

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED 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
9 locations and to extend its plant and system within its approved electric service
10 areas.

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

29 3. Commission costs incurred in reviewing and approving an electric service area
30 agreement or in designating electric service areas under this section must be

1 directly paid equally by each electric service provider involved in the commission
2 proceeding after approval by the commission.

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

5 **Electric service areas to be exclusive - Existing electric service locations may**
6 **continue to be served.**

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

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

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

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

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

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

1 **49-03-01.1. Limitation on electric transmission and distribution lines, extensions,**
2 **and service by electric public utilities.** ~~No~~ Except for construction, extensions, and
3 operations provided for in sections 1 through 3 of this Act, no electric public utility henceforth
4 shall begin in the construction or operation of a public utility plant or system or extension
5 thereof without first obtaining from the commission a certificate that public convenience and
6 necessity require or will require such construction and operation, nor shall such public utility
7 henceforth extend its electric transmission or distribution lines beyond or outside of the
8 corporate limits of any municipality, nor shall it serve any customer where the place to be
9 served is not located within the corporate limits of a municipality, unless and until, after
10 application, such electric public utility has obtained an order from the commission authorizing
11 such extension and service and a certificate that public convenience and necessity require that
12 permission be given to extend such lines and to serve such customer.

13 **SECTION 6. 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~~ This chapter shall not be construed to require any such
18 electric public utility to secure such order or certificate for an extension of its electric distribution
19 lines within the corporate limits of any municipality within which it has lawfully commenced
20 operations; provided, however, that, and except for extensions provided for in sections 1
21 through 3 of this Act, such extension or extensions shall not interfere with existing services
22 provided by a rural electric cooperative or another electric public utility within such municipality;
23 and provided duplication of services is not deemed unreasonable by the commission.

24 ~~Sections 49-03-01 through 49-03-01.5~~ This chapter shall not be construed to require an
25 electric public utility to discontinue service to customers thereof whose places receiving service
26 are located outside the corporate limits of a municipality on July 1, 1965; provided, however,
27 that within ninety days after July 1, 1965, any 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

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

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

7 **49-03-01.5. Definitions.** As used in ~~sections 49-03-01 through 49-03-01.5~~ this
8 chapter:

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

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- 1 ~~2.~~ 6. "Person" includes an individual, an electric public utility, a corporation, a limited
2 liability company, an association, or a rural electric cooperative.
- 3 ~~3.~~ 7. "Rural electric cooperative" includes any electric cooperative organized under
4 chapter 10-13. An electric cooperative, composed of members as prescribed by
5 law, shall not be deemed to be an electric public utility.