

SENATE BILL NO. 2389

Introduced by

Senators St. Aubyn, Fischer, B. Stenehjem

Representatives Hawken, Keiser, Timm

1 A BILL for an Act to create and enact a new section to chapter 49-03 of the North Dakota
2 Century Code, relating to the voluntary sale or trade of facilities and service areas; and to
3 amend and reenact sections 49-03-01.1, 49-03-01.3, 49-03-01.4, and 49-03-05 of the North
4 Dakota Century Code, relating to service by electric public utilities and rural electric
5 cooperatives.

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

7 **SECTION 1. AMENDMENT.** Section 49-03-01.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **49-03-01.1. Limitation on electric transmission and distribution lines, extensions
10 and service by electric public utilities.** ~~No~~ An electric public utility ~~henceforth shall~~ may not
11 begin ~~in~~ the construction or operation of a public utility plant or system or extension thereof
12 without first obtaining from the commission a certificate that public convenience and necessity
13 require or will require ~~such~~ the construction and operation, nor ~~shall such~~ may an electric public
14 utility ~~henceforth~~ extend its electric transmission or distribution lines beyond or outside of the
15 corporate limits of ~~any~~ a municipality, nor ~~shall~~ may it serve any customer where the place to
16 be served is not located within the corporate limits of a municipality, unless and until, after
17 application, ~~such~~ the electric public utility has obtained an order from the commission
18 authorizing ~~such~~ the extension and service and a certificate that public convenience and
19 necessity require that permission be given to extend ~~such~~ the lines and to serve ~~such~~ the
20 customer.

21 **SECTION 2. AMENDMENT.** Section 49-03-01.3 of the 1997 Supplement to the North
22 Dakota Century Code is amended and reenacted as follows:

23 **49-03-01.3. Exclusions from limitations on electric distribution lines, extension
24 and service and on issuance of certificates of public convenience and necessity.**

- 1 1. Sections 49-03-01 through 49-03-01.5 ~~shall~~ may not be construed to require ~~any~~
2 ~~such an~~ electric public utility to secure ~~such an~~ order or certificate for an extension
3 of its electric distribution lines within the corporate limits of ~~any a~~ a municipality within
4 which it has lawfully commenced operations; ~~provided, however, that such~~
5 ~~extension or extensions shall not interfere with existing services provided by a rural~~
6 ~~electric cooperative or another electric public utility within such municipality; and~~
7 ~~provided duplication of services is not deemed unreasonable by the commission.~~
8 After July 31, 1999, the following conditions apply to the provision of electric
9 service within a municipality:
- 10 a. An electric public utility, if authorized by franchise, shall provide electric
11 service to all customers within the corporate limits of a municipality, except
12 that a rural electric cooperative may continue to provide electric service to
13 existing customers it was serving within a municipality on July 31, 1999, if
14 allowed by the municipality pursuant to a limited franchise. However, a rural
15 electric cooperative is ineligible for a new or continued franchise that would
16 allow the rural electric cooperative to provide electric service to any new
17 customer within the corporate limits of the municipality after July 31, 1999.
- 18 b. If a municipality does not allow a rural electric cooperative to continue electric
19 service to existing customers within a municipality pursuant to limited
20 franchise, the rural electric cooperative may remove its lines, plant, or system
21 or sell its lines, plant, or system to the franchised electric public utility at an
22 agreed upon price.
- 23 2. Sections 49-03-01 through 49-03-01.5 ~~shall~~ may not be construed to require an
24 electric public utility to discontinue service to customers thereof whose places
25 receiving service are located outside the corporate limits of a municipality on
26 July 1, 1965; provided, however, that within ninety days after July 1, 1965, ~~any an~~
27 ~~an~~ electric public utility furnishing service to customers whose places receiving service
28 are located outside the corporate limits of a municipality shall file with the
29 commission a complete map or maps of its electric distribution system showing all
30 places in ~~North Dakota which~~ this state that are located outside the corporate limits
31 of a municipality and which are receiving its service as of July 1, 1965. After ninety

1 days from July 1, 1965, unless a customer whose place being served is located
2 outside the corporate limits of a municipality is shown on ~~said~~ the map or maps, it
3 ~~shall be~~ is conclusively presumed that ~~such~~ the customer was not being served on
4 July 1, 1965, and cannot be served until after compliance with ~~the provisions of~~
5 section 49-03-01.1.

6 **SECTION 3. AMENDMENT.** Section 49-03-01.4 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **49-03-01.4. Enforcement of act.** If ~~any~~ an electric public utility or rural electric
9 cooperative violates or threatens to violate ~~any of the provisions of sections 49-03-01 through~~
10 ~~49-03-01.5 or interferes with or threatens to interfere with the service or system of any other~~
11 ~~electric public utility or rural electric cooperative~~ this chapter, the commission, after complaint,
12 notice, and hearing as provided in chapter 28-32, shall make its order restraining and enjoining
13 ~~said the~~ the electric public utility or rural electric cooperative from ~~constructing or extending its~~
14 ~~interfering lines, plant or system~~ engaging in conduct in violation of this chapter. In addition to
15 the restraint imposed, the commission shall prescribe ~~such~~ the terms and conditions as it ~~shall~~
16 ~~deem~~ deems reasonable and proper.

17 Provided, further, that ~~nothing herein contained shall be construed to~~ this chapter does
18 not prohibit or limit any person, who has been injured in ~~his~~ that person's business or property
19 by reason of a violation of ~~sections 49-03-01 through 49-03-01.5~~ this chapter by ~~any~~ an electric
20 public utility or rural electric cooperative ~~corporation~~, from bringing an action for damages in
21 ~~any~~ a district court of this state to recover ~~such~~ damages.

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

24 **Voluntary sale or trade of facilities and service areas.** An electric public utility may
25 agree to voluntarily sell its lines, plant, and system outside the corporate limits of a municipality
26 to the rural electric cooperative serving the particular area. A rural electric cooperative may
27 agree to voluntarily sell its lines, plant, and system within the corporate limits of a municipality to
28 the electric public utility serving within the same municipality pursuant to franchise. A voluntary
29 sale may not require electric customer consent. An electric public utility and a rural electric
30 cooperative may voluntarily agree to trade service areas or individual customers. All sales or
31 trades pursuant to this section must be approved by the governing body of a city for sales or

1 trades within a municipality and by the commission for sales or trades outside the corporate
2 limits of a municipality. This chapter does not prevent the sale, merger, or other type of
3 corporate reorganization of a public utility and the transfer of the public utility's lines, plant, and
4 system to another entity as part of that transaction.

5 **SECTION 5. AMENDMENT.** Section 49-03-05 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **49-03-05. Complaint upon violation of chapter.** Whenever a an electric public utility
8 engages or is about to engage in construction or operation as described in this chapter without
9 having secured a certificate of public convenience and necessity as required by the provisions
10 of this chapter, or whenever a an electric public utility or rural electric cooperative constructs or
11 extends its line, plant, or system, or supplies, or offers to supply electric service in violation of
12 this chapter, ~~any~~ an interested municipality, public authority, electric public utility, rural electric
13 cooperative ~~corporation~~, or person, may file a complaint with the commission. The commission
14 thereupon, or upon its own motion without complaint, with or without notice, may make its order
15 requiring the electric public utility or rural electric cooperative complained of to cease and desist
16 from ~~such~~ the construction or operation or other prohibited activity until the further order of the
17 commission. Upon hearing had after due notice given, the commission shall make ~~such~~ the
18 order with respect to ~~such~~ the electric public utility or rural electric cooperative and prescribe
19 ~~such~~ terms and conditions as are just and reasonable.