation of sections 49-03-01 through 49-03-01.5 by ~~any~~ an electric public utility ~~or electric~~  
12 ~~cooperative corporation~~, from bringing an action for damages in ~~any~~ a district court of this state  
13 to recover ~~such~~ damages.

14           **SECTION 7. AMENDMENT.** Section 49-03-01.5 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16           **49-03-01.5. Definitions.** As used in sections 49-03-01 through 49-03-01.5:

- 17           1. "Electric public utility" means a ~~privately owned~~ supplier of electricity offering to  
18           supply or supplying electricity to the general public.
- 19           2. "Person" includes an individual, an electric public utility, a corporation, a limited  
20           liability company, an association, or a rural electric cooperative.
- 21           3. ~~"Rural electric cooperative" includes any electric cooperative organized under~~  
22           ~~chapter 10-13. An electric cooperative, composed of members as prescribed by~~  
23           ~~law, shall not be deemed to be an electric public utility.~~

24           **SECTION 8. AMENDMENT.** Section 49-03-02 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26           **49-03-02. Prerequisites to issuance of certificate of public convenience and**  
27 **necessity.** Before ~~any~~ a certificate may issue under this chapter, a certified copy of the articles  
28 of incorporation or charter of the utility, if the applicant is a corporation, or a certified copy of the  
29 articles of organization of the utility, if the applicant is a limited liability company, ~~shall~~ must be  
30 filed with the commission. At the hearing of ~~said~~ the application upon notice as provided in this  
31 title, the utility shall submit evidence showing that ~~such~~ the applicant has received the consent,

1 franchise, permit, ordinance, or other authority of the proper municipality or other public  
2 authority, if required, or has or is about to make application therefor. The commission ~~shall~~  
3 ~~have the power~~, after notice and hearing, ~~to~~ may:  
4       1. Issue the certificate prayed for;  
5       2. Refuse to issue ~~such~~ the certificate;  
6       3. Issue it for the construction or operation of a portion only of the contemplated  
7       facility, line, plant, system, or extension thereof; or  
8       4. Issue it for the partial exercise of the right or privilege sought, conditioned upon the  
9       applicant's having secured or upon the applicant's securing the consent, franchise,  
10      permit, ordinance, or other authority of the proper municipality or other public  
11      authority, and may attach to the exercise of the rights granted by ~~any~~ a certificate  
12      such terms and conditions as in its judgment the public convenience and necessity  
13      may require.

14 Notwithstanding any of the foregoing provisions, the commission may grant a certificate if no  
15 interested party, ~~including any local electric cooperative~~, has requested a hearing on ~~said~~ the  
16 application after receiving at least twenty days' notice of opportunity to request ~~such~~ a hearing.

17       **SECTION 9. AMENDMENT.** Section 49-03-05 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19       **49-03-05. Complaint upon violation of chapter.** Whenever a public utility engages or  
20 is about to engage in construction or operation as described in this chapter without having  
21 secured a certificate of public convenience and necessity as required by the provisions of this  
22 chapter, or whenever a public utility constructs or extends its line, plant, or system, or supplies,  
23 or offers to supply electric service in violation of this chapter, ~~any~~ an interested municipality,  
24 public authority, utility, ~~electric cooperative corporation~~, or person, may file a complaint with the  
25 commission. The commission thereupon, or upon its own motion without complaint, with or  
26 without notice, may make its order requiring the public utility complained of to cease and desist  
27 from ~~such~~ the construction or operation or other prohibited activity until the further order of the  
28 commission. Upon hearing had after due notice given, the commission shall make such order  
29 with respect to ~~such~~ the public utility and prescribe such terms and conditions as are just and  
30 reasonable.

1           **SECTION 10. AMENDMENT.** Section 49-20-12.1 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **49-20-12.1. Notice of change in topography of lands under or adjacent to electric**  
4 **transmission or telecommunications lines.** Before any change is made in the topography of  
5 lands under, or adjacent to, any electric transmission or telecommunications lines, which  
6 change would increase the hazard to travel, or to persons or property, the one proposing to  
7 make ~~such~~ the change shall, except in the case of an emergency, at least ten days before  
8 proceeding therewith, notify the public utility ~~or cooperative corporation~~ operating ~~such~~ the  
9 electric transmission or telecommunications lines. ~~Such~~ The notification ~~shall~~ must clearly  
10 state the nature and location of the proposed change in topography and ~~shall~~ must be sent to  
11 ~~such~~ the public utility ~~or cooperative corporation~~ at its principal place of business within the  
12 state by registered ~~or certified~~ mail. In case of an emergency, when ten days' notice cannot be  
13 given, notice ~~shall~~ must be given, as herein provided, ~~prior to~~ before proceeding with ~~such~~ the  
14 change.