

**HOUSE BILL NO. 1454**

Introduced by

Representatives Keiser, Brusegaard, Hawken, R. Kelsch

Senators Dever, Tollefson

1 A BILL for an Act to create and enact three new sections to chapter 49-03 of the North Dakota  
2 Century Code, relating to the establishment of electric service areas; and to amend and reenact  
3 sections 49-03-01, 49-03-01.1, 49-03-01.3, and 49-03-01.5 of the North Dakota Century Code,  
4 relating to certificates of public convenience and necessity to be secured by an electric public  
5 utility, limitation on electric transmission and distribution lines, extensions, and service by  
6 electric public utilities, exclusions from such limitations, and definitions.

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

8 **SECTION 1.** A new section to chapter 49-03 of the North Dakota Century Code is  
9 created and enacted as follows:

10 **Establishment of electric service areas outside metropolitan statistical area cities**  
11 **of ten thousand or greater population.**

12 1. The electric service providers serving within any portion of a city of ten thousand or  
13 greater population located within a metropolitan statistical area shall negotiate and  
14 file an electric service area agreement with the commission within forty-five days  
15 after the effective date of this Act, or within forty-five days of the date the city is  
16 included in a metropolitan statistical area, for the provision of electric service to  
17 areas outside the corporate limits of the city. The electric service area agreement  
18 must establish electric service areas for each electric service provider extending  
19 outward from the established corporate limits of the city to the outer boundaries of  
20 the city's extraterritorial zoning limits established by the city, and revised from time  
21 to time, pursuant to section 40-47-01.1, to provide each electric supplier a  
22 reasonably equal opportunity to grow as the city expands outward from its  
23 corporate limits. The electric service area agreement must provide that the  
24 agreement is subject to the continuing jurisdiction of the commission to settle all

1           disputes arising under the agreement. The filing must include maps and a written  
2           description of each electric service area using standard survey lines and legal  
3           descriptions. The commission shall review and approve the agreement within  
4           forty-five days after filing, based on the filing and supporting documents, upon  
5           finding that the agreement is in the public interest and complies with this  
6           subsection. Upon approval of the agreement, the commission shall issue its order  
7           and a certificate of public convenience and necessity to the public utility electric  
8           service provider authorizing it to provide electric service to electric service locations  
9           and to extend its plant and system within its approved electric service areas.

10          2. If the electric service providers are unable to negotiate an electric service area  
11          agreement, they shall notify the commission in writing and the commission shall  
12          designate electric service areas for each electric service provider within ninety  
13          days thereafter. The commission shall designate electric service areas extending  
14          outward from the established corporate limits of the city to the outer boundaries of  
15          the city's extraterritorial zoning limits established by the city, and revised from time  
16          to time, pursuant to section 40-47-01.1. Each electric service area, as nearly as  
17          reasonably practical for each electric service provider, must comprise territories  
18          with equal potential for electric service load growth. In designating electric service  
19          areas, the commission shall consider proposed electric service area maps  
20          submitted by each of the electric service providers. The commission shall hold a  
21          hearing on the proposed electric service areas, hear testimony from witnesses for  
22          the electric service providers and other interested persons, and issue an order  
23          designating electric service areas based upon the public interest and in  
24          accordance with this subsection. The commission shall issue the public utility  
25          electric service provider a certificate of public convenience and necessity  
26          authorizing it to provide electric service to electric service locations and to extend  
27          its plant and system within its designated electric service areas.

28          3. Commission costs incurred in reviewing and approving an electric service area  
29          agreement or in designating electric service areas under this section must be billed  
30          equally to each electric service provider involved in the commission proceeding in  
31          accordance with subsection 6 of section 49-02-02.

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

3           **Electric service areas to be exclusive - Existing electric service locations may**  
4 **continue to be served.**

- 5           1. Except as provided in subsection 2 and in section 3 of this Act, each electric  
6 service provider has the exclusive right to provide electric service to all electric  
7 service locations within each electric service area designated to it. Except as  
8 provided in subsection 2 and section 3 of this Act, an electric service provider may  
9 not offer electric service to or construct or extend electric facilities to serve electric  
10 service locations within an electric service area designated to another electric  
11 service provider even if a portion or all of the electric service area is incorporated  
12 into the corporate limits of a city.
- 13           2. An electric service provider may continue to provide electric service to an existing  
14 electric service location being served by it in any electric service area on the date  
15 the electric service area is approved or designated by the commission.
- 16           3. If a city's extraterritorial zoning limits are extended by the city after approval or  
17 designation of electric service areas, each electric service provider may extend its  
18 approved or designated electric service areas to coincide with the extension of the  
19 extraterritorial zoning limits. Upon submission to the commission by an electric  
20 service provider of a map showing an extension of the city's extraterritorial zoning  
21 limits, the commission shall issue an order and, in the case of a public utility  
22 electric service provider, a certificate of public convenience and necessity allowing  
23 the electric service provider to provide electric service to electric service locations  
24 and to extend its plant and system within the extended extraterritorial zoning area if  
25 the commission finds the filing is in accordance with this subsection.
- 26           4. The commission shall retain jurisdiction to settle any disputes involving the electric  
27 service providers within an approved or designated electric service area upon  
28 application of an electric service provider.

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

1           **Waiver, exchange, and assignment of electric service areas, existing electric**  
2 **service locations, and facilities.** Electric service providers providing electric service outside  
3 the corporate limits of a city of ten thousand or greater population located within a metropolitan  
4 statistical area may temporarily or permanently waive the right to serve an electric service  
5 location or may exchange or assign electric service locations, and all or portions of their  
6 approved or designated electric service areas to each other upon written agreement.  
7 Agreements to exchange or assign all or portions of an electric service area exceeding ten  
8 acres must be filed and approved by the commission upon a finding that the exchange or  
9 assignment is in the public interest. The commission shall issue its order and a new or  
10 amended certificate of public convenience and necessity to an electric public utility recognizing  
11 the effect of the approved exchange or assignment.

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

14           **49-03-01. Certificate of public convenience and necessity - Secured by electric**  
15 **public utility.** ~~No~~ Except for construction, extensions, and operations provided for in section 1  
16 through 3 of this Act, no electric public utility henceforth shall begin construction or operation of  
17 a public utility plant or system, or of an extension of a plant or system, except as provided  
18 below, without first obtaining from the commission a certificate that public convenience and  
19 necessity require or will require such construction and operation. This section does not require  
20 an electric public 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 constructing or  
22 extending its line, plant, or system, unreasonably interferes with or is about to interfere  
23 unreasonably with the service or system of any other electric public utility, or any electric  
24 cooperative corporation, the commission, on complaint of the electric public utility or the electric  
25 cooperative corporation claiming to be injuriously affected, after notice and hearing as provided  
26 in this title, may order enforcement of this section with respect to the offending electric public  
27 utility and prescribe just and reasonable terms and conditions.

28           **SECTION 5. AMENDMENT.** Section 49-03-01.1 of the North Dakota Century Code is  
29 amended and reenacted as follows:

30           **49-03-01.1. Limitation on electric transmission and distribution lines, extensions,**  
31 **and service by electric public utilities.** ~~No~~ Except for construction, extensions, and

1 operations provided for in sections 1 through 3 of this Act, no electric public utility henceforth  
2 shall begin in the construction or operation of a public utility plant or system or extension thereof  
3 without first obtaining from the commission a certificate that public convenience and necessity  
4 require or will require such construction and operation, nor shall such public utility henceforth  
5 extend its electric transmission or distribution lines beyond or outside of the corporate limits of  
6 any municipality, nor shall it serve any customer where the place to be served is not located  
7 within the corporate limits of a municipality, unless and until, after application, such electric  
8 public utility has obtained an order from the commission authorizing such extension and service  
9 and a certificate that public convenience and necessity require that permission be given to  
10 extend such lines and to serve such customer.

11 **SECTION 6. AMENDMENT.** Section 49-03-01.3 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **49-03-01.3. Exclusions from limitations on electric distribution lines, extension,**  
14 **and service and on issuance of certificates of public convenience and necessity.**

15 ~~Sections 49-03-01 through 49-03-01.5~~ This chapter shall not be construed to require any such  
16 electric public utility to secure such order or certificate for an extension of its electric distribution  
17 lines within the corporate limits of any municipality within which it has lawfully commenced  
18 operations; provided, however, that, and except for extensions provided for in sections 1  
19 through 3 of this Act, such extension or extensions shall not interfere with existing services  
20 provided by a rural electric cooperative or another electric public utility within such municipality;  
21 and provided duplication of services is not deemed unreasonable by the commission.

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

1 such customer was not being served on July 1, 1965, and cannot be served until after  
2 compliance with the provisions of section 49-03-01.1.

3 **SECTION 7. AMENDMENT.** Section 49-03-01.5 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **49-03-01.5. Definitions.** As used in ~~sections 49-03-01 through 49-03-01.5~~ this  
6 chapter:

- 7 1. "Electric public utility" means a privately owned supplier of electricity offering to  
8 supply or supplying electricity to the general public.
- 9 2. "Electric service location" means the structures, facilities, or improvements on a  
10 parcel of real property to which electric service is requested or provided.
- 11 3. "Electric service provider" means either an electric public utility or a rural electric  
12 cooperative.
- 13 4. "Existing electric service location" means an electric service location served by an  
14 electric service provider within an electric service area on the date the electric  
15 service area is approved or designated under sections 1 through 3 of this Act.  
16 Existing electric service location includes expansions, improvements, or additions  
17 to the structures, facilities, and other improvements on the property made after the  
18 area is approved or designated to an electric service provider. An existing electric  
19 service location does not include: a material change of use or replacement of the  
20 structures, facilities, or other improvements on the property that necessitates a  
21 replacement or substantial modification of the electric service facilities serving the  
22 electric service location after the area is approved or designated to an electric  
23 service provider, or new structures, facilities, or other improvements on a parcel of  
24 property that is subdivided after an area is approved or designated to an electric  
25 service provider.
- 26 5. "Metropolitan statistical area" means a geographical area as defined and  
27 established by the federal office of management and budget based on the concept  
28 of a core area with a large population nucleus plus adjacent communities having a  
29 high degree of economic and social integration with that core area.
- 30 ~~2.~~ 6. "Person" includes an individual, an electric public utility, a corporation, a limited  
31 liability company, an association, or a rural electric cooperative.

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- 1       ~~3~~. 7. "Rural electric cooperative" includes any electric cooperative organized under  
2                                   chapter 10-13. An electric cooperative, composed of members as prescribed by  
3                                   law, shall not be deemed to be an electric public utility.