

NORTH DAKOTA ADMINISTRATIVE CODE

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Prepared by the Legislative Council staff
for the
Administrative Rules Committee



TITLE 69

PUBLIC SERVICE COMMISSION

STAFF COMMENT: The changes to sections in article 69-05.1 correct typographical or grammatical errors.

69-05.1-02-08. HYDROLOGIC DATA - EXTENDED MINING PLAN. The hydrologic data to be submitted as a part of the extended mining plan shall include:

1. A general account of the surface and ground water hydrology (the water resources of the area).
2. A general account of water use in the area.
3. Contour maps or maps showing the water table or piezometric surface of the water in each aquifer (including waterbearing coal seams) that will be affected by mining developed from available ground water studies and from existing wells located in the extended mine plan area. The locations of data points shall be shown on the map and given to the nearest ten acres [4.05 hectares]. The scale of the map shall be 1:24,000. Data accompanying the map or maps should include available lithologic and geophysical logs of any wells or holes in which piezometers are located and piezometer construction details. Elevations of the water level and land surface to the accuracy necessary for valid analysis of the ground water hydrology of the area should also be included.
4. Where feasible, water samples shall be collected from each of the data points for chemical analyses; if possible. The analyses shall include:
 - a. Total dissolved solids.
 - b. Hardness.
 - c. Sodium.
 - d. Iron.
 - e. Bicarbonate.
 - f. Nitrate.
 - g. Sulfate.
 - h. Chloride.
 - i. pH.
 - j. Sodium adsorption ratio (include calcium, magnesium and sodium cation concentrations).

k. Electrical conductivity.

l. Any other relevant analyses which the commission may require.

History: Effective July 1, 1979.

General Authority
NDCC 38-14.1-03,
38-14.1-15

Law Implemented
NDCC 38-14.1-15

69-05.1-02-09. ALLUVIAL VALLEY FLOORS - EXTENDED MINING PLAN. For extended mine plan areas that may contain alluvial valley floors, the permit applicant, in consultation with the commission, shall determine the baseline data to be collected before the surface coal mining operation moves within or adjacent to this area. This baseline data will be used by the commission in the determination of the existence or nonexistence of an alluvial valley floor in the area.

History: Effective July 1, 1979.

General Authority
NDCC 38-14.1-03,
38-14.1-15

Law Implemented
NDCC 38-14.1-15

69-05.1-02-15. AREA MAP - MINING AND RECLAMATION PLAN. A 1:4,800 planimetric mine map, together with as many separate detail maps as necessary, shall be used to depict the following information regarding the proposed permit areas:

1. The scale, date, location, company name, legal subdivision boundaries, and an appropriate legend.
2. The delineation of the exact area being considered for permit.
3. The location of structures, wells, springs, streams, natural drainageways, railroads, roads, highways, existing and proposed haul roads and mine railways, existing pipelines and transmission lines, and all other manmade features.
4. The location of any drill holes used for collecting geologic and overburden information.
5. Present and postmining land use, along with the major vegetative types and their distribution.
6. Pit layout, proposed sequence of mining operations, crop line, final graded spoil line, spoil placement, and areas proposed for stockpiling suitable plant growth material.

7. The intended post-mining topography and surface drainage, if it will differ significantly from that which existed prior to mining.
8. A surface water management plan including but not limited to: delineation of the watershed boundaries, the location of all proposed sediment ponds, water impoundments, diversions, or other water management structures (including those located outside of the proposed permit area) and the design specifications of such structures to meet the criteria set forth in chapter 69-05.1-11.
9. To determine the natural slopes of the area before mining, the permit applicant shall submit to the commission the following maps:
 - a. Topographic maps with five-foot [1.52 meter] contour intervals; and
 - b. Cross-sections or an area slope map that adequately represents the existing land surface configuration and reflects the geomorphic differences of the area to be disturbed. If cross-sections are used, the location of each cross-section submitted should be identified on the topographic map.

History: Effective July 1, 1979.

General Authority
NDCC 38-14.1-03,
38-14.1-14

Law Implemented
NDCC 38-14.1-14

69-05.1-02-24. COMPUTATION OF TIME. Except as otherwise provided, computation of time for this article will be based on calendar days: _

1. In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday on which the commission is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.
2. Intermediate Saturdays, Sundays and legal holidays are excluded from the computation when the period of prescribed time is seven days or less.

History: Effective July 1, 1979.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-03

69-05.1-11-09. DISCHARGE STRUCTURES. Discharges from sedimentation ponds and diversions shall be controlled, where necessary, using energy dissipators, surge ponds, and other devices to reduce erosion and prevent deepening or

enlargement of stream channels and to minimize disturbances to the hydrologic balance.

History: Effective July 1, 1979.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.1-11-13. COMPLIANCE WITH THE STANDARDS OF THE STATE ENGINEER. Any water impoundment, diversion, structure, or drainage ditch built as part of an approved mining and reclamation plan shall be constructed in accordance with the requirements of the North Dakota state engineer, as well as the requirements of this article. No mining permit shall be issued by the commission until the state engineer has had an opportunity to review the permit application. No rights under the mining permit shall be exercised until necessary permits are obtained from the state engineer.

History: Effective July 1, 1979.

General Authority
NDCC 38-14.1-03,
38-14.1-42

Law Implemented
NDCC 38-14.1-24,
38-14.1-42

69-05.1-14-05. METHODS OF REVEGETATION.

1. The permittee shall use technical publications or the results of laboratory and field tests approved by the commission to determine the varieties, species, seeding rates, and soil amendment practices essential for establishment and self-regeneration of vegetation. The commission shall approve species selection and planting plans.
2. Where hayland, pasture, or range is to be the postmining land use, the species of grasses, legumes, browse, trees, or forbs for seeding or planting and their pattern of distribution shall be selected by the permittee to provide a diverse, effective, and permanent vegetative cover with the seasonal variety, succession, distribution, and regenerative capabilities native to the area. Livestock grazing will not be allowed on reclaimed land until the seedlings are established and can sustain managed grazing. The commission, in consultation with the permittee and the landowner or in concurrence with the governmental land managing agency having jurisdiction over the surface, shall determine when the revegetated area is ready for livestock grazing.
3. Where forest is to be the postmining land use, the permittee shall plant trees adapted for local site conditions and climate. Trees shall be planted in combination with an herbaceous cover of grains, grasses, legumes, forbs, or woody plants to provide a diverse, effective, and

permanent vegetative cover with the seasonal variety, succession, and regeneration regenerative capabilities native to the area.

4. Where wildlife habitat is to be included in the postmining land use, the permittee shall consult with appropriate state wildlife and land management agencies and shall select those species that will fulfill the needs of wildlife, including food, water, cover, and space. Plant groupings and water resources shall be spaced and distributed to fulfill the requirements of wildlife.

History: Effective July 1, 1979.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24,
38-14.1-42

ARTICLE 69-06

ENERGY CONVERSION AND TRANSMISSION FACILITY SITING

Chapter

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69-06-02	Utility Reporting Requirements
69-06-03	Letter of Intent
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CHAPTER 69-06-01
GENERAL PROVISIONS

Section

69-06-01-01	Definitions
69-06-01-02	Procedure for Public Hearings
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69-06-01-05	Designated State Agencies and Officers

69-06-01-01. DEFINITIONS. The terms used throughout this article have the same meanings as in North Dakota Century Code chapter 49-22, and in addition:

1. "Act" means the North Dakota Energy Conversion and Transmission Facility Siting Act, North Dakota Century Code chapter 49-22.
2. "Avoidance criteria" means criteria that remove areas from consideration for energy conversion facility sites and transmission facility routes unless it is shown that under the circumstances there are no reasonable alternatives.
3. "Criteria" means policy statements that guide and govern the preparation of the inventory of exclusion and avoidance areas, and the energy conversion facility site and transmission facility corridor and route suitability evaluation process.
4. "Designated corridor" means a corridor for which a certificate has been issued by the commission.
5. "Designated route" means a route for which a permit has been issued by the commission.

6. "Designated site" means a site for which a certificate has been issued by the commission.
7. "Exclusion criteria" means criteria that remove areas from consideration for energy conversion facility sites and transmission facility routes.
8. "Historical resource" means a district, site, building, structure, or other object which possesses significance in history, archaeology, paleontology, or architecture, or has other cultural value to the state or local community.
- 8- 9. "Party aggrieved" means a person who will be affected in a manner different from the effect on the general public.
- 9- 10. "Policy criteria" means criteria that guide and govern the selection of energy conversion facility sites and transmission facility corridors and routes in order to maximize benefits during the construction and operation of a facility.
- ~~10-~~ 11. "Refinement" means the action or process of purifying.
- ~~11-~~ 12. "Selection criteria" means criteria that guide and govern the selection of energy conversion facility sites and transmission facility corridors and routes in order to minimize adverse human and environmental impact after the exclusion and avoidance criteria have been applied.
- ~~12-~~ 13. "Siting rules" means this article adopted by the commission pursuant to North Dakota Century Code chapter 49-22.
- ~~13-~~ 14. "Wetland" means an aquatic area important to the life stages of certain wildlife species as defined by the United States fish and wildlife service.

History: Amended effective August 1, 1979.

General Authority
NDCC 49-22-18

Law Implemented
NDCC 49-22-01,
49-22-03,
49-22-05.1,
49-22-07,
~~49-22-10;~~
~~49-22-11;~~
49-22-08,
49-22-08.1,
49-22-19

69-06-01-02. PROCEDURE FOR PUBLIC HEARINGS.

1. GENERAL HEARINGS. ~~General--hearings~~ A general hearing shall be held prior to the adoption of, or a substantial or material modification of to, the criteria, a substantial or material modification or addition to

~~this article; these rules, and the revocation or suspension of a certificate or permit; and the transfer of a certificate.~~ Notice of a general hearing shall be given by the commission at least twenty days prior to the hearing by publication in the official newspaper of the county where the hearing will be held, in the official newspaper of all counties in which any part of an affected facility is located, and if it is a hearing on the adoption of, or a substantial or material modification or addition to, the criteria or these rules, in all of the state daily newspapers.

2. APPLICATION HEARINGS. One or more public hearings shall be held on an application for a certificate; or a permit; ~~an emergency certificate; or an emergency permit shall be held~~ in each county in which any part of the site, corridor, or route is proposed to be located, provided that the commission by order may consolidate the county hearings. The notice of a hearing on an application for a certificate of corridor compatibility for a transmission facility shall include a map of the appropriate county depicting the proposed corridor and study area. The notice of a hearing on an application for a route permit shall include a map of the appropriate county depicting the designated corridor and the location of the proposed route and any alternative routes. The maps shall be of a size, style, and legend as specified by the commission. Notice of each hearing shall be given by the commission at least twenty days prior to the hearing, as follows:
 - a. By publication in the official newspaper of each county affected in which any part of the site, corridor, or route is proposed to be located, whether the hearings are consolidated or not, and in such other newspapers that the commission may determine to be appropriate.
 - b. By mail to the following persons in each county in which any portion part of the facility site, corridor, or route is proposed to be located:
 - (1) The chairman of the board of county commissioners.
 - (2) ~~The head of each government agency charged with the duty of protecting the environment or planning land or water use in the area affected.~~ The county auditor.
 - (3) The chief executive officer of each city in the county on an application for a certificate for an energy conversion facility.
 - (4) The chief executive officer of each city within a corridor on an application for a certificate or permit for a transmission facility.
 - c. By mail to any state or federal agency authorized to issue a permit required for the construction or operation of ~~energy conversion or transmission facilities~~ the facility.
 - d. By mail to all other parties.

e. By mail to the state senators and representatives of each legislative district in which any part of the site, corridor, or route is proposed to be located.

3. WAIVER--AND--EMERGENCY--HEARINGS:---Public--hearings--shall--be--held--on--an--application--for--a--waiver--of--procedures--and--time--schedules--and--on--a--request--for--a--determination--of--demonstrable--emergency:--Notice--of--a--hearing--shall--be--given--by--the--commission--at--least--twenty--days--prior--to--the--hearing--by--publication--in--the--official--newspaper--of--each--county--in--which--any--part--of--the--facility--is--proposed--to--be--located: TRANSFER AND WAIVER HEARINGS. The commission, upon determination that an application for the transfer of a certificate or permit or an application for a waiver of procedures and time schedules is complete, shall publish a notice of opportunity for a public hearing, or upon its own motion shall publish a notice of hearing, in the official newspaper of each county in which any part of the site, corridor, or route is located or proposed to be located. A public hearing shall be held on an application if, either within twenty days following the publication of a notice of opportunity any interested person requests and demonstrates good cause for a public hearing, or the commission determines upon its own motion that there is good cause for a public hearing. Notice of a public hearing shall be given by the commission at least twenty days prior to the hearing by publication in the official newspaper of each county in which the site, corridor, or route is located or proposed to be located.

History: Amended effective August 1, 1979.

General Authority
NDCC 49-22-18

Law Implemented
NDCC 49-22-13

69-06-01-04. APPLICATIONS.

- 1. TIME. The time in which the commission is required to act in response to an application shall not commence until the commission notifies the applicant in writing that the application is complete.
- 2. COMPLETE APPLICATION. An application for a certificate or permit shall be deemed complete when the application contains sufficient information and supporting documentation to enable the commission to process the application.

General Authority
NDCC 49-22-18

Law Implemented
NDCC 49-22-08,
~~49-22-10;~~
~~49-22-11~~
49-22-08.1

69-06-01-05. DESIGNATED STATE AGENCIES AND OFFICERS. The following are the designated state agencies and officers entitled to notice when so referred to in this article:

1. Aeronautics commission.
2. Attorney general.
3. Board of vocational education.
4. Business and industrial development commission.
5. Coal development impact office.
6. Department of agriculture.
7. Department of health.
8. Department of labor.
9. ~~Employment-security-bureau.~~
- ~~10-~~ 9. Game and fish department.
- ~~11-~~ 10. Geological survey.
- ~~12-~~ 11. Governor.
- ~~13-~~ 12. Governor's council on human resources.
- ~~14-~~ 13. Highway department.
- ~~15-~~ 14. Historical board.
- ~~16-~~ 15. Indian affairs commission.
16. Job service North Dakota.
17. Land department.
18. Natural resources council.
19. Parks and recreation department.
20. Planning division.

~~21:--Regional-environmental-assessment-program-~~

~~22: 21. Soil conservation committee.~~

~~23: 22. Water conservation commission.~~

History: Amended effective August 1, 1979.

General Authority
NDCC 49-22-18

Law Implemented
NDCC 49-22-08,
~~49-22-11~~
49-22-08.1

69-06-02-02. FILING.

1. Ten copies of each report shall be filed with the commission, and one copy of each report shall be filed with the county auditor of each county in which any part of a site or corridor is proposed to be located.
2. Notice of the filing of each report shall be given by the utility to each state agency and officer entitled to notice as designated in ~~this article; and to the head of each government agency charged with the duty of protecting the environment or planning and or water use in the area in which any part of a site or corridor is proposed to be located~~ section 69-06-01-05.

History: Amended effective August 1, 1979.

General Authority
NDCC 49-22-18

Law Implemented
NDCC 49-22-04

69-06-04-01. APPLICATION.

1. FORM. All applications shall be in such form as the commission may prescribe.
2. FILING. The applicant shall file an original and ten copies of an application with the commission.
3. NOTICE OF FILING. The commission shall serve a notice of filing of a complete application on ~~all~~ of the following:
 - a. The chairman of the board of county commissioners and the auditor of each county in which any portion part of the site or corridor is proposed to be located.

- b. The chief executive officer of each city in a county in which any portion part of an energy conversion facility is proposed to be located.
 - c. The chief executive officer of each city within a proposed corridor for a transmission facility.
 - ~~d. The head of each government agency charged with the duty of protecting the environment or planning land use in the area in which any portion of the site or corridor is proposed to be located.~~
 - e. d. The state agencies and officers entitled to notice as designated in this article section 69-06-01-05.
 - e. The state senators and representatives of each legislative district in which any part of the site or corridor is proposed to be located.
4. AMENDMENT OF APPLICATION. The commission may allow an applicant to amend its application at any time during the pendency of an application. A rehearing may be required if the commission determines that a proposed amendment, which is received after the hearing process has been completed, materially changes the authority sought.
5. REAPPLICATION. When a certificate is denied and the commission specifies a modification that would make it acceptable, the applicant may reapply. In a reapplication:
- a. The reapplication shall be heard in the same manner as an original application.
 - b. The utility shall indicate its acceptance or rejection of the suggested modification.
 - c. If a suggested modification is rejected by the applicant, it shall propose an alternative modification.
 - d. No initial fee shall be required.
 - e. Further additional fees may be required.
 - f. Reapplication must be made within six months of the order denying an application.

History: Amended effective August 1, 1979.

General Authority
NDCC 49-22-18

Law Implemented
NDCC 49-22-08,
49-22-08.1

69-06-04-02. DESIGNATION OF SITES AND CORRIDORS.

1. REQUIREMENTS OF ORDER.

- a. An order approving the issuance of a certificate shall contain findings that the application, with modifications, if any, meets the site or corridor evaluation process requirements of the Act, and any special conditions the commission may require.
 - (1) Any modifications or special conditions required by the commission shall be deemed to be accepted unless the applicant petitions for a rehearing.
 - (2) If the applicant rejects any modifications or special conditions and proposes alternatives which it would accept, such a proposal shall be treated by the commission as an amendment to the application.
 - (3) If the applicant rejects any modifications or special conditions without either requesting a rehearing or proposing alternatives, the commission shall rescind its order and deny the application.
 - b. The width of a corridor must be at least ten percent of its length, but not less than one mile [1.61 kilometers] or greater than six miles [9.66 kilometers] unless approved by the commission.
 - c. An order denying the issuance of a certificate shall contain findings that state:
 - (1) The reason for such denial.
 - (2) What modification in the application would make it acceptable or that there is no modification that would be acceptable based upon the record before the commission.
2. ISSUANCE OF A CERTIFICATE. When a site or corridor is approved, the commission shall issue a certificate in accordance with the order which shall:
- a. Describe the authority granted.
 - b. Contain any special conditions that the commission may require.

General Authority
NDCC 49-22-18

Law Implemented
NDCC ~~49-22-10~~
49-22-08

69-06-05-01. APPLICATION.

1. FORM. All applications shall be in such form as the commission may prescribe.
2. FILING. The applicant shall file an original and ten copies of an application with the commission.

3. SERVICE. The applicant shall serve one copy of a complete application on the county auditor in each county in which any part of the designated corridor is located.
4. NOTICE OF FILING. The commission shall serve a notice of the filing of a complete application on ~~all~~ of the following:
 - a: ~~The head of each government agency charged with the duty of protecting the environment or planning land or water use in the area:~~
 - b: a. The chief executive officer of any each city within the designated corridor.
 - c: b. The state agencies and officers entitled to notice as designated in these rules and regulations section 69-06-01-05.
 - c. The chairman of the board of county commissioners of each county in which any part of the designated corridor is located.
 - d. The state senators and representatives of each legislative district in which any part of the designated corridor is located.
- 5: ~~REQUEST FOR APPLICATION: The applicant shall furnish a copy of an application to any of the above named agencies or officers who so request within thirty days of receipt of the notice of filing:~~

History: Amended effective August 1, 1979.

General Authority
NDCC 49-22-18

Law Implemented
NDCC ~~49-22-11~~
49-22-08.1

69-06-05-02. DESIGNATION OF ROUTE.

1. ISSUANCE OF A PERMIT. A An order approving the issuance of a permit shall:
 - a. Describe the authority granted.
 - b. Contain any special conditions that the commission may require.
 - c. Specify any required modifications in the type, design, routing, right-of-way preparation, or construction of the facility.
2. DEVIATIONS. A deviation from the designated route may be permitted if the deviation does not violate any of the exclusion and avoidance area criteria of this article.

3. VARIANCE FROM PERMIT CONDITIONS. The commission may allow a variance from any special condition upon a request which demonstrates the existence of good cause.

History: Amended effective August 1, 1979.

General Authority
NDCC 49-22-18

Law Implemented
NDCC ~~49-22-11~~
49-22-08.1

CHAPTER 69-06-07
EMERGENCY CERTIFICATE OR PERMIT

[Repealed effective August 1, 1979]

69-06-08-01. ENERGY CONVERSION FACILITY SITING CRITERIA. The following criteria shall guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process.

1. EXCLUSION AREAS. The following geographical areas shall be excluded in the consideration of a site for an energy conversion facility, and shall include a buffer zone of a reasonable width to protect the integrity of the area. Natural screening may be considered in determining the width of the buffer zone.
 - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; historic districts; monuments; wilderness areas; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
 - b. Designated or registered state: parks; forests; forest management lands; historic sites; monuments; historical markers; archaeological sites; grasslands; wild, scenic, or recreational rivers; game refuges; game management areas; management areas; and nature preserves.
 - c. County parks and recreational areas; municipal parks; parks owned or administered by other governmental subdivisions; hardwood draws; and enrolled woodlands.
 - d. Prime farmland and unique farmland, as defined by the land inventory and monitoring division of the soil conservation service, United States department of agriculture, in 7 C.F.R. part 657; provided, however, that if the commission finds that the prime farmland and unique farmland that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural productions, such exclusion shall not apply.
 - e. Irrigated land.

- f. Areas critical to the lifestages of threatened or endangered animal or plant species.
 - g. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
2. AVOIDANCE AREAS. The following geographical areas shall not be approved as a site for an energy conversion facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative sites. Economic considerations alone shall not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area shall be included. Natural screening may be considered in determining the width of the buffer zone.
- a. ~~Areas of historical, recreational, archaeological, or paleontological significance~~ Historical resources which are not designated as exclusion areas.
 - b. Areas within the city limits of a city or the boundaries of a military installation.
 - c. Areas within known flood plains as defined by the geographical boundaries of the hundred-year flood.
 - d. Areas that are geologically unstable.
 - e. Woodlands and wetlands.
 - f. Areas of recreational significance which are not designated as exclusion areas.
3. SELECTION CRITERIA. A site shall be approved in an area only when it is demonstrated to the commission by the applicant that any significant adverse effects resulting from the location, construction, and operation of the facility in that area as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum.
- a. The impact upon agriculture:
 - (1) Agricultural production.
 - (2) Family farms and ranches.
 - (3) Land which the owner demonstrates has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.
 - (4) Surface drainage patterns and ground water flow patterns.

- (5) The agricultural quality of the crop land.
 - b. The impact upon the availability and adequacy of:
 - (1) Law enforcement.
 - (2) School systems and education programs.
 - (3) Governmental services and facilities.
 - (4) General and mental health care facilities.
 - (5) Recreational programs and facilities.
 - (6) Transportation facilities and networks.
 - (7) Retail service facilities.
 - (8) Utility services.
 - c. The impact upon:
 - (1) Local institutions.
 - (2) Noise sensitive land uses.
 - (3) Rural residences and businesses.
 - (4) Aquifers.
 - (5) Human health and safety.
 - (6) Animal health and safety.
 - (7) Plant life.
 - (8) Temporary and permanent housing.
 - (9) Temporary and permanent skilled and unskilled labor.
 - d. The cumulative effects of the location of the facility in relation to existing and planned facilities and other industrial development.
4. POLICY CRITERIA. The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices.
- a. Recycling of the conversion byproducts and effluents.
 - b. Energy conservation through location, process, and design.
 - c. Training and utilization of available labor in this state for the general and specialized skills required.

- d. Use of a primary energy source or raw material located within the state.
- e. Nonrelocation of residents.
- f. The dedication of an area adjacent to the facility to land uses such as recreation, agriculture, or wildlife management.
- g. Economies of construction and operation.
- h. Secondary uses of appropriate associated facilities for recreation and the enhancement of wildlife.
- i. Use of citizen coordinating committees.
- j. A commitment of a portion of the energy produced for use in this state.
- k. Labor relations.
- l. The coordination of facilities.
- m. Monitoring of impacts.

History: Amended effective August 1, 1979.

General Authority
NDCC 49-22-18

Law Implemented
NDCC 49-22-05.1

69-06-08-02. TRANSMISSION FACILITY CORRIDOR AND ROUTE CRITERIA. The following criteria shall guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process. Exclusion and avoidance areas may be located within a corridor, but at no given point shall such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

- 1. EXCLUSION AREAS. The following geographical areas shall be excluded in the consideration of a route for a transmission facility. A buffer zone of a reasonable width to protect the integrity of the area shall be included. Natural screening may be considered in determining the width of the buffer zone.
 - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; monuments; and wilderness areas.
 - b. Designated or registered state: parks; historic sites; monuments; historical markers; archaeological sites; and nature preserves.
 - c. County parks and recreational areas; municipal parks; and parks owned or administered by other governmental subdivisions.

- d. Areas critical to the lifestages of threatened or endangered animal or plant species.
 - e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
2. AVOIDANCE AREAS. The following geographical areas shall not be considered in the routing of a transmission facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative routes. Economic considerations alone shall not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area shall be included unless a distance is specified in the criteria. Natural screening may be considered in determining the width of the buffer zone.
- a. Designated or registered national: historic districts; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
 - b. Designated or registered state: wild, scenic, or recreational rivers; game refuges; game management areas; management areas; forests; forest management lands; and grasslands.
 - c. Woodlands and wooded areas.
 - d. ~~Other---areas---of---historical;---recreational;---archaeological;---or paleontological-significance~~ Historical resources which are not specifically designated as exclusion or avoidance areas.
 - e. Areas which are geologically unstable.
 - f. Within five hundred feet [152.4 meters] of a farmhouse, rural residence, or place of business. This criterion shall not apply to a water pipeline transmission facility.
 - g. Reservoirs and municipal water supplies.
 - h. Water sources for organized rural water districts.
 - i. Irrigated land. This criterion shall not apply to an underground transmission facility.
 - j. Areas of recreational significance which are not designated as exclusion areas.
3. SELECTION CRITERIA. A corridor or route shall be designated only when it is demonstrated to the commission by the applicant that any significant adverse effects which will result from the location, construction, and maintenance of the facility as they relate to the

following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum.

a. The impact upon agriculture:

- (1) Agricultural production.
- (2) Family farms and ranches.
- (3) Land which the owner can demonstrate has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.
- (4) Surface drainage patterns and ground water flow patterns.

b. The impact upon:

- (1) Noise sensitive land uses.
- (2) The visual effect on the adjacent area.
- (3) Extractive and storage resources.
- (4) Wetlands, woodlands, and wooded areas.
- (5) Radio and television reception, and other communication or electronic control facilities.
- (6) Human health and safety.
- (7) Animal health and safety.
- (8) Plant life.

4. POLICY CRITERIA. The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices.

- a. Location and design.
- b. Training and utilization of available labor in this state for the general and specialized skills required.
- c. Economies of construction and operation.
- d. Use of citizen coordinating committees.
- e. A commitment of a portion of the transmitted product for use in this state.
- f. Labor relations.
- g. The coordination of facilities.

- h. Monitoring of impacts.
- i. Utilization of existing and proposed rights of way and corridors.
- j. Other existing or proposed transmission facilities.

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General Authority
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