

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2412
(Senators Stenehjem, O'Connell)
(Representatives Berg, Boucher)
(Approved by the Delayed Bills Committee)

AN ACT to create and enact a new section to chapter 49-03 of the North Dakota Century Code, relating to electric service area agreements; to amend and reenact sections 49-02-01.1 and 49-03-01.5 of the North Dakota Century Code, relating to the jurisdiction of the public service commission and definitions; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

49-02-01.1. Jurisdiction of commission limited as to certain utilities. 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 any 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 eight thousand local exchange subscribers. However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual telecommunications company or has fewer than eight thousand local exchange subscribers is subject to sections 49-21-01.4, 49-21-02.4, 49-21-08, 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 ~~chapter~~ chapters 49-03 and 49-03.1 or sections 49-04-05 and 49-04-06.

SECTION 2. A new section to chapter 49-03 of the North Dakota Century Code is created and enacted as follows:

Service agreements among electric providers.

1. This section authorizing service area agreements is intended to encourage harmony and operational efficiency among electric providers, promote safety, discourage unreasonable duplication of electric facilities, assure adequate and reliable electric service for all consumers and territories within the state, and provide antitrust immunity to electric providers that negotiate service area agreements in accordance with this section.
2. An electric provider may enter into agreements with other electric providers having adjacent or intermingled electric supply facilities for the purpose of establishing service areas and designating the service locations to be served by each electric provider. The designated service locations may include all or any portion of the service locations within a service area that are being served by the electric providers at the time of the agreement, or that could be economically served by the then existing facilities of the electric providers, or by reasonable and economic extensions of such existing facilities. The service area agreement must provide that it is subject to the continuing jurisdiction of the commission to settle all service location disputes between the contracting electric providers arising under the agreement.

3. Electric providers may enter into written agreements for the sale, transfer, exchange, or lease of equipment or facilities used to serve the areas that are the subject of a service area agreement. Any sale, exchange, transfer, or lease of equipment, plant or facilities made under this subsection is subject to sections 49-04-05 and 10-13-08.1.
4. A service area agreement shall be promptly filed with the commission which must give 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.
5. The public service commission shall approve or disapprove a service area agreement. The commission may not revise a service area agreement except by mutual consent of the parties to the agreement.
6. A service area agreement shall be valid and enforceable if the commission after notice as provided in subsection 4, approves the agreement and finds that the agreement complies with this section and is in the public interest.
7. Upon approval of a service area agreement, the commission shall issue its order and any necessary certificates of public convenience and necessity authorizing an electric public utility to extend its plant and system and to provide electric service to service locations within the service areas.
8. The governing board of a city may require approval or disapproval of a service area agreement between electric providers to the extent the agreement encompasses service locations within the city. Nothing in this chapter shall be construed to limit the authority of a governing board of a city to exercise its franchise authority under section 40-05-01.

SECTION 3. AMENDMENT. Section 49-03-01.5 of the North Dakota Century Code is amended and reenacted as follows:

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

1. "Electric provider" means either an electric public utility or a rural electric cooperative.
2. "Electric public utility" means a privately owned supplier of electricity offering to supply or supplying electricity to the general public.
- ~~2.~~ 3. "Person" includes an individual, an electric public utility, a corporation, a limited liability company, an association, or a rural electric cooperative.
- ~~3.~~ 4. "Rural electric cooperative" includes any electric cooperative organized under chapter 10-13. An electric cooperative, composed of members as prescribed by law, shall not be deemed to be an electric public utility.
5. "Service area" means a defined geographic area containing existing or future service locations established by an agreement among electric providers and approved by the commission.
6. "Service area agreement" means an agreement between electric providers establishing service areas and designating service locations to be served by each provider under section 2 of this Act.
7. "Service location" means the structures, facilities, or improvements on a parcel of real property to which electric service may be provided.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2412 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 44 Nays 0 Absent 3

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 91 Nays 0 Absent 3

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at ___ o'clock _____ M.

Secretary of State