

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Practice and Procedure  
Rulemaking**

**Case No. AD-17-49**

**Proposed Rule**

**January 31, 2017**

**CHAPTER 69-02-04  
HEARINGS**

**69-02-04-01. Notice.** In those proceedings in which a hearing is to be held, the commission will assign a time and place for hearing. Notice of the hearing must be posted in the office of the commission, and must be served on the parties and other persons entitled to receive notice at least twenty days prior to the date set for the hearing except in cases of emergency or as otherwise provided by law.

In any proceeding, except rulemaking proceedings, involving the rights of persons who are members of the public generally, notice of hearing must be given by legal publication in the North Dakota daily newspaper of the affected area. Notice must be published at least twenty days prior to the date of the hearing.

An electric, gas, or telecommunications public utility shall provide individual customer notice as required below by billing insert, newsletter, or other appropriate method approved by the commission. The notice must indicate the place and date of the commencement of any hearing, informal hearing, or public input session that has been ordered by the commission, and that the public is invited to attend. Subject to the power of the commission to modify its contents and when applicable, the notice must include a summary sheet describing the absolute dollar and percentage impact of any

proposed rate or price changes by the various classes of services offered by the utility and must include a list of the utility's business office locations where the proposed rate or price schedules and a comparison of present and proposed rates or prices can be examined by the public. The notice must also contain in bold type the following statement when applicable: The rate changes described in this notice have been requested by (specific utility).

For electric and gas utilities, individual customer notice is required for an application for approval of a rate increase, purchase or sale, merger, or acquisition filed by the utility, and applications by the utility for alternative regulation. For electric and gas utilities, the commission may require the utility to provide individual customer notice to potentially affected customers in other rate proceedings, complaint cases, advance determination of prudence cases, and fuel and purchased gas adjustment proceedings.

For telecommunications utilities, individual customer notice is required for an application for a certificate of public convenience and necessity resulting from the sale, merger, or acquisition of an incumbent telecommunications company. The commission may require a telecommunications utility to provide individual customer notice to potentially affected customers in complaint cases.

The individual customer notices required by this section are separate from and in addition to any other customer notices required by law or rule, unless the commission authorizes the utility to satisfy multiple notice requirements with one notice.

**History:** Amended effective October 1, 1980; September 1, 1982; September 1, 1992; January 1, 2001; \_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-05, 28-32-08, 49-01-07

**69-02-04-02. Appearances.** Each interested party shall enter an appearance at the beginning of the hearing by giving the party's name and address and briefly stating the capacity in which the party appears. All appearances must be noted on the record. ~~The name and position of each member of the commission's staff participating in the hearing or investigation must be included in the record as an appearance.~~

**History:** Amended effective September 1, 1992; \_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-01-07

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**CHAPTER 69-02-07  
RULES**

**69-02-07-02. Notice.**

1. The commission will issue a notice that the rules are proposed and set for hearing which will include:
  - a. A short, specific explanation of the proposed rule;
  - b. A brief explanation of the purpose of the proposed rule;
  - c. A determination of whether the proposal impacts the regulated community in excess of fifty thousand dollars;
  - d. A location where the text of the proposed rule may be reviewed;
  - e. Notice to interested persons of the opportunity to submit written comments and to appear and testify at the hearing to offer oral testimony;
  - f. The address to which written comments may be sent;
  - g. The address and telephone number at which a copy of the proposed rules and regulation analysis may be requested; and
  - h. The date, time, and place of the hearing.

2. The commission will publish an abbreviated newspaper notice in each official county newspaper in the state.
3. The commission will file the notice of hearing and a copy of the proposed rules with the legislative council ~~at least thirty days before the hearing.~~
4. The public comment period on the proposed adoption, amendment, or repeal of any rule under this article will close ~~thirty~~ten days after conclusion of the public hearing, unless extended by the commission.
5. The commission will consider all written comments and oral testimony received before adoption, amendment, or repeal of any rule under this article and make a written record of its consideration.

**History:** Effective December 1, 1990; amended effective January 1, 2001; \_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-02, 49-01-07

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**CHAPTER 69-02-09  
PROCEDURES FOR PROTECTING INFORMATION FROM DISCLOSURE**

**69-02-09-01. Application to protect information.**

Except as provided in section 69-02-09-13, ~~an applicant~~ a person requesting protection of information in an administrative proceeding or in a response to a commission request for information shall file an application with the commission. The application must include at least the following:

1. A general description of the nature of the information sought to be protected.
2. The specific law or rule on which protection is based.
3. If the basis for protection is that the information is trade secret:
  - a. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons;
  - b. An explanation of why the information is not readily ascertainable by proper means by other persons;
  - c. A general description of the persons or entities that would obtain

- economic value from disclosure or use of the information;
- d. A specific description of known competitors and competitors' goods and services that are pertinent to the tariff or rate filing; and
  - e. A description of the efforts used to maintain the secrecy of the information.
4. If the basis for protection is a reason other than that the information is trade secret, the specific basis or bases upon which the information qualifies for protection.
  5. A redacted public version of the information, unless this requirement is waived by the commission. The amount redacted must be as minimal as possible. If it is not possible to file a redacted public version, a specific written request for waiver of the requirement and the reasons for requesting a waiver must be filed.

**History:** Effective March 1, 1994; amended effective April 1, 2015;\_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 47-25.1

**69-02-09-02. Filing of application.**

1. The application must be addressed to and filed with the executive secretary of the commission.
2. The protected material filed with the application or pursuant to section 69-02-09-13 must be separately bound and placed in a sealed envelope, or other appropriate, sealed container, which must be labeled: **PROTECTED INFORMATION - PRIVATE**. An original and seven copies of the public portion of the application must be filed unless this requirement is waived by the

commission. Only one copy of the protected material may be filed.

**History:** Effective March 1, 1994; amended effective April 1, 2015;\_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 47-25.1

#### **69-02-09-03. Processing the application.**

When an application for protection of information is filed, the commission staff shall examine the information and application, and file and serve a response that includes a recommendation on whether the information qualifies for protection. If the basis for requesting protection is that the information is trade secret, the staff response must include a recommendation on whether the information is relevant and is trade secret, under the definition of trade secret in North Dakota Century Code section 47-25.1-01. The commission will make a determination on the application from the application, the recommendation, and any response received from those served.

**History:** Effective March 1, 1994; amended effective April 1, 2015.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 47-25.1

#### **69-02-09-04. Protective order.**

Upon a determination that information qualifies for protection, the commission shall issue a protective order limiting disclosure.

**History:** Effective March 1, 1994; amended effective April 1, 2015.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 47-25.1

#### **69-02-09-05. Request for hearing - Who may request - Time - Burden of proof.**

1. Upon a determination that the information does not qualify for protection,



the applicant will be notified and has seven days to request a hearing before the commission, or obtain appropriate injunctive relief from the courts. If no hearing is requested or the commission is not otherwise restrained, the information will become part of the public record without protection. The burden of proof in such a hearing is on the party seeking to prevent disclosure.

2. If any person disagrees with the designation of information as protected or with its nondisclosure, the person shall first attempt to informally dispose of the dispute with the party seeking to prevent disclosure. If the dispute cannot be resolved, any person may request a hearing before the commission to determine the protected status.

**History:** Effective March 1, 1994; amended effective April 1, 2015.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 47-25.1

**69-02-09-13. Information filed under sections ~~69-09-05-12~~ and ~~69-09-05-12.1~~ by telecommunications companies.**

Information filed to comply with subdivision b of subsection 3 of section ~~69-09-05-12~~ or section ~~69-09-05-12.1~~ identified in subsections one through five of this section is protected without need for the originator to file an application and without further action by the commission, unless the commission orders otherwise. Sections ~~69-02-09-01~~ 69-02-09-01(1) through ~~69-02-09-04~~ 69-02-09-01(4), 69-02-09-02(1), 69-02-09-03, 69-02-09-04, and 69-02-09-05(1) do not apply to information filed to comply with subdivision b of subsection 3 of section ~~69-09-05-12~~, or subsections 1, 2, or 3 of section ~~69-09-05-12.1~~ under this section.

1. Detailed information concerning telecommunications infrastructure projects.

2. Disaggregated data on provisioned volumes of local services by service type and local exchange.
3. Disaggregated data on provisioned volumes and associated revenue of switched access traffic by jurisdiction or local exchange.
4. Detailed information on service outages as defined in Title 47 Code of Federal Regulations, Part 4, Section 4.5, in effect as of January 30, 2017.
5. Financial information required by the Federal Communications Commission to be copied to the commission, accompanied by the filing of a copy of the Federal Communication Commission's Protective Order for that information.

**History:** Effective April 1, 2015; amended effective \_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 47-25.1

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Case No. AD-17-49

NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES AND NOTICE OF  
PUBLIC HEARING

January 31, 2017

**PLEASE TAKE NOTICE** that the Public Service Commission intends to propose amendments to the following parts of the North Dakota Administrative Code: Section 69-02-04-01, Section 69-02-04-02, Section 69-02-07-02 and Chapter 69-02-09.

A hearing will be held on the proposed rules at **1:30 p.m. Central Time on March 15, 2017, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.**

The proposed revisions are: changes to the rules regarding individual customer notice in utility rate related cases (bill stuffers), appearances at formal hearings, the filing and comment period time frames for proposed rules, and changes to the procedure for protecting certain information filed by telecommunications companies.

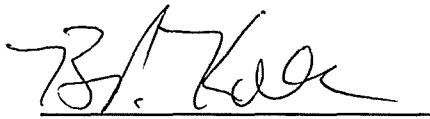
One additional type of utility filing will be included with the existing types of filings for which individual customer notice is required. The requirement that staff who work on formal cases be noted as making a formal appearance is being deleted. Certain time frames associated with the procedure proposing rules are being revised to make the commission's procedure consistent with statute. Information filed by telecommunications companies is specified as protected without the need for application for protection.

The proposed rule changes and the statements concerning the Regulatory Analysis, Small Entity Regulatory Analysis and Economic Impact, and Takings Assessment may be reviewed at the Public Service Commission's offices on the 12<sup>th</sup> floor of the State Capitol, Bismarck, North Dakota. To obtain a copy of the proposed rule changes or the statements contact the Public Service Commission at 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, 701-328-2400, toll free 1-877-245-6685, Relay North Dakota TTY 1-800-366-6888, or [ndpsc@nd.gov](mailto:ndpsc@nd.gov). This information is also available on the Commission's web site at [www.psc.nd.gov](http://www.psc.nd.gov) under "Formal Actions/Case Search".

Interested persons may attend the hearing and may submit written comments on the proposed rules. Written comments should be filed with Darrell Nitschke, Executive Secretary, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, or ndpsc@nd.gov. The comment period closes 30 days after the hearing. Comments must be received by the close of business on April 17, 2017.

If you require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify the Commission at least 24 hours in advance.

**PUBLIC SERVICE COMMISSION**



**Brian P. Kalk**  
Commissioner



**Randy Christmann**  
Chairman



**Julie Fedorchak**  
Commissioner