

Fifty-ninth  
Legislative Assembly  
of North Dakota

## ENGROSSED 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 distribution 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 that has two thousand five hundred or more members served, limited  
10 liability company, or agency engaged or employed in any business enumerated in  
11 this title.

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

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

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

5. Electric distribution cooperatives that have two thousand five hundred or more members served and are engaged in the generation and distribution of light, heat, or power.

6. Gas utilities engaged in the distribution of natural, synthetic, or artificial gas.

7. All heating utilities engaged in the distribution of heat.

8. Warehouse companies engaged in the marketing, storage, or handling of agricultural products.

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

**SECTION 3. 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 except an electric distribution cooperative having two thousand five hundred or more members served, 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 under chapter 49-03.1 or sections 49-04-05 and 49-04-06.

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

**49-03-01. Certificate of public convenience and necessity - Secured by electric public utility.** ~~No~~ An electric public utility ~~henceforth shall~~ may not begin construction or

1 operation of a public utility plant or system, or of an extension of a plant or system, except as  
2 provided below, without first obtaining from the commission a certificate that public  
3 convenience and necessity require or will require ~~such the~~ construction and operation. This  
4 section does not require an electric public utility to secure a certificate for an extension within  
5 ~~any a~~ municipality within which it has lawfully commenced operations. If ~~any an~~ electric public  
6 utility in constructing or extending its line, plant, or system, unreasonably interferes with or is  
7 about to interfere unreasonably with the service or system of ~~any other~~ another electric public  
8 utility, or ~~any a rural~~ electric cooperative ~~corporation~~, the commission, on complaint of the  
9 electric public utility or ~~the rural~~ electric cooperative ~~corporation~~ claiming to be injuriously  
10 affected, after notice and hearing as provided in this title, may order enforcement of this section  
11 with respect to the offending electric public utility and prescribe just and reasonable terms and  
12 conditions.

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

15 **49-03-01.3. Exclusions from limitations on electric distribution lines, extension,**  
16 **and service and on issuance of certificates of public convenience and necessity.**

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

24 Sections 49-03-01 through 49-03-01.5 ~~shall~~ may not be construed to require an electric  
25 public utility to discontinue service to its customers ~~thereof~~ whose places receiving service are  
26 located outside the corporate limits of a municipality on July 1, 1965; provided, however, that  
27 within ninety days after July 1, 1965, ~~any an~~ electric public utility furnishing service to  
28 customers whose places receiving service are located outside the corporate limits of a  
29 municipality shall file with the commission a complete map or maps of its electric distribution  
30 system showing all places in North Dakota which are located outside the corporate limits of a  
31 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 the~~ map or maps, it ~~shall be~~ is conclusively presumed that ~~such the~~ 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~~ an electric public utility 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 the~~ electric public utility 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.

Provided, further, that nothing herein contained ~~shall~~ may be construed to prohibit or limit ~~any a~~ 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 an~~ electric public utility or rural electric cooperative ~~corporation~~, from bringing an action for damages in ~~any a~~ 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:

1. "Electric public utility" means a ~~privately-owned~~ supplier of electricity offering to supply or supplying electricity to the general public and an electric distribution cooperative that has two thousand five hundred or more members served.
2. "Person" includes an individual, an electric public utility, a corporation, a limited liability company, an association, or a rural electric cooperative.
3. "Rural electric cooperative" includes any electric cooperative organized under chapter 10-13 which has fewer than two thousand five hundred members served.  
~~An A~~ A rural electric cooperative that has two thousand five hundred or fewer

1           members served, composed of members as prescribed by law, shall not be  
2           deemed to be an electric public utility.

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

5           **49-03-02. Prerequisites to issuance of certificate of public convenience and**  
6           **necessity.** Before ~~any~~ a certificate may issue under this chapter, a certified copy of the articles  
7           of incorporation or charter of the utility, if the applicant is a corporation, or a certified copy of the  
8           articles of organization of the utility, if the applicant is a limited liability company, ~~shall~~ must be  
9           filed with the commission. At the hearing of ~~said~~ the application upon notice as provided in this  
10          title, the utility shall submit evidence showing that ~~such~~ the applicant has received the consent,  
11          franchise, permit, ordinance, or other authority of the proper municipality or other public  
12          authority, if required, or has or is about to make application therefor. The commission ~~shall~~  
13          ~~have the power~~, after notice and hearing, ~~to~~ may:

- 14           1.    Issue the certificate prayed for;
- 15           2.    Refuse to issue ~~such~~ the certificate;
- 16           3.    Issue it for the construction or operation of a portion only of the contemplated  
17                  facility, line, plant, system, or extension thereof; or
- 18           4.    Issue it for the partial exercise of the right or privilege sought, conditioned upon the  
19                  applicant's having secured or upon the applicant's securing the consent, franchise,  
20                  permit, ordinance, or other authority of the proper municipality or other public  
21                  authority, and may attach to the exercise of the rights granted by ~~any~~ a certificate  
22                  such terms and conditions as in its judgment the public convenience and necessity  
23                  may require.

24          Notwithstanding any of the foregoing provisions, the commission may grant a certificate if no  
25          interested party, including ~~any local~~ an electric distribution cooperative that has fewer than two  
26          thousand five hundred members served, has requested a hearing on ~~said~~ the application after  
27          receiving at least twenty days' notice of opportunity to request ~~such~~ a hearing.

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

30          **49-03-05. Complaint upon violation of chapter.** Whenever a public utility engages or  
31          is about to engage in construction or operation as described in this chapter without having

1 secured a certificate of public convenience and necessity as required by the provisions of this  
2 chapter, or whenever a public utility constructs or extends its line, plant, or system, or supplies,  
3 or offers to supply electric service in violation of this chapter, ~~any~~ an interested municipality,  
4 public authority, utility, electric distribution cooperative corporation that has fewer than two  
5 thousand five hundred members served, or person, may file a complaint with the commission.

6 The commission thereupon, or upon its own motion without complaint, with or without notice,  
7 may make its order requiring the public utility complained of to cease and desist from ~~such~~ the  
8 construction or operation or other prohibited activity until the further order of the commission.

9 Upon hearing had after due notice given, the commission shall make such order with respect to  
10 ~~such~~ the public utility and prescribe such terms and conditions as are just and reasonable.

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

13 **49-20-12.1. Notice of change in topography of lands under or adjacent to electric**  
14 **transmission or telecommunications lines.** Before any change is made in the topography of  
15 lands under, or adjacent to, any electric transmission or telecommunications lines, which  
16 change would increase the hazard to travel, or to persons or property, the one proposing to  
17 make ~~such~~ the change shall, except in the case of an emergency, at least ten days before  
18 proceeding therewith, notify the public utility or electric distribution cooperative corporation that  
19 has fewer than two thousand five hundred members served operating ~~such~~ the electric  
20 transmission or telecommunications lines. ~~Such~~ The notification ~~shall~~ must clearly state the  
21 nature and location of the proposed change in topography and ~~shall~~ must be sent to ~~such~~ the  
22 public utility or electric distribution cooperative corporation that has fewer than two thousand  
23 five hundred members served at its principal place of business within the state by registered or  
24 certified mail. In case of an emergency, when ten days' notice cannot be given, notice ~~shall~~  
25 must be given, as herein provided, ~~prior to~~ before proceeding with ~~such~~ the change.