Sixty-second Legislative Assembly of North Dakota

SENATE BILL NO. 2322

Introduced by

Senators Klein, Krebsbach, Robinson

Representatives Delmore, Keiser, Thoreson

- 1 A BILL for an Act to amend and reenact sections 49-03-01, 49-03-01.4, 49-03-01.5, 49-03-02,
- 2 49-03-03, 49-03-04, and 49-03-05 of the North Dakota Century Code, relating to electric
- 3 transmission providers; and to declare an emergency.

4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

5 SECTION 1. AMENDMENT. Section 49-03-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

49-03-01. Certificate of public convenience and necessity - Secured by electric public
utility.

9 No

10 An electric public utility henceforth shallmay not begin construction or operation of a 1. 11 public utility plant or system, or of an extension of a plant or system, except as-12 provided below, without first obtaining from the commission a certificate that public 13 convenience and necessity require or will require such the construction and operation. 14 This section does not require an electric public utility to secure a certificate for an 15 extension within any municipality within which itthe electric public utility has lawfully 16 commenced operations. If any electric public utility in constructing or extending its line, 17 plant, or system, unreasonably interferes with or is about to interfere unreasonably 18 with the service or system of any other electric public utility, or any electric cooperative 19 corporation, the commission, on complaint of the electric public utility or the electric 20 cooperative corporation claiming to be injuriously affected, after notice and hearing as 21 provided in this title, may order enforcement of this section with respect to the 22 offending electric public utility and prescribe just and reasonable terms and conditions. 23 2. An electric transmission provider may not begin construction or operation of an electric 24 transmission line interconnecting with an existing electric transmission line owned or

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1	operated by an electric public utility without first obtaining a certificate that public				
2	convenience and necessity require or will require the construction or operation.				
3	SECTION 2. AMENDMENT. Section 49-03-01.4 of the North Dakota Century Code is				
4	amended and reenacted as follows:				
5	49-03-01.4. Enforcement of act.				
6	<u>1.</u>	If any electric public utility or electric transmission provider violates or threatens to			
7		violate any of the provisions of sections 49-03-01 through 49-03-01.5 or interferes with			
8		or threatens to interfere with the service or system of any other electric public utility or			
9		rural electric cooperative, the commission, after complaint, notice, and hearing as			
10	provided in chapter 28-32, shall make its order restraining and enjoining saidthe				
11	electric public utility or electric transmission provider from constructing or extending its				
12	interfering lines, plant, or system. In addition to the restraint imposed, the commission				
13		shall prescribe suchany terms and conditions as it shall deemthe commission deems			
14		reasonable and proper.			
15	Prov	vided, further, that nothing herein contained shall be construed to			
16	<u>2.</u>	This section does not prohibit or limit any person, who has been injured in the person's			
17		business or property by reason of a violation of sections 49-03-01 through 49-03-01.5			
18		by any electric public utility, electric transmission provider, or electric cooperative			
19		corporation, from bringing an action for damages in any district court of this state to			
20		recover such damages.			
21	SECTION 3. AMENDMENT. Section 49-03-01.5 of the North Dakota Century Code is				
22	amended and reenacted as follows:				
23	49-03-01.5. Definitions.				
24	As ι	used in sections 49-03-01 through 49-03-01.5:			
25	1.	"Electric provider" means either an electric public utility or a rural electric cooperative.			
26	2.	"Electric public utility" means a privately owned supplier of electricity offering to supply			
27		or supplying electricity to the general public.			
28	3.	"Electric transmission line" means facilities for conducting electric energy at a design			
29		voltage of one hundred fifteen kilovolts or greater phase to phase and more than one			
30		mile long.			

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1	<u>4.</u>	"Electric transmission provider" means an owner or operator, other than a rural electric					
2		cooperative, of a transmission line the costs of which are recovered directly or					
3		indirectly through transmission charges to an electric public utility.					
4	<u>5.</u>	"Person" includes an individual, an electric public utility, a corporation, a limited liability					
5		company, an association, or a rural electric cooperative.					
6	<u>4.6.</u>	"Rural electric cooperative" includes any electric cooperative organized under chapter					
7		10-13. An electric cooperative, composed of members as prescribed by law, shall not					
8		be deemed to be an electric public utility.					
9	5.<u>7.</u>	"Service area" means a defined geographic area containing existing or future service					
10		locations established by an agreement among electric providers and approved by the					
11		commission.					
12	6.<u>8.</u>	"Service area agreement" means an agreement between electric providers					
13		establishing service areas and designating service locations to be served by each					
14		provider under section 49-03-06.					
15	7.<u>9.</u>	"Service location" means the structures, facilities, or improvements on a parcel of real					
16		property to which electric service may be provided.					
17	SEC	SECTION 4. AMENDMENT. Section 49-03-02 of the North Dakota Century Code is					
18	amended and reenacted as follows:						
19	49-03-02. Prerequisites to issuance of certificate of public convenience and						
20	necessity.						
21	<u>1.</u>	Before any certificate may issue under this chapter, a certified copy of the articles of					
22		incorporation or charter of the utility, if the applicant is a corporation, or a certified copy					
23		of the articles of organization of the utility, if the applicant is a limited liability company,					
24		shall<u>must</u> be filed with the commission. At the hearing of said<u>on the</u> application					
25		uponafter notice as provided in this title, the utility shall submit evidence showing that					
26		suchthe applicant has received the consent, franchise, permit, ordinance, or other					
27		authority of the proper municipality or other public authority, if required, or has or is					
28		about to make application thereforfor authority. The commission shall have the power,					
29		after notice and hearing, to:					
30	1.	a. Issue the certificate prayed for;					
31	2.	<u>b.</u> Refuse to issue suchthe certificate;					

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1	3.	<u>C.</u>	Issue it the certificate for the construction or operation of a portion only of the			
2			contemplated facility, line, plant, system, or extension thereofof the same; or			
3	4.	<u>d.</u>	Issue it the certificate for the partial exercise of the right or privilege sought,			
4			conditioned upon the applicant's having secured or upon the applicant's securing			
5			the consent, franchise, permit, ordinance, or other authority of the proper			
6			municipality or other public authority, and may attach to the exercise of the rights			
7			granted by any certificate such terms and conditions as in itsthe judgment of the			
8			commission the public convenience and necessity may require.			
9	<u>2.</u>	Not	withstanding any of the foregoing provisionsother provision of this section, the			
10		com	mission may grant a certificate if noan interested party, including any local electric			
11		c00	perative, has <u>not</u> requested a hearing on saidan application after receiving at least			
12		twe	nty days' notice of opportunity to request such hearing. In addition, the commission			
13		<u>may</u>	not issue a certificate to an electric transmission provider for construction or			
14		<u>ope</u>	ration of an electric transmission line that will interconnect with an electric			
15		<u>tran</u>	smission line owned or operated by an electric public utility if the electric public			
16		<u>utilit</u>	ty is willing and able to construct and operate a similar electric transmission line.			
17	3.	The	commission may impose an application fee of up to one hundred twenty-five			
18		<u>thou</u>	usand dollars for an application under this chapter. With the approval of the			
19		eme	ergency commission, the commission may impose an additional amount. The			
20		<u>com</u>	mission shall pay the expenses of processing an application under this chapter			
21		<u>fron</u>	the application fee paid by the public utility in accordance with section 49-02-02.			
22	SECTION 5. AMENDMENT. Section 49-03-03 of the North Dakota Century Code is					
23	amended and reenacted as follows:					
24	49-03-03. Franchise not to be exercised without certificate.					
25	NoA public utility henceforth shallor electric transmission provider may not exercise any					
26	right or privilege under any franchise or certificate hereafter granted, or under any franchise or-					
27	certificate heretofore granted, the exercise of which has been suspended or discontinued for					
28	more than one year, without first obtaining from the commission a certificate that public					
29	convenience and necessity require the exercise of suchthe right or privilege.					
30	SECTION 6. AMENDMENT. Section 49-03-04 of the North Dakota Century Code is					
31	amended and reenacted as follows:					

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1 49-03-04. Replacement or renewal of franchise - Certificate of public convenience and 2 necessity not necessary. 3 NoA public utility or electric transmission provider does not need to secure a renewal of the 4 certificate of public convenience and necessity under this chapter in order to exercise rights 5 under an ordinance hereafter granted where itif either has not suspended operation of its plant 6 and where such the franchise merely replaces or renews an expiring or expired franchise. 7 SECTION 7. AMENDMENT. Section 49-03-05 of the North Dakota Century Code is 8 amended and reenacted as follows: 9 49-03-05. Complaint upon violation of chapter. WheneverIf a public utility or electric transmission provider engages or is about to engage in 10 11 construction or operation as described in this chapter without having secured a certificate of 12 public convenience and necessity as required by the provisions of this chapter, or wheneverif a 13 public utility or electric transmission provider constructs or extends its line, plant, or system, or 14 supplies, or offers to supply electric service in violation of this chapter, any interested 15 municipality, public authority, utility, electric cooperative corporation, or person, may file a 16 complaint with the commission. The commission thereuponacting on the complaint, or upon its 17 own motion without complaint, with or without notice, may make its order requiring the public 18 utility complained of to cease and desist from such the construction or operation or other 19 prohibited activity until the further order of the commission. Upon hearing had after due notice 20 given, the commission shall make suchan order with respect to such the public utility or electric. 21 transmission provider and prescribe such terms and conditions as are just and reasonable. 22 **SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.