

Sixty-third
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1147

Introduced by

Representatives Keiser, Porter

Senator Lyson

1 A BILL for an Act to create and enact ~~a new subsection to section 49-22-03 and a~~ new section
2 to chapter 49-22 of the North Dakota Century Code, relating to ~~definitions and~~ route
3 ~~variances~~ adjustments for gas and liquid transmission lines; to amend and reenact
4 subsections 4 and 10 of section 49-22-03 ~~and sections 49-22-07.1 and 49-22-13~~ of the North
5 Dakota Century Code, relating to definitions ~~and the procedure~~ for siting a gas or liquid
6 transmission line; to repeal section 49-22-07.1 of the North Dakota Century Code, relating to
7 a letter of intent; and to declare an emergency.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1. AMENDMENT.** Subsections 4 and 10 of section 49-22-03 of the North Dakota
10 Century Code are amended and reenacted as follows:

11 4. "Corridor" means the general location of strip area of land ~~proposed and surveyed, as~~
12 ~~applicable, by an applicant~~ in which a designated route may be established for a
13 transmission facility.

14 10. "Route" means the specific location of a transmission facility within a designated
15 corridor.

16 ~~SECTION 2. A new subsection to section 49-22-03 of the North Dakota Century Code is~~
17 ~~created and enacted as follows:~~

18 ~~"Intervenor" means a person, other than the applicant to a pending proceeding, who~~
19 ~~becomes a party under rules adopted by the commission. The commission's act of~~
20 ~~permitting a party to join a pending proceeding as an intervenor shall not be construed~~
21 ~~as an acknowledgment or finding by the commission that the intervenor has, is, or may~~
22 ~~suffer damages by the issuance of any order in the proceeding.~~

23 ~~SECTION 3. AMENDMENT. Section 49-22-07.1 of the North Dakota Century Code is~~
24 ~~amended and reenacted as follows:~~

~~49-22-07.1. Letter of intent prior to construction.~~

~~Every utility which plans to construct any energy conversion or transmission facility within this state shall submit a letter of intent to the commission in the form and manner prescribed by the commission. A utility seeking to construct an energy conversion or transmission facility must submit its letter of intent thirty days before filing an application for a certificate of corridor compatibility or a route permit.~~

~~SECTION 4. AMENDMENT.~~ Section 49-22-13 of the North Dakota Century Code is amended and reenacted as follows:

~~49-22-13. Public hearings -- Notice.~~

~~1. The commission shall hold a public hearing in each county in which any portion of a site, corridor, or route is proposed to be located in an application for a certificate or a permit. At the public hearing, any person may present testimony or evidence oral or written comments relating to the information provided in the application, the criteria developed pursuant to under section 49-22-05.1, and the factors to be considered pursuant to under section 49-22-09. The applicant or an intervenor may present testimony or evidence, or both, and only this evidence is part of the official record used by the commission to make a decision. WhenIf more than one county is involved, the commission may hold a consolidated hearing in one or more of the affected counties. A hearing for any county shallmay not be consolidated if five or more affected landowners in sucha county file a petition with the commission within ten days of the publication of the notice of hearing.~~

~~2. The commission shallmay not be required to hold a public hearing on an application for the transfer of a certificate or a permit, or an application for a waiver of procedures and time schedules, but shall publish a notice of opportunity for a public hearing in the official newspaper of each county in which any portion of the facility or the proposed site, corridor, or route is located. If requested by any interested personan intervenor and good cause has been shown thereforfor a hearing, the commission shall hold a public hearing. WhereIf more than one county is involved, the commission may hold a consolidated hearing in one or more of the affected counties.~~

~~3. OneThe commission shall hold one or more public hearings shall be held at a location or locations determined by the commission concerning the following matters:~~

- ~~a. A substantial or material change in the criteria established pursuant to under section 49-22-05.1.~~
- ~~b. A substantial or material change in the rules adopted pursuant to under section 49-22-18.~~
- ~~c. The revocation or suspension of a certificate or permit.~~
- ~~d. In this subsection, a "substantial or material change" means any alteration of a project which has a significant impact on any finding of fact, conclusion of law, or term or condition of the project's permit and which affects one or more of the criteria used by the commission to guide and govern the preparation of the inventory of exclusion and avoidance areas or the corridor and route suitability evaluation process.~~
- ~~4. NoticeThe commission shall give notice of a public hearing shall be given by the commission by service on such persons and agenciesa person or agency that the commission may deem appropriate and. The commission shall give notice twice by publication, once at least twenty days prior to suchbefore a hearing and a second time within twenty days prior to suchbefore a hearing. NoticeThe applicant shall pay for the cost of notice of a public hearing and notice of opportunity for a public hearing on an application for a certificate, a permit, a transfer, or a waiver shall be given at the expense of the applicant. In an emergency the commission, in its discretion, may notice a hearing upon less than twenty days.~~
- ~~5. To be an intervenor at a hearing for a gas or liquid transmission line, a person shall file a petition to intervene in compliance with rules adopted by the commission. The petition for intervenor status shall affirm that the petitioner:~~
 - ~~a. Has a vested interest in real property within the proposed corridor;~~
 - ~~b. Received notice by service from the commission;~~
 - ~~c. Is a governmental entity with jurisdiction over property within the proposed corridor; or~~
 - ~~d. Any other individual or governmental entity that files notice with the commission and receives permission from the commission to provide certain testimony or evidence as to a particular factor under section 49-22-09 or a criteria developed~~

~~under section 49-22-05.1 because of a particular and substantial interest of that individual or governmental entity.~~

SECTION 2. A new section to chapter 49-22 of the North Dakota Century Code is created and enacted as follows:

~~**Route variance for gas or liquid transmission line.**~~

~~1. Without any action by the commission, a utility may adjust the location of a gas or liquid transmission line within the approved corridor width, as specified in a route permit and a certificate of corridor compatibility if:~~

~~a. The activities will not affect a known exclusion or avoidance area;~~

~~b. Directly affected landowners do not oppose the variance;~~

~~c. The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the transmission facility; and~~

~~d. Upon completion of the project, the utility reports any route changes authorized under this subsection in its final "as built" drawings of the transmission line.~~

~~2. For a good and just cause, a utility may apply for a route variance to relocate its gas or transmission line outside the permitted corridor width specified in the route permit and certificate of corridor compatibility. If the applicant has filed an application for route variance and certifies in writing the information enumerated in this subsection, the secretary of the commission shall approve the variance within fifteen days of such filing. The applicant shall certify the following:~~

~~a. The activities will not affect a known exclusion or avoidance area unless the activities affect an avoidance area for which the utility has appropriate written approval to use and the written approval is filed with the application;~~

~~b. The route variance located is within the study area used to determine the approved corridor width and there are no known additional adverse factors under section 40-22-09 other than those considered by the commission for the initial designated route;~~

~~c. There is a special condition that demonstrates the existence of good cause;~~

~~d. Directly affected landowners do not oppose the variance;~~

- ~~e. All environmental clearances have been obtained and the clearances are filed with the application;~~
- ~~f. A map, showing the location of the gas or liquid transmission line within the approved and permitted corridor width and the proposed route adjustment, is filed with the application; and~~
- ~~g. The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the transmission facility.~~
- ~~3. If the secretary of the commission does not take action with respect to the applicant's application for route variance within fifteen days of the applicant's filing, the route variance is deemed approved by the secretary unless:~~
- ~~a. The applicant requests an extension of time to meet a condition in subsection 2; or~~
- ~~b. The secretary of the commission requests an extension of time to request additional information. The secretary shall grant additional time as deemed necessary for the applicant to provide the requested information or to meet one of the conditions as identified by the secretary.~~
- ~~4. If the applicant is unable to resolve any of the conditions raised by the secretary, then the secretary may schedule an informal hearing. The notice of an informal hearing shall be given by the commission by service on the applicant and other parties of record, and any other person that the commission deems appropriate. The informal hearing shall be scheduled twenty days after the notice is served, and shall be limited to the condition necessary for approval and to testimony and evidence from the applicant or an intervenor who has a substantial interest in the particular condition, or both.~~

Route adjustment before or during construction for gas or liquid transmission line.

- 1. Before or during construction, a utility, without any action by the commission, may adjust the route of a gas or liquid transmission line within the designated corridor if, before conducting any construction activities associated with the adjustment, the utility files with the commission certification and supporting documentation that:**
- a. The construction activities will be within the designated corridor;**

1 b. The construction activities will not affect any known exclusion or avoidance areas
2 within the designated corridor; and

3 c. The utility will comply with the commission's order, laws, and rules designating
4 the corridor and designating the route.

5 2. Before or during construction, a utility may adjust the route of a gas or liquid
6 transmission line within the designated corridor that may affect an avoidance area if,
7 before conducting any construction activities associated with the adjustment, the
8 utility:

9 a. Files with the commission certification and supporting documentation that:

10 (1) The construction activities are within the designated corridor;

11 (2) The construction activities will not affect any known exclusion areas within
12 the designated corridor;

13 (3) The construction activities are expected to impact an avoidance area with a
14 specific description of the avoidance area expected to be impacted;

15 (4) Each owner of real property on which the adjustment is to be located and
16 any applicable governmental entity with an interest in the same adjustment
17 area do not oppose the adjustment, unless the utility previously received
18 authorization from the commission for the impact to the avoidance area;

19 (5) For an impact for which the utility does not already have approval or has not
20 filed the approval in paragraph 4, the utility has good cause and a specific
21 reason to impact the avoidance area, and a reasonable alternative does not
22 exist; and

23 (6) The utility will comply with the commission's order, laws, and rules
24 designating the corridor and designating the route.

25 b. Receives the commission's written authorization that the utility may impact the
26 avoidance area. If the commission does not authorize the impact to the
27 avoidance area, the utility must obtain siting authority for the affected portion of
28 the route adjustment. If the commission fails to act within ten working days of
29 receipt of the utility's filing of the certification and supporting documentation under
30 subdivision a of subsection 2, the route adjustment is deemed approved.

1 3. Before or during construction, a utility, without any action by the commission, may
2 adjust the route of a gas or liquid transmission line outside the designated corridor if,
3 before conducting any construction activities associated with the adjustment, the
4 utility:

5 a. Files with the commission certification and supporting documentation that:

6 (1) The construction activities will not affect any known exclusion or avoidance
7 areas;

8 (2) The route outside the corridor is no longer than one and one-half mile [2.41
9 kilometers];

10 (3) The utility will comply with the commission's order, laws, and rules
11 designating the corridor and designating the route; and

12 (4) Each owner of real property on which the adjustment is to be located and
13 any applicable governmental entity with an interest in the same adjustment
14 area do not oppose the adjustment.

15 b. Files detailed field studies indicating exclusion and avoidance areas for an area
16 encompassing the route outside the designated corridor equal to the length of the
17 adjustment of the proposed corridor.

18 4. Before or during construction, a utility may adjust the route of a gas or liquid
19 transmission line outside the designated corridor that may affect an avoidance area if,
20 before conducting any construction activities associated with the adjustment, the
21 utility:

22 a. Files with the commission certification and supporting documentation that:

23 (1) The construction activities will not affect any known exclusion areas;

24 (2) The construction activities are expected to impact an avoidance area with a
25 specific description of the avoidance area expected to be impacted;

26 (3) The utility has good cause and a specific reason to impact the avoidance
27 area, and a reasonable alternative does not exist;

28 (4) The route outside the corridor is no longer than one and one-half mile [2.41
29 kilometers];

30 (5) The utility will comply with the commission's order, laws, and rules
31 designating the corridor and designating the route; and

1 (6) Each owner of real property on which the adjustment is to be located and
2 any applicable governmental entity with an interest in the same adjustment
3 area do not oppose the adjustment.

4 b. Files detailed field studies indicating exclusion and avoidance areas for an area
5 encompassing the route outside the designated corridor equal to the length of the
6 adjustment of the proposed corridor.

7 c. Receives the commission's written authorization that the utility may impact the
8 avoidance area. If the commission does not authorize the impact to the
9 avoidance area, the utility must obtain siting authority for the affected portion of
10 the route adjustment. If the commission fails to act within ten working days of
11 receipt of the utility's filing of the certification and supporting documentation under
12 subdivisions a and b of subsection 4, the route adjustment is deemed approved.

13 5. The commission may not be required to hold a public hearing or publish a notice of
14 opportunity for a public hearing for any route adjustment under this section.

15 **SECTION 3. REPEAL.** Section 49-22-07.1 of the North Dakota Century Code is repealed.

16 **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.