

Fifty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2377

Introduced by

Senators Mutch, Tollefson

Representatives Carlson, Kasper, R. Kelsch, Wald

A BILL for an Act to create and enact two new sections to chapter 49-03 of the North Dakota Century Code, relating to electric service area agreements and factors to be considered in granting or denying certificates of public convenience and necessity to electric public utilities; to amend and reenact sections 49-02-01.1, 49-03-01, 49-03-01.3, 49-03-01.4, 49-03-01.5, and 49-03-05 of the North Dakota Century Code, relating to the jurisdiction of the public service commission, certificates of public convenience and necessity, extensions of service by electric service providers, exclusions from limitations on electric lines and service, enforcement, definitions, and complaints regarding electric providers; and to provide an effective date.

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

1 more telecommunications companies. Nothing in this section limits the authority of the
2 commission under ~~chapter~~ chapter chapters 49-03 and 49-03.1 or sections 49-04-05 and 49-04-06.

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

5 **Service agreements among electric suppliers.**

- 6 1. An electric provider may enter agreements with other electric providers having
7 adjacent or intermingled electric supply facilities for the purpose of establishing
8 service areas and designating the service locations to be served by each electric
9 provider. The electric service area agreement may establish or modify service
10 areas for the provision of electric service by electric providers to existing or future
11 electric service locations within or outside the corporate limits of a city subject to
12 approval by the commission. The service area agreement must provide that it is
13 subject to the continuing jurisdiction of the commission to settle all disputes arising
14 under the agreement.
- 15 2. Electric providers may enter written agreements for the sale, exchange, transfer, or
16 lease of equipment or facilities used to serve the areas that are the subject of a
17 service area agreement. Any sale, exchange, transfer, or lease of equipment,
18 plant, or facilities made under this subsection is subject to sections 10.13-08.1 and
19 49-04-05.
- 20 3. A service area agreement must be promptly filed with the commission. The
21 commission shall give notice of the filing. Upon the commission's order, or if an
22 affected electric consumer or electric provider requests a hearing within twenty
23 days of the notice, the commission shall hold a hearing on the service area
24 agreement.
- 25 4. The commission shall approve or disapprove a service area agreement. The
26 commission may not revise a service area agreement except by mutual consent of
27 the parties to the agreement.
- 28 5. A service area agreement is valid and enforceable if the commission, after notice
29 as provided in subsection 3, approves the agreement and finds that the agreement
30 complies with this section and is in the public interest. A service area agreement is
31 void if disapproved by the commission.

- 1 6. If electric providers operating electric systems within a city or the extraterritorial
2 zoning boundaries of such city having a population of ten thousand or more
3 persons have failed to negotiate a service area agreement for any area within the
4 extraterritorial zoning boundaries of the city by January 1, 2006, an affected
5 electric provider may petition the commission to establish a service area
6 agreement for such area in accordance with the factors in section 4 of this Act.
7 7. Upon approval of a service area agreement, the commission shall issue its order
8 and any necessary certificates of public convenience and necessity to the electric
9 providers authorizing them to extend their plant and system and to provide electric
10 service to service locations within the service areas.

11 **SECTION 3. AMENDMENT.** Section 49-03-01 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **49-03-01. Certificate of public convenience and necessity - ~~Secured~~ Extensions**
14 **of service by electric public-utility providers.** ~~No~~

- 15 1. An electric public utility henceforth ~~shall~~ may not begin construction or
16 operation of a public utility plant or system, or of an extension of a plant or
17 system, except as provided below, without first obtaining from the commission
18 a certificate that public convenience and necessity require or will require such
19 construction and operation. This section does not require an electric public
20 utility to secure a certificate for an extension within any municipality within
21 which it has lawfully commenced operations. If any electric public utility in
22 constructing or extending its line, plant, or system, unreasonably interferes
23 with or is about to interfere unreasonably with the service or system of any
24 other electric public utility; or any rural electric cooperative ~~corporation~~, the
25 commission, on complaint of the electric public utility or the rural electric
26 cooperative ~~corporation~~ claiming to be injuriously affected, after notice and
27 hearing as provided in this title, may order enforcement of this section with
28 respect to the offending electric public utility and prescribe just and
29 reasonable terms and conditions.
30 2. Except for construction, extensions, and operations provided for in section 2 of this
31 Act, a rural electric cooperative henceforth may not begin construction or operation

of an electric plant or system, or of an extension of a plant or system, nor serve any electric service location, in any area extending outward from the established corporate limits of a city to the outer boundaries of the extraterritorial zoning authority available to the city, and revised from time to time, pursuant to section 40-47-01.1, without first providing notice to the other electric providers operating electric systems within the city or within the boundaries of the extraterritorial zoning authority available to the city. The rural electric cooperative may not proceed with the construction or extension if within fifteen days of the notice an electric public utility files an application with the commission for a certificate of public convenience and necessity to extend its plant or system to serve the same service area or electric service location, or another electric provider files a complaint with the commission that the proposed extension by the rural electric cooperative will unreasonably interfere with the service or system of the other electric provider. If any rural electric cooperative in constructing or extending its line, plant, or system, unreasonably interferes with or is about to unreasonably interfere with the service or system of another electric provider, the commission, on complaint of the electric provider claiming to be injuriously affected, after notice and hearing as provided in this title, may order enforcement of this title with respect to the offending rural electric cooperative and prescribe just and reasonable terms and conditions.

3. If within fifteen days of a notice provided under subsection 2 an electric public utility files an application for a certificate of public convenience and necessity to extend its plant or system to serve all or part of the same service area or electric service locations described in the notice, the commission after notice and hearing as provided in this title shall determine if a certificate of public convenience and necessity should be issued to the electric public utility or if the rural electric cooperative should be allowed to extend its plant or system to serve the service area or electric service locations.

4. When necessary and on application of an electric provider showing an immediate need for electric service to an electric service location, the commission may issue authority without hearing to allow the electric provider to temporarily extend its facilities and temporarily provide electric service to an electric service location

1 pending expiration of the notice period under subsection 2 without the filing of a
2 complaint or application for a certificate of public convenience and necessity, the
3 issuance of an order on a complaint filed under subsection 1 or 2, or the issuance
4 of a certificate of public convenience and necessity under subsection 1 or 3. A
5 temporary authority may not be considered as evidence by the commission in
6 determining whether to issue a certificate of public convenience and necessity to
7 serve the electric service location.

8 **SECTION 4.** A new section to chapter 49-03 of the North Dakota Century Code is
9 created and enacted as follows:

10 **Factors to be considered by the commission in granting or denying a certificate.**

- 11 1. Before granting or denying a certificate of public convenience and necessity to an
12 electric public utility, the commission shall consider:
- 13 a. The need for the service.
 - 14 b. The fitness and ability of the applicant to provide the service.
 - 15 c. The adequacy of the proposed service.
 - 16 d. The effect on other electric providers.
 - 17 e. Customer preference.
 - 18 f. The orderly growth and economic development of electric service in the area
19 sought to be served.
- 20 2. Notwithstanding subdivisions d, e, and f of subsection 1, the commission shall
21 consider and provide an opportunity for electric providers having facilities within or
22 adjacent to the corporate limits of a city to participate equitably in providing electric
23 service to electric service locations in the areas between the established corporate
24 limits of the city and the outer boundaries of the extraterritorial zoning authority
25 available to the city, and revised from time to time, pursuant to section 40-47-01.1.
- 26 3. An electric public utility may not be required to obtain a customer request for
27 service as a condition to obtaining a certificate of public convenience and
28 necessity.

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

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

~~Sections 49-03-01 through 49-03-01.5 shall~~ This chapter may not be construed to require any such electric public utility to secure such order or certificate for an extension of its electric distribution lines within the corporate limits of any municipality within which it has lawfully commenced operations; provided, however, that, and except for extensions provided for in sections 2 through 4 of this Act, such extension or extensions shall not interfere with existing services provided by a rural electric cooperative or another electric public utility within such municipality; and provided duplication of services is not deemed unreasonable by the commission.

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

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

49-03-01.4. Enforcement of act. If any electric public utility or any rural electric cooperative violates or threatens to violate any of the provisions of sections 49-03-01 through 49-03-01.5 or interferes with or threatens to interfere with the service or system of any other electric public utility or rural electric cooperative, the commission, after complaint, notice, and hearing as provided in chapter 28-32, shall make its order restraining and enjoining said electric public utility or rural electric cooperative from constructing or extending its interfering lines, plant, or system. In addition to the restraint imposed, the commission shall prescribe such

terms and conditions as it shall deem reasonable and proper, including removal of the interfering lines, plant, or system.

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

SECTION 7. 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~~ this chapter:

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.
3. "Existing service location" means a service location served by an electric provider within a service area on the date the service area is approved or designated under section 2 of this Act. The term includes expansions, improvements, or additions to the structures, facilities, and other improvements on the property made after the area is approved or designated to an electric provider. The term does not include a material change of use or replacement of the structures, facilities, or other improvements on the property which necessitates a replacement or substantial modification of the electric service facilities serving the service location after the area is approved or designated to an electric provider or new structures, facilities, or other improvements on a parcel of property which is subdivided after an area is approved or designated to an electric supplier.
- ~~2.~~ 4. "Person" includes an individual, an electric public utility, a corporation, a limited liability company, an association, or a rural electric cooperative.
- ~~3.~~ 5. "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.

6. "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.

7. "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.

8. "Service location" means the structures, facilities, or improvements on a parcel of real property to which electric service may be provided.

SECTION 8. AMENDMENT. Section 49-03-05 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 9. EFFECTIVE DATE. Section 3 of this Act becomes effective January 1, 2006.