

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1144

Introduced by

Representatives Keiser, Mock, Seibel

Senators Armstrong, Kreun, Oban

1 A BILL for an Act to create and enact section 49-22-08.2 and chapter 49-22.1 of the North
2 Dakota Century Code, relating to gas and liquid energy conversion, gas and liquid transmission
3 facility siting, and combining application; to amend and reenact sections 11-09.1-04, 17-05-09,
4 and 32-15-21, subsection 18 of section 38-08-02, sections 49-07-01.1, 49-21.1-01.1, 49-22-03,
5 49-22-04, 49-22-05.1, 49-22-07, and 49-22-07.2, subsection 1 of section 49-22-08, sections
6 49-22-08.1, 49-22-09, 49-22-09.1, 49-22-14, 49-22-16, 49-22-17, 49-22-19, 49-22-20, and
7 49-22-21, subdivision e of subsection 1 of section 49-22-22, subsection 2 of section 49-22-22,
8 subsection 1 of section 54-17.7-08, and section 61-24.3-03 of the North Dakota Century Code,
9 relating to energy conversion and transmission facility siting; to repeal sections 49-22-01 and
10 49-22-16.3 of the North Dakota Century Code, relating to energy conversion short title and
11 route adjustment before or during construction for gas or liquid transmission line; to provide a
12 continuing appropriation; and to provide a penalty.

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

14 **SECTION 1. AMENDMENT.** Section 11-09.1-04 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **11-09.1-04. Ratification by majority vote - Supersession of existing charter and**
17 **conflicting state laws - Filing of copies of new charter.**

18 If a majority of the qualified electors voting on the charter at the election vote in favor of the
19 home rule charter, it is ratified and becomes the organic law of the county on the first day of
20 January or July next following the election, and extends to all its county matters. The charter
21 and the ordinances made pursuant to the charter in county matters must be liberally construed
22 to supersede within the territorial limits and jurisdiction of the county any conflicting state law
23 except for any state law as it applies to cities or any power of a city to govern its own affairs,
24 without the consent of the governing body of the city. The charter may not authorize the

1 enactment of ordinances to diminish the authority of a board of supervisors of a township or to
2 change the structure of township government in any organized civil township, without the
3 consent of the board of supervisors of the township. No ordinance of a home rule county shall
4 supersede ~~section~~sections 49-22-16 and 49-22.1-12. One copy of the charter as ratified and
5 approved must be filed with the secretary of state; one with the recorder for the county, unless
6 the board of county commissioners designates a different official; and one with the auditor of the
7 county to remain as a part of its permanent records. Courts shall take judicial notice of the
8 charter.

9 **SECTION 2. AMENDMENT.** Section 17-05-09 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **17-05-09. Public service commission jurisdiction and consultation.**

- 12 1. The authority and the transmission facilities built under this chapter, until sold or
13 disposed of by the authority, are exempt from the provisions of title 49 except for
14 ~~chapter~~chapters 49-22 and 49-22.1. Upon sale or disposal by the authority,
15 transmission facilities built under this chapter are subject to the provisions of title 49.
16 2. The authority shall consult with the public service commission with respect to the rates
17 charged by the authority for use of its transmission facilities and such rates must
18 thereafter be considered just and reasonable in proceedings before the public service
19 commission pursuant to section 49-05-06.
20 3. The authority shall conduct its activities in consultation with transmission providers,
21 wind interests, the lignite research council, and other persons having relevant
22 expertise.

23 **SECTION 3. AMENDMENT.** Section 32-15-21 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **32-15-21. Power of court.**

- 26 1. The court shall have power:
27 a. To regulate and determine the place and manner of making connections and
28 crossings, or of enjoying the common use mentioned in subsection 6 of section
29 32-15-04.
30 b. To hear and determine all adverse or conflicting claims to the property sought to
31 be condemned and to the damages for the property.

1 c. To determine the respective rights of different parties seeking condemnation of
2 the same property.

3 2. Notwithstanding any other provision of law, if a route permit is required under
4 ~~chapter~~chapters 49-22 or 49-22.1, the court may order the taking by eminent domain
5 conditioned on the receipt of the route permit.

6 **SECTION 4. AMENDMENT.** Subsection 18 of section 38-08-02 of the North Dakota
7 Century Code is amended and reenacted as follows:

8 18. "Underground gathering pipeline" means an underground gas or liquid pipeline with
9 associated above ground equipment which is designed for or capable of transporting
10 crude oil, natural gas, carbon dioxide, or water produced in association with oil and
11 gas which is not subject to chapter ~~49-22~~49-22.1. As used in this subsection,
12 "associated above ground equipment" means equipment and property located above
13 ground level, which is incidental to and necessary for or useful for transporting crude
14 oil, natural gas, carbon dioxide, or water produced in association with oil and gas from
15 a production facility. As used in this subsection, "equipment and property" includes a
16 pump, a compressor, storage, leak detection or monitoring equipment, and any other
17 facility or structure.

18 **SECTION 5. AMENDMENT.** Section 49-07-01.1 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **49-07-01.1. Violation of statute, commission order, or commission rule - Assessment**
21 **of civil penalty.**

22 Any person who violates any statute, commission order, or commission rule which applies
23 to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, 24-09, 32-25,
24 and 51-05.1, titles 60 and 64, and title 49 except for chapters 49-22, 49-22.1, and 49-23, ~~shall,~~
25 in addition to any other penalty provided, ~~be~~is subject to a civil penalty of not to exceed five
26 thousand dollars. A violation occurring under chapter 49-23, in addition to any other penalty, is
27 subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall
28 develop policies for the assessment of penalties under chapter 49-23 which will take into
29 consideration the severity of damages and the conduct of the offender. The civil penalty may be
30 compromised by the commission. The amount of the penalty when finally determined or agreed
31 upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

1 **SECTION 6. AMENDMENT.** Section 49-21.1-01.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **49-21.1-01.1. Electricity transmission and distribution lines - Differentiation.**

4 Except for purposes of transmission facility siting under ~~chapter~~ chapters 49-22 and 49-22.1,
5 and regulatory accounting including the determination of the demarcation between federal and
6 state jurisdiction over transmission in interstate commerce and local distribution, for purposes of
7 this title and chapter 57-33.2, lines designed to operate at a voltage of 41.6 kilovolts or more are
8 transmission lines, and lines designed to operate at a voltage less than 41.6 kilovolts are
9 distribution lines.

10 **SECTION 7. AMENDMENT.** Section 49-22-03 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **49-22-03. Definitions.**

13 In this chapter, unless the context or subject matter otherwise requires:

- 14 1. "Certificate" means the certificate of site compatibility or the certificate of corridor
15 compatibility issued under this chapter.
- 16 2. "Commission" means the North Dakota public service commission.
- 17 3. "Construction" includes any clearing of land, excavation, or other action that would
18 affect the environment of the site after April 9, 1975, but does not include activities:
- 19 a. Conducted wholly within the geographic location for which a utility has previously
20 obtained a certificate or permit under this chapter, or on which a facility was
21 constructed before April 9, 1975, if:
- 22 (1) The activities are for the construction of the same type of facility as the
23 existing type of facility as identified in a subdivision of subsections 5 or 12 of
24 this section and the activities are:
- 25 (a) Within the geographic boundaries of a previously issued certificate or
26 permit;
- 27 (b) For an electric energy conversion facility constructed before April 9,
28 1975, within the geographic location on which the facility was built; or
- 29 (c) For an electric transmission facility constructed before April 9, 1975,
30 within a width of three hundred fifty feet [106.68 meters] on either side
31 of the centerline;

- 1 (2) Except as provided in subdivision b, the activities do not affect any known
2 exclusion or avoidance area;
- 3 (3) The activities are for the construction:
- 4 (a) Of a new electric energy conversion facility;
- 5 (b) Of a new ~~gas, liquid, or~~ electric transmission facility;
- 6 (c) To improve the existing electric energy conversion facility or ~~gas,~~
7 ~~liquid, or~~ electric transmission facility; or
- 8 (d) To increase or decrease the capacity of the existing electric energy
9 conversion facility or ~~gas, liquid, or~~ electric transmission facility; and
- 10 (4) Before conducting any activities, the utility certifies in writing to the
11 commission that:
- 12 (a) The activities will not affect any known exclusion or avoidance area;
- 13 (b) The activities are for the construction:
- 14 [1] Of a new electric energy conversion facility;
- 15 [2] Of a new ~~gas, liquid, or~~ electric transmission facility;
- 16 [3] To improve the existing electric energy conversion or ~~gas, liquid,~~
17 ~~or~~ electric transmission facility; or
- 18 [4] To increase or decrease the capacity of the existing electric
19 energy conversion facility or ~~gas, liquid, or~~ electric transmission
20 facility; and
- 21 (c) The utility will comply with all applicable conditions and protections in
22 siting laws and rules and commission orders previously issued for any
23 part of the facility.
- 24 b. Otherwise qualifying for exclusion under subdivision a, except that the activities
25 are expected to affect a known avoidance area and the utility before conducting
26 any activities:
- 27 (1) Certifies in writing to the commission that:
- 28 (a) The activities will not affect any known exclusion area;
- 29 (b) The activities are for the construction:
- 30 [1] Of a new electric energy conversion facility;
- 31 [2] Of a new ~~gas, liquid, or~~ electric transmission facility;

1 [3] To improve the existing electric energy conversion facility or gas,
2 liquid, or electric transmission facility; or

3 [4] To increase or decrease the capacity of the existing electric
4 energy conversion facility or gas, liquid, or electric transmission
5 facility; and

6 (c) The utility will comply with all applicable conditions and protections in
7 siting laws and rules and commission orders previously issued for any
8 part of the facility;

9 (2) Notifies the commission in writing that the activities are expected to impact
10 an avoidance area and provides information on the specific avoidance area
11 expected to be impacted and the reasons why impact cannot be avoided;
12 and

13 (3) Receives the commission's written approval for the impact to the avoidance
14 area, based on a determination that there is no reasonable alternative to the
15 expected impact. If the commission does not approve impacting the
16 avoidance area, the utility must obtain siting authority under this chapter for
17 the affected portion of the site or route. If the commission fails to act on the
18 notification required by this subdivision within thirty days of the utility's filing
19 the notification, the impact to the avoidance area is deemed approved.

20 c. Incident to preliminary engineering or environmental studies.

21 4. "Corridor" means the area of land in which a designated route may be established for
22 aan electric transmission facility.

23 5. "EnergyElectric energy conversion facility" means any plant, addition, or combination
24 of plant and addition, designed for or capable of:

25 a. Generation by wind energy conversion exceeding one-half megawatt of
26 electricity; or

27 b. Generation by any means other than wind energy conversion exceeding fifty
28 megawatts of electricity;

29 e. ~~Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic~~
30 ~~meters] or more of gas per day, regardless of the end use of the gas;~~

- 1 d. ~~Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or~~
2 ~~more of liquid hydrocarbon products per day; or~~
- 3 e. ~~Enrichment of uranium minerals.~~
- 4 6. "Electric transmission facility" means an electric transmission line and associated
5 facilities with a design in excess of one hundred fifteen kilovolts. "Electric transmission
6 facility" does not include:
- 7 a. A temporary electric transmission line loop that is:
- 8 (1) Connected and adjacent to an existing electric transmission facility that was
9 sited under this chapter;
- 10 (2) Within the corridor of the sited facility and does not cross known exclusion
11 or avoidance areas; and
- 12 (3) In place for less than one year; or
- 13 b. An electric transmission line that is less than one mile [1.61 kilometers] long.
- 14 7. "Facility" means an electric energy conversion facility, electric transmission facility, or
15 both.
- 16 ~~7-8.~~ "Permit" means the permit for the construction of an electric transmission facility
17 within a designated corridor issued under this chapter.
- 18 ~~8-9.~~ "Person" includes any individual, firm, association, partnership, cooperative,
19 corporation, limited liability company, or any department, agency, or instrumentality of
20 a state or of the federal government, or any subdivision thereof.
- 21 ~~9-10.~~ "Power emergency" means an electric transmission line and associated facilities that
22 have been damaged or destroyed by natural or manmade causes resulting in a loss of
23 power supply to consumers of the power.
- 24 ~~10-11.~~ "Route" means the location of an electric transmission facility within a designated
25 corridor.
- 26 ~~11-12.~~ "Site" means the location of an electric energy conversion facility.
- 27 ~~12.~~ "Transmission facility" means any of the following:
- 28 a. ~~An electric transmission line and associated facilities with a design in excess of~~
29 ~~one hundred fifteen kilovolts. "Transmission facility" does not include:~~
- 30 (1) ~~A temporary transmission line loop that is:~~

- 1 (a) ~~Connected and adjacent to an existing transmission facility that was~~
2 ~~sited under this chapter;~~
3 (b) ~~Within the corridor of the sited facility and does not cross known~~
4 ~~exclusion or avoidance areas; and~~
5 (c) ~~In place for less than one year; or~~
6 (2) ~~A transmission line that is less than one mile [1.61 kilometers] long.~~
7 b. ~~A gas or liquid transmission line and associated facilities designed for or capable~~
8 ~~of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or~~
9 ~~carbon dioxide. This subdivision does not apply to:~~
10 (1) ~~An oil or gas pipeline gathering system;~~
11 (2) ~~A pipeline with an outside diameter of four and one-half inches [11.43~~
12 ~~centimeters] or less that will not be trenched and will be plowed in with a~~
13 ~~power mechanism having a vertical knife or horizontally directionally drilled,~~
14 ~~and its associated facilities; or~~
15 (3) ~~A pipeline that is less than one mile [1.61 kilometers] long.~~
16 ~~For purposes of this chapter, a gathering system includes the pipelines and~~
17 ~~associated facilities used to collect oil from the lease site to the first pipeline~~
18 ~~storage site where pressure is increased for further transport, or pipelines and~~
19 ~~associated facilities used to collect gas from the well to the gas processing facility~~
20 ~~at which end-use consumer-quality gas is produced, with or without the addition~~
21 ~~of odorant.~~
22 c. ~~A liquid transmission line and associated facilities designed for or capable of~~
23 ~~transporting water from or to an energy conversion facility.~~
24 13. "Utility" means any person engaged in and controlling the generation, ~~manufacture,~~
25 ~~refinement, or transmission of electric energy, gas, liquid hydrocarbons, or liquid~~
26 ~~hydrocarbon products, including electric power generation or transmission, coal~~
27 ~~gasification, coal liquefaction, petroleum refinement, uranium enrichment, and the~~
28 ~~transmission of coal, gas, liquid hydrocarbons, or liquid hydrocarbon products,~~
29 ~~electric~~
30 ~~generation, the transmission of electric energy, or the transmission of water from or to~~
 any electric energy conversion facility.

1 **SECTION 8. AMENDMENT.** Section 49-22-04 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **49-22-04. Ten-year plans - Contents.**

4 Each utility that owns or operates, or plans within the next ten years to own, operate, or
5 start construction on any facility shall develop a ten-year plan as specified in this section and
6 submit the plan to the commission. Each utility shall file an updated plan on or before July first
7 of each even-numbered year after the year of its initial submission. The ten-year plan may be
8 appropriate portions of a single regional plan or may be jointly prepared and submitted by two
9 or more utilities and must contain the following information:

- 10 1. A description of the general location, size, and type of all facilities to be owned or
11 operated by the utility during the ensuing ten years, as well as those facilities to be
12 removed from service during the ten-year period.
- 13 2. An identification of the location of the tentative preferred site for all electric energy
14 conversion facilities and the tentative location of all electric transmission facilities on
15 which construction is intended to be commenced within the ensuing five years and
16 such other information as may be required by the commission. The site and corridor
17 identification shall be made in compliance with the criteria published by the
18 commission pursuant to section 49-22-05.1.
- 19 3. A description of the efforts by the utility to coordinate the plan with other utilities so as
20 to provide a coordinated regional plan for meeting the utility needs of the region.
- 21 4. A description of the efforts to involve environmental protection and land-use planning
22 agencies in the planning process, as well as other efforts to identify and minimize
23 environmental problems at the earliest possible stage in the planning process.
- 24 5. A statement of the projected demand for the service rendered by the utility for the
25 ensuing ten years and the underlying assumptions for the projection, with that
26 information being as geographically specific as possible, and a description of the
27 manner and extent to which the utility will meet the projected demands.
- 28 6. Any other relevant information as may be requested by the commission. Upon receipt
29 of the ten-year plans the commission shall proceed to assess the impact of the
30 development proposed within the state to ensure that energy conversion facilities and

1 transmission facilities will be sited in an orderly manner compatible with environmental
2 preservation and efficient use of resources.

3 **SECTION 9. AMENDMENT.** Section 49-22-05.1 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **49-22-05.1. Exclusion and avoidance areas - Criteria.**

6 The commission shall develop criteria to be used in identifying exclusion and avoidance
7 areas and to guide the site, corridor, and route suitability evaluation and designation process.
8 Except for electric transmission lines in existence before July 1, 1983, areas within five hundred
9 feet [152.4 meters] of an inhabited rural residence must be designated avoidance areas. This
10 criterion does not apply to a water pipeline. The five hundred foot [152.4 meter] avoidance area
11 criteria for an inhabited rural residence may be waived by the owner of the inhabited rural
12 residence in writing. The criteria may also include an identification of impacts and policies or
13 practices which may be considered in the evaluation and designation process.

14 **SECTION 10. AMENDMENT.** Section 49-22-07 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **49-22-07. Certificate of site compatibility or route permit required.**

- 17 1. A utility may not begin construction of an electric energy conversion facility or an
18 electric transmission facility in the state without first having obtained a certificate of site
19 compatibility or a route permit from the commission pursuant to this chapter. The
20 facility must be constructed, operated, and maintained in conformity with the certificate
21 or permit and any terms, conditions, or modifications of the certificate or permit. A
22 certificate or permit may be transferred, subject to the approval of the commission, to
23 any person who agrees to comply with its terms, conditions, and modifications.
- 24 2. If a power emergency exists which necessitates the relocation of a portion of an
25 electric transmission line and associated facilities from the designated route, the
26 owner of the line shall give telephonic notice to the commission in advance of the
27 relocation. The line may then be relocated to restore power as soon as practicable.
28 After the line has been relocated, the owner shall file with the commission a request to
29 approve the relocated route.

30 **SECTION 11. AMENDMENT.** Section 49-22-07.2 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **49-22-07.2. Waiver of procedures and time schedules.**

2 Any utility which proposes to construct an electric energy conversion facility or an electric
3 transmission facility within the state may make an application to the commission for a waiver of
4 any of the procedures or time schedules set forth in this chapter or in the rules adopted
5 pursuant to this chapter. The commission, after hearing and upon a finding that the proposed
6 facility is of such length, design, location, or purpose that it will produce minimal adverse effects,
7 or, after hearing and upon a finding that a demonstrable emergency exists which requires
8 immediate construction and that adherence to the procedures and time schedules would
9 jeopardize the utility's system, may issue an order waiving specified procedures and time
10 schedules required by this chapter or by the rules adopted pursuant to this chapter, including,
11 but not limited to, applications, notices, and hearings, and may forthwith issue a certificate of
12 site compatibility, a certificate of corridor compatibility, or a route permit, with such conditions as
13 the commission may require.

14 **SECTION 12. AMENDMENT.** Subsection 1 of section 49-22-08 of the North Dakota
15 Century Code is amended and reenacted as follows:

- 16 1. An application for a certificate ~~shall~~must be in such form as the commission may
17 prescribe, containing the following information:
- 18 a. A description of the size and type of facility.
 - 19 b. A summary of any studies which have been made of the environmental impact of
20 the facility.
 - 21 c. A statement explaining the need for the facility.
 - 22 d. An identification of the location of the preferred site for any electric energy
23 conversion facility.
 - 24 e. An identification of the location of the preferred corridor for any electric
25 transmission facility.
 - 26 f. A description of the merits and detriments of any location identified and a
27 comprehensive analysis with supporting data showing the reasons why the
28 preferred location is best suited for the facility.
 - 29 g. A description of mitigative measures that will be taken to minimize all foreseen
30 adverse impacts resulting from the location, construction, and operation of the
31 proposed facility.

- 1 h. An evaluation of the proposed site or corridor with regard to the applicable
2 considerations set out in section 49-22-09 and the criteria established pursuant to
3 section 49-22-05.1.
- 4 i. Such other information as the applicant may consider relevant or the commission
5 may require.

6 **SECTION 13. AMENDMENT.** Section 49-22-08.1 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **49-22-08.1. Application for a permit - Notice of filing - Amendment - Designation of a**
9 **route.**

- 10 1. An application for a route permit for ~~aan electric~~ transmission facility within a
11 designated corridor ~~shall~~must be filed no later than two years after the issuance of the
12 certificate and ~~shall~~must be in such form as the commission may prescribe, containing
13 the following information:
- 14 a. A description of the type, size, and design of the proposed facility.
- 15 b. A description of the location of the proposed facility.
- 16 c. An evaluation of the proposed route with regard to the applicable considerations
17 set out in section 49-22-09 and the criteria established pursuant to section
18 49-22-05.1.
- 19 d. A description of mitigative measures that will be taken to minimize all foreseen
20 adverse impacts resulting from the location, construction, and operation of the
21 proposed facility.
- 22 e. A description of the right-of-way preparation and construction and reclamation
23 procedures.
- 24 f. A statement setting forth the manner in which:
- 25 (1) The utility will inform affected landowners of easement acquisition, and
26 necessary easement conditions and restrictions.
- 27 (2) The utility will compensate landowners for easements, without reference to
28 the actual consideration to be paid.
- 29 g. Such other information as the utility may consider relevant or the commission
30 may require.

- 1 2. After determining that the application is complete, the commission shall serve a notice
2 of filing of the application on such persons and agencies that the commission may
3 deem appropriate and shall publish a notice of filing of the application in the official
4 newspaper of each county in which any portion of the designated corridor is located.
- 5 3. A copy of the application shall be furnished to any person or agency, upon request to
6 the commission within thirty days of either service or publication of the notice of filing.
- 7 4. An application for an amendment of a permit shall be in such form and contain such
8 information as the commission shall prescribe.
- 9 5. The commission shall designate a route for the construction of aan electric
10 transmission facility following the study and hearings provided for in this chapter. This
11 designation shall be made in accordance with the evidence presented at the hearings,
12 an evaluation of the information provided in the application, the criteria established
13 pursuant to section 49-22-05.1, and the considerations set out in section 49-22-09 in a
14 finding with reasons for the designation, and shall be made in a timely manner no later
15 than six months after the filing of a completed application. The time for designation of
16 a route may be extended by the commission for just cause. The failure of the
17 commission to act within the time limit provided in this section shall not operate to
18 divest the commission of jurisdiction in any permit proceeding. Upon designation of a
19 route the commission shall issue a permit to the applicant with such terms, conditions,
20 or modifications deemed necessary.

21 **SECTION 14.** Section 49-22-08.2 of the North Dakota Century Code is created and enacted
22 as follows:

23 **49-22-08.2. Combining application.**

24 A utility may file a separate application for a certificate or a permit, or combined into one
25 application.

26 **SECTION 15. AMENDMENT.** Section 49-22-09 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **49-22-09. Factors to be considered in evaluating applications and designation of**
29 **sites, corridors, and routes.**

30 The commission shall be guided by, but is not limited to, the following considerations, where
31 applicable, to aid the evaluation and designation of sites, corridors, and routes:

- 1 1. Available research and investigations relating to the effects of the location,
2 construction, and operation of the proposed facility on public health and welfare,
3 natural resources, and the environment.
- 4 2. The effects of new electric energy conversion and electric transmission technologies
5 and systems designed to minimize adverse environmental effects.
- 6 3. The potential for beneficial uses of waste energy from a proposed electric energy
7 conversion facility.
- 8 4. Adverse direct and indirect environmental effects ~~which~~that cannot be avoided should
9 the proposed site or route be designated.
- 10 5. Alternatives to the proposed site, corridor, or route which are developed during the
11 hearing process and which minimize adverse effects.
- 12 6. Irreversible and irretrievable commitments of natural resources should the proposed
13 site, corridor, or route be designated.
- 14 7. The direct and indirect economic impacts of the proposed facility.
- 15 8. Existing plans of the state, local government, and private entities for other
16 developments at or in the vicinity of the proposed site, corridor, or route.
- 17 9. The effect of the proposed site or route on existing scenic areas, historic sites and
18 structures, and paleontological or archaeological sites.
- 19 10. The effect of the proposed site or route on areas which are unique because of
20 biological wealth or because they are habitats for rare and endangered species.
- 21 11. Problems raised by federal agencies, other state agencies, and local entities.

22 **SECTION 16. AMENDMENT.** Section 49-22-09.1 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **49-22-09.1. Approval of hydroelectric transmission facilities by legislative assembly**
25 **required.**

26 After compliance with the applicable requirements of this chapter, any hydroelectric
27 transmission facility that transmits hydroelectric power produced outside the United States, and
28 which crosses any portion of this state, must have the approval of the legislative assembly by
29 concurrent resolution. A person may not begin construction of a hydroelectric transmission
30 facility in this state ~~that~~which transmits hydroelectric power produced outside the United States,
31 or exercise the right of eminent domain in connection with such construction, without first having

1 complied with this chapter and obtained the approval of the legislative assembly. This section
2 ~~shall~~does not apply to any electric transmission facility for which a route permit and certificate of
3 corridor compatibility has been issued prior to July 1, 1985, or any extension thereof issued
4 after July 1, 1985.

5 **SECTION 17. AMENDMENT.** Section 49-22-14 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **49-22-14. Advisory committees - Appointment - Compensation.**

8 The commission may appoint one or more advisory committees to assist it in carrying out its
9 duties under this chapter. Committees appointed to evaluate sites or corridors considered for
10 designation ~~shall~~must be composed of as many persons as may be appointed by the
11 commission, but ~~shall~~must include a majority of public representatives; at least one
12 representative from the state department of agriculture, a public or municipally owned utility, a
13 private investor-owned utility, and a cooperatively owned utility; and one representative from
14 each county and city in which an electric energy conversion facility or electric transmission
15 facility is proposed to be located. Members of advisory committees ~~shall~~are entitled to be
16 reimbursed, within the limits of legislative appropriations, for any necessary expenses in the
17 amounts provided by law for state officials.

18 **SECTION 18. AMENDMENT.** Section 49-22-16 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **49-22-16. Effect of issuance of certificate or permit - Local land use, zoning, or**
21 **building rules, regulations, or ordinances - State agency rules.**

- 22 1. The issuance of a certificate of site compatibility or a route permit shall, subject to
23 subsections 2 and 3, be the sole site or route approval required to be obtained by the
24 utility.
- 25 2. A certificate of site compatibility for an electric energy conversion facility shall not
26 supersede or pre-empt any local land use, zoning, or building rules, regulations, or
27 ordinances and no site shall be designated which violates local land use, zoning, or
28 building rules, regulations, or ordinances. A permit for the construction of ~~aan~~ an electric
29 transmission facility within a designated corridor may supersede and pre-empt any
30 local land use, zoning, or building rules, regulations, or ordinances upon a finding by
31 the commission that such rules, regulations, or ordinances, as applied to the proposed

1 route, are unreasonably restrictive in view of existing technology, factors of cost or
2 economics, or needs of consumers regardless of their location. Without such a finding
3 by the commission, no route shall be designated which violates local land use, zoning,
4 or building rules, regulations, or ordinances.

5 3. Utilities subject to this chapter shall obtain state permits that may be required to
6 construct and operate electric energy conversion facilities and electric transmission
7 facilities. A state agency in processing a utility's facility permit application shall be
8 bound to the decisions of the commission with respect to the site designation for the
9 electric energy conversion facility or the corridor or route designation for the electric
10 transmission facility and with respect to other matters for which authority has been
11 granted to the commission by this chapter.

12 4. No site or route shall be designated which violates the rules of any state agency. A
13 state agency with jurisdiction over any aspect of a proposed facility shall present the
14 position of the agency at the public hearing on an application for a certificate, a permit,
15 or a waiver, which position shall clearly state whether the site, corridor, or route being
16 considered for designation will be in compliance with such agency's rules. For
17 purposes of this chapter it shall be presumed that a proposed facility will be in
18 compliance with a state agency's rules if such agency fails to present its position on
19 the proposed site, corridor, or route at the appropriate public hearing.

20 **SECTION 19. AMENDMENT.** Section 49-22-17 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **49-22-17. Improvement of sites or locations.**

23 Utilities ~~which~~that have acquired an electric energy conversion facility site or electric
24 transmission line route in accordance with the provisions of this chapter may proceed to
25 construct or improve such site or route for the intended purposes at any time, subject to
26 subsections 2 and 3 of section 49-22-16; provided, that if such construction and improvement
27 commences more than four years after a certificate or permit for the site or route has been
28 issued, then the utility must certify to the commission that such site or route continues to meet
29 the conditions upon which the certificate of site compatibility or electric transmission facility
30 construction permit was issued.

1 **SECTION 20. AMENDMENT.** Section 49-22-19 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **49-22-19. Hearing - Judicial review.**

4 Any party aggrieved by the issuance of a certificate of site compatibility or electric
5 transmission facility construction permit from the commission, certification of continuing
6 suitability filed by a utility with the commission, or promulgation of a final order by the
7 commission, may request a rehearing by the commission. The hearing ~~shall~~must be conducted
8 pursuant to chapter 28-32. There ~~shall be~~is a right of appeal to the district court from any
9 adverse ruling by the commission.

10 **SECTION 21. AMENDMENT.** Section 49-22-20 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **49-22-20. Revocation or suspension of certificate or permit.**

13 A certificate of site compatibility or permit for the construction of ~~a~~an electric transmission
14 facility may be revoked or suspended for:

- 15 1. Any material false statement in the application or in accompanying statements or
16 studies required of the applicant.
- 17 2. Failure to comply with the certificate or permit or any terms, conditions, or
18 modifications contained therein.
- 19 3. Violation of the provisions of this chapter or rules or regulations issued pursuant to this
20 chapter by the commission.
- 21 4. A determination by a district court pursuant to section 49-22-16.1.

22 **SECTION 22. AMENDMENT.** Section 49-22-21 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **49-22-21. Penalties.**

- 25 1. Any person required by this chapter to have a certificate or permit who willfully begins
26 construction of an electric energy conversion facility or electric transmission facility
27 without previously securing a certificate or permit as prescribed by this chapter, or who
28 willfully constructs, operates, or maintains an electric energy conversion facility or
29 electric transmission facility other than in compliance with the certificate or permit and
30 any terms, conditions, and modifications contained therein is guilty of a class A
31 misdemeanor.

- 1 2. Any person who willfully violates any regulation issued or approved pursuant to this
2 chapter or who willfully falsifies, tampers with, or renders inaccurate any monitoring
3 device or method required to be maintained under this chapter shall be guilty of a
4 class A misdemeanor.
- 5 3. Any person who willfully engages in any of the following conduct ~~shall be~~ subject to a
6 civil penalty of not to exceed ten thousand dollars for each such violation for each day
7 ~~that such~~ the violations persist, except that the maximum penalty may not exceed two
8 hundred thousand dollars for any related series of violations:
- 9 a. Begins construction of an electric energy conversion facility or ~~a~~ an electric
10 transmission facility without having been issued a certificate or permit pursuant to
11 this chapter.
- 12 b. Constructs, operates, or maintains an electric energy conversion facility or ~~a~~ an
13 electric transmission facility other than in compliance with the certificate or permit
14 and any terms, conditions, or modifications contained therein.
- 15 c. Violates any provision of this chapter or any rule adopted by the commission
16 pursuant to this chapter.
- 17 d. Falsifies, tampers with, or renders inaccurate any monitoring device or method
18 required to be maintained pursuant to a certificate or permit issued pursuant to
19 this chapter.

20 The civil penalty provided for in this subsection may be compromised by the
21 commission. The amount of the penalty when finally determined or agreed upon in
22 compromise ~~shall~~ must be deposited in the general fund and, if not paid, may be
23 recovered in a civil action in the courts of the state.

- 24 4. Notwithstanding any other provision of this chapter, the commission ~~may~~, by injunctive
25 procedures, without bond or other undertaking, may proceed against any person who
26 willfully engages in any conduct described in subsection 3. No liability shall accrue to
27 the commission or its authorized representative in proceeding against any person
28 pursuant to this section.

29 **SECTION 23. AMENDMENT.** Subdivision e of subsection 1 of section 49-22-22 of the North
30 Dakota Century Code is amended and reenacted as follows:

- 1 e. An applicant certifying to the commission under subsection 3 of section 49-22-03
2 ~~or obtaining siting authority under subdivision b of subsection 2 or subdivision c~~
3 ~~of subsection 4 of section 49-22-16.3~~, shall pay an amount to be determined by
4 the commission to cover anticipated expenses of processing the application.

5 **SECTION 24. AMENDMENT.** Subsection 2 of section 49-22-22 of the North Dakota
6 Century Code is amended and reenacted as follows:

- 7 2. At the request of the commission and with the approval of the emergency commission,
8 the applicant shall pay such additional fees as are reasonably necessary for
9 completion of the electric energy conversion facility site, electric transmission facility
10 corridor, or electric transmission facility route evaluation and designation process by
11 the commission. ~~In no event shall the~~The application fee under subsection 1 and any
12 additional fees required of the applicant under this subsection may not exceed an
13 amount equal to one thousand dollars for each one million dollars of investment in a
14 proposed energy conversion facility or ten thousand dollars for each one million dollars
15 of investment in a proposed electric transmission facility.

16 **SECTION 25.** Chapter 49-22.1 of the North Dakota Century Code is created and enacted
17 as follows:

18 **49-22.1-01. Definitions.**

19 In this chapter, unless the context or subject matter otherwise requires:

- 20 1. "Certificate" means the certificate of site compatibility or the certificate of corridor
21 compatibility issued under this chapter.
22 2. "Commission" means the North Dakota public service commission.
23 3. "Construction" includes any clearing of land, excavation, or other action that would
24 affect the environment of the site after April 9, 1975, but does not include activities:
25 a. Conducted wholly within the geographic location for which a utility has previously
26 obtained a certificate or permit under this chapter, or on which a facility was
27 constructed before April 9, 1975, if:
28 (1) The activities are for the construction of the same type of facility as the
29 existing type of facility as identified in subsection 5 or 12 and the activities
30 are:

- 1 (a) Within the geographic boundaries of a previously issued certificate or
2 permit;
- 3 (b) For a gas or liquid energy conversion facility constructed before
4 April 9, 1975, within the geographic location on which the facility was
5 built; or
- 6 (c) For a gas or liquid transmission facility constructed before April 9,
7 1975, within a width of three hundred fifty feet [106.68 meters] on
8 either side of the centerline;
- 9 (2) Except as provided in subdivision b, the activities do not affect any known
10 exclusion or avoidance area;
- 11 (3) The activities are for the construction:
- 12 (a) Of a new gas or liquid energy conversion facility;
- 13 (b) Of a new gas or liquid transmission facility;
- 14 (c) To improve the existing gas or liquid energy conversion facility, or gas
15 or liquid, transmission facility; or
- 16 (d) To increase or decrease the capacity of the existing gas or liquid
17 energy conversion facility or gas or liquid transmission facility; and
- 18 (4) Before conducting any activities, the utility certifies in writing to the
19 commission that:
- 20 (a) The activities will not affect any known exclusion or avoidance area;
- 21 (b) The activities are for the construction:
- 22 [1] Of a new gas or liquid energy conversion facility;
- 23 [2] Of a new gas or liquid transmission facility;
- 24 [3] To improve the existing gas or liquid energy conversion or gas or
25 liquid transmission facility; or
- 26 [4] To increase or decrease the capacity of the existing gas or liquid
27 energy conversion facility or gas or liquid transmission facility;
28 and
- 29 (c) The utility will comply with all applicable conditions and protections in
30 siting laws and rules and commission orders previously issued for any
31 part of the facility.

1 b. Otherwise qualifying for exclusion under subdivision a, except that the activities
2 are expected to affect a known avoidance area and the utility before conducting
3 any activities:

4 (1) Certifies in writing to the commission:

5 (a) The activities will not affect any known exclusion area:

6 (b) The activities are for the construction:

7 [1] Of a new gas or liquid energy conversion facility;

8 [2] Of a new gas or liquid transmission facility;

9 [3] To improve the existing gas or liquid energy conversion facility or
10 gas or liquid facility; or

11 [4] To increase or decrease the capacity of the existing gas or liquid
12 energy conversion facility or gas or liquid transmission facility;

13 and

14 (c) The utility will comply with all applicable conditions and protections in
15 siting laws and rules and commission orders previously issued for any
16 part of the facility:

17 (2) Notifies the commission in writing that the activities are expected to impact
18 an avoidance area and provides information on the specific avoidance area
19 expected to be impacted and the reasons why impact cannot be avoided;
20 and

21 (3) Receives the commission's written approval for the impact to the avoidance
22 area, based on a determination that there is no reasonable alternative to the
23 expected impact. If the commission does not approve impacting the
24 avoidance area, the utility must obtain siting authority under this chapter for
25 the affected portion of the site or route. If the commission fails to act on the
26 notification required by this subdivision within thirty days of the utility's filing
27 the notification, the impact to the avoidance area is deemed approved.

28 c. Incident to preliminary engineering or environmental studies.

29 4. "Corridor" means the area of land in which a designated route may be established for
30 a gas or liquid transmission facility.

- 1 5. "Facility" means a gas or liquid energy conversion facility, gas or liquid transmission
2 facility, or both.
- 3 6. "Gas or liquid energy conversion facility" means any plant, addition, or combination of
4 plant and addition, designed for or capable of:
- 5 a. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic
6 meters] or more of gas per day, regardless of the end use of the gas;
- 7 b. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or
8 more of liquid hydrocarbon products per day; or
- 9 c. Enrichment of uranium minerals.
- 10 7. "Gas or liquid transmission facility" means any of the following:
- 11 a. A gas or liquid transmission line and associated facilities designed for or capable
12 of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or
13 carbon dioxide. This subdivision does not apply to:
- 14 (1) An oil or gas pipeline gathering system;
- 15 (2) A pipeline with an outside diameter of four and one-half inches
16 [11.43 centimeters] or less which will not be trenched and will be plowed in
17 with a power mechanism having a vertical knife or horizontally directionally
18 drilled, and its associated facilities; or
- 19 (3) A pipeline that is less than one mile [1.61 kilometers] long. For purposes of
20 this chapter, a gathering system includes the pipelines and associated
21 facilities used to collect oil from the lease site to the first pipeline storage
22 site where pressure is increased for further transport, or pipelines and
23 associated facilities used to collect gas from the well to the gas processing
24 facility at which end-use consumer-quality gas is produced, with or without
25 the addition of odorant.
- 26 b. A liquid transmission line and associated facilities designed for or capable of
27 transporting water from or to an energy conversion facility.
- 28 8. "Permit" means the permit for the construction of a gas or liquid transmission facility
29 within a designated corridor issued under this chapter.

1 9. "Person" includes any individual, firm, association, partnership, cooperative,
2 corporation, limited liability company, or any department, agency, or instrumentality of
3 a state or of the federal government, or any subdivision thereof.

4 10. "Route" means the location of a gas or liquid transmission facility within a designated
5 corridor.

6 11. "Site" means the location of a gas or liquid energy conversion facility.

7 12. "Utility" means any person engaged in and controlling the generation, manufacture,
8 refinement, or transmission of gas, liquid hydrocarbons, or liquid hydrocarbon
9 products, including coal gasification, coal liquefaction, petroleum refinement, uranium
10 enrichment, and the transmission of coal, gas, liquid hydrocarbons, or liquid
11 hydrocarbon products, or the transmission of water from or to any gas or liquid energy
12 conversion facility.

13 **49-22.1-01.1. Public service commission duties.**

14 The public service commission shall:

- 15 1. Ensure the location, construction, and operation of energy conversion and
16 transmission facilities will produce minimal adverse effects on the environment and the
17 welfare of the citizens of this state.
- 18 2. Provide an energy conversion facility or transmission facility may not be located,
19 constructed, and operated within this state without a certificate of site compatibility or a
20 route permit acquired pursuant to this chapter.
- 21 3. Site energy conversion facilities and route transmission facilities in an orderly manner
22 compatible with environmental preservation and the efficient use of resources.
- 23 4. Ensure chosen sites and routes will minimize adverse human and environmental
24 impact while maintaining system reliability and integrity.
- 25 5. Ensure energy needs are met and fulfilled in an orderly and timely fashion.

26 **49-22.1-02. Exclusion and avoidance areas - Criteria.**

27 The commission shall develop criteria to be used in identifying exclusion and avoidance
28 areas and to guide the site, corridor, and route suitability evaluation and designation process.
29 Except for oil and gas transmission lines in existence before July 1, 1983, areas within five
30 hundred feet [152.4 meters] of an inhabited rural residence must be designated avoidance
31 areas. This criterion does not apply to a water pipeline. The five hundred foot [152.4 meter]

1 avoidance area criteria for an inhabited rural residence may be waived by the owner of the
2 inhabited rural residence in writing. The criteria also may include an identification of impacts and
3 policies or practices which may be considered in the evaluation and designation process.

4 **49-22.1-03. Certificate of site compatibility or route permit required.**

5 A utility may not begin construction of a gas or liquid energy conversion facility or gas or
6 liquid transmission facility in the state without first having obtained a certificate of site
7 compatibility or a route permit from the commission pursuant to this chapter. The facility must be
8 constructed, operated, and maintained in conformity with the certificate or permit and any terms,
9 conditions, or modifications of the certificate or permit. A certificate or permit may be
10 transferred, subject to the approval of the commission, to any person who agrees to comply
11 with its terms, conditions, and modifications.

12 **49-22.1-04. Waiver of procedures and time schedules.**

13 Any utility that proposes to construct a gas or liquid energy conversion facility or a gas or
14 liquid transmission facility within the state may make an application to the commission for a
15 waiver of any of the procedures or time schedules set forth in this chapter or in the rules
16 adopted pursuant to this chapter. The commission, after hearing and upon a finding that the
17 proposed facility is of a length, design, location, or purpose that it will produce minimal adverse
18 effects, or, after hearing and upon a finding that a demonstrable emergency exists which
19 requires immediate construction and that adherence to the procedures and time schedules
20 would jeopardize the utility's system, may issue an order waiving specified procedures and time
21 schedules required by this chapter or by the rules adopted pursuant to this chapter, including
22 applications, notices, and hearings, and may forthwith issue a certificate of site compatibility, a
23 certificate of corridor compatibility, or a route permit, with such conditions as the commission
24 may require.

25 **49-22.1-05. Application for a certificate - Notice of filing - Amendment - Designation of**
26 **a site or corridor.**

27 1. An application for a certificate must be in the form prescribed by the commission
28 containing the following information:

29 a. A description of the size and type of facility.

30 b. A summary of any studies that have been made of the environmental impact of
31 the facility.

- 1 c. A statement explaining the need for the facility.
- 2 d. An identification of the location of the preferred site for any gas or liquid energy
- 3 conversion facility.
- 4 e. An identification of the location of the preferred corridor for any gas or liquid
- 5 transmission facility.
- 6 f. A description of the merits and detriments of any location identified and a
- 7 comprehensive analysis with supporting data showing the reasons why the
- 8 preferred location is best suited for the facility.
- 9 g. A description of mitigative measures that will be taken to minimize all foreseen
- 10 adverse impacts resulting from the location, construction, and operation of the
- 11 proposed facility.
- 12 h. An evaluation of the proposed site or corridor with regard to the applicable
- 13 considerations set out in section 49-22.1-08 and the criteria established pursuant
- 14 to section 49-22.1-02.
- 15 i. Any other information as the applicant considers relevant or the commission may
- 16 require.
- 17 2. After determining the application is complete, the commission shall serve a notice of
- 18 filing of the application on those persons and agencies the commission deems
- 19 appropriate and shall publish a notice of filing of the application in the official
- 20 newspaper of each county in which any portion of the site or corridor is proposed to be
- 21 located.
- 22 3. A copy of the application must be furnished to any person or agency, upon request to
- 23 the commission within thirty days of either service or publication of the notice of filing.
- 24 4. An application for an amendment of a certificate must be in the form and contain the
- 25 information as the commission prescribes.
- 26 5. The commission may designate a site or corridor for a proposed facility following the
- 27 study and hearings provided for in this chapter. Any designation must be made in
- 28 accordance with the evidence presented at the hearings, an evaluation of the
- 29 information provided in the application, the criteria established pursuant to section
- 30 49-22.1-02, and the considerations set out in section 49-22.1-08 in a finding with
- 31 reasons for the designation, and must be made in a timely manner no later than six

1 months after the filing of a completed application for a certificate of site compatibility or
2 no later than three months after the filing of a completed application for a certificate of
3 corridor compatibility. The time for designation of a site or corridor may be extended by
4 the commission for just cause. The failure of the commission to act within the time
5 limits provided in this section does not operate to divest the commission of jurisdiction
6 in any certification proceeding. The commission shall indicate the reasons for any
7 refusal of designation. Upon designation of a site or corridor, the commission shall
8 issue a certificate of site compatibility or a certificate of corridor compatibility with the
9 terms, conditions, or modifications deemed necessary.

10 **49-22.1-06. Application for a permit - Notice of filing - Amendment - Designation of a**
11 **route.**

- 12 1. An application for a route permit for a gas or liquid transmission facility within a
13 designated corridor must be filed no later than two years after the issuance of the
14 certificate and must be in the form the commission prescribes, containing the following
15 information:
- 16 a. A description of the type, size, and design of the proposed facility.
 - 17 b. A description of the location of the proposed facility.
 - 18 c. An evaluation of the proposed route with regard to the applicable considerations
19 set out in section 49-22.1-08 and the criteria established pursuant to section
20 49-22.1-02.
 - 21 d. A description of mitigative measures that will be taken to minimize all foreseen
22 adverse impacts resulting from the location, construction, and operation of the
23 proposed facility.
 - 24 e. A description of the right-of-way preparation and construction and reclamation
25 procedures.
 - 26 f. A statement setting forth the manner in which:
 - 27 (1) The utility will inform affected landowners of easement acquisition, and
28 necessary easement conditions and restrictions.
 - 29 (2) The utility will compensate landowners for easements, without reference to
30 the actual consideration to be paid.
 - 31 g. Any other information the utility considers relevant or the commission requires.

- 1 2. After determining the application is complete, the commission shall serve a notice of
2 filing of the application on those persons and agencies the commission deems
3 appropriate and shall publish a notice of filing of the application in the official
4 newspaper of each county in which any portion of the designated corridor is located.
- 5 3. A copy of the application must be furnished to any person or agency, upon request to
6 the commission within thirty days of either service or publication of the notice of filing.
- 7 4. An application for an amendment of a permit must be in the form and contain the
8 information the commission prescribes.
- 9 5. The commission shall designate a route for the construction of a gas or liquid
10 transmission facility following the study and hearings provided for in this chapter. This
11 designation must be made in accordance with the evidence presented at the hearings,
12 an evaluation of the information provided in the application, the criteria established
13 pursuant to section 49-22.1-02, and the considerations set out in section 49-22.1-05 in
14 a finding with reasons for the designation, and must be made in a timely manner no
15 later than six months after the filing of a completed application. The time for
16 designation of a route may be extended by the commission for just cause. The failure
17 of the commission to act within the time limit provided in this section does not operate
18 to divest the commission of jurisdiction in any permit proceeding. Upon designation of
19 a route the commission shall issue a permit to the applicant with the terms, conditions,
20 or modifications deemed necessary.

21 **49-22.1-07. Combining application.**

22 A utility may file a separate application for a certificate or a permit, or combined into one
23 application.

24 **49-22.1-08. Factors to be considered in evaluating applications and designation of**
25 **sites, corridors, and routes.**

26 The commission is guided by, but is not limited to, the following considerations, when
27 applicable, to aid the evaluation and designation of sites, corridors, and routes:

- 28 1. Available research and investigations relating to the effects of the location,
29 construction, and operation of the proposed facility on public health and welfare,
30 natural resources, and the environment.

- 1 2. The effects of new gas or liquid energy conversion and gas or liquid transmission
- 2 technologies and systems designed to minimize adverse environmental effects.
- 3 3. The potential for beneficial uses of waste energy from a proposed gas or liquid energy
- 4 conversion facility.
- 5 4. Adverse direct and indirect environmental effects that cannot be avoided should the
- 6 proposed site or route be designated.
- 7 5. Alternatives to the proposed site, corridor, or route that are developed during the
- 8 hearing process and which minimize adverse effects.
- 9 6. Irreversible and irretrievable commitments of natural resources should the proposed
- 10 site, corridor, or route be designated.
- 11 7. The direct and indirect economic impacts of the proposed facility.
- 12 8. Existing plans of the state, local government, and private entities for other
- 13 developments at or in the vicinity of the proposed site, corridor, or route.
- 14 9. The effect of the proposed site or route on existing scenic areas, historic sites and
- 15 structures, and paleontological or archaeological sites.
- 16 10. The effect of the proposed site or route on areas that are unique because of biological
- 17 wealth or because the site or route is a habitat for rare and endangered species.
- 18 11. Problems raised by federal agencies, other state agencies, and local entities.

19 **49-22.1-09. Public hearings - Notice.**

- 20 1. The commission shall hold a public hearing in each county in which any portion of a
- 21 site, corridor, or route is proposed to be located in an application for a certificate or a
- 22 permit. At the public hearing, any person may present testimony or evidence relating
- 23 to the information provided in the application, the criteria developed pursuant to
- 24 section 49-22.1-02, and the factors to be considered pursuant to section 49-22.1-08.
- 25 When more than one county is involved, the commission may hold a consolidated
- 26 hearing in one or more of the affected counties. A hearing for any county may not be
- 27 consolidated if five or more affected landowners in that county file a petition with the
- 28 commission within ten days of the publication of the notice of hearing.
- 29 2. The commission is not required to hold a public hearing on an application for the
- 30 transfer of a certificate or a permit, or an application for a waiver of procedures and
- 31 time schedules, but shall publish a notice of opportunity for a public hearing in the

1 official newspaper of each county in which any portion of the facility or the proposed
2 site, corridor, or route is located. If requested by any interested person and good
3 cause has been shown therefor, the commission shall hold a public hearing. If more
4 than one county is involved, the commission may hold a consolidated hearing in one
5 or more of the affected counties.

6 3. One or more public hearings must be held at a location or locations determined by the
7 commission concerning the following matters:

8 a. A substantial or material change in the criteria established pursuant to section
9 49-22.1-02.

10 b. A substantial or material change in the rules adopted pursuant to section
11 49-22.1-16.

12 c. The revocation or suspension of a certificate or permit.

13 4. Notice of a public hearing must be given by the commission by service on those
14 persons the commission deems appropriate and twice by publication, once at least
15 twenty days before the hearing and a second time within twenty days before the
16 hearing. Notice of a public hearing and notice of opportunity for a public hearing on an
17 application for a certificate, a permit, a transfer, or a waiver must be given at the
18 expense of the applicant. In an emergency the commission may notice a hearing upon
19 less than twenty days.

20 **49-22.1-10. Advisory committees - Appointment - Compensation.**

21 The commission may appoint one or more advisory committees to assist it in carrying out its
22 duties under this chapter. Committees appointed to evaluate sites or corridors considered for
23 designation must be composed of as many persons as may be appointed by the commission,
24 but must include a majority of public representatives; at least one representative from the state
25 department of agriculture, a public or municipally owned utility, a private investor-owned utility,
26 and a cooperatively owned utility; and one representative from each county and city in which a
27 gas or liquid energy conversion facility or gas or liquid transmission facility is proposed to be
28 located. Members of advisory committees are entitled to be reimbursed, within the limits of
29 legislative appropriations, for any necessary expenses in the amounts provided by law for state
30 officials.

1 **49-22.1-11. Cooperation with state and federal agencies.**

2 The commission may, and is encouraged to, cooperate with and receive and exchange
3 technical information and assistance from and with any department, agency, or officer of any
4 state or of the federal government to eliminate duplication of effort, to establish a common
5 database, or for any other purpose relating to the provisions of this chapter.

6 **49-22.1-12. Effect of issuance of certificate or permit - Local land use, zoning, or**
7 **building rules, regulations, or ordinances - State agency rules.**

8 1. The issuance of a certificate of site compatibility or a route permit is, subject to
9 subsections 2 and 3, the sole site or route approval required to be obtained by the
10 utility.

11 2. A certificate of site compatibility for an energy conversion facility does not supersede
12 or pre-empt any local land use; zoning; or building rules, regulations, or ordinances,
13 and a site may not be designated which violates local land use; zoning; or building
14 rules, regulations, or ordinances. A permit for the construction of a gas or liquid
15 transmission facility within a designated corridor may supersede and pre-empt any
16 local land use; zoning; or building rules, regulations, or ordinances, upon a finding by
17 the commission that the rules, regulations, or ordinances, as applied to the proposed
18 route, are unreasonably restrictive in view of existing technology, factors of cost or
19 economics, or needs of consumers regardless of their location. Without that finding by
20 the commission, a route may not be designated which violates local land use; zoning;
21 or building rules, regulations, or ordinances.

22 3. Utilities subject to this chapter shall obtain state permits that may be required to
23 construct and operate gas or liquid energy conversion facilities and gas or liquid
24 transmission facilities. A state agency in processing a utility's facility permit application
25 is bound to the decisions of the commission with respect to the site designation for the
26 gas or liquid energy conversion facility or the corridor or route designation for the gas
27 or liquid transmission facility and with respect to other matters for which authority has
28 been granted to the commission by this chapter.

29 4. A site or route may not be designated which violates the rules of any state agency. A
30 state agency with jurisdiction over any aspect of a proposed facility shall present the
31 position of the agency at the public hearing on an application for a certificate, a permit,

1 or a waiver, which position must clearly state whether the site, corridor, or route being
2 considered for designation will be in compliance with the agency's rules. For purposes
3 of this chapter it is presumed a proposed facility will be in compliance with a state
4 agency's rules if that agency fails to present its position on the proposed site, corridor,
5 or route at the appropriate public hearing.

6 **49-22.1-13. Unfair tactics in acquiring land or easements for a facility - Court action -**
7 **Cancellation of easement - Penalty.**

- 8 1. Any person employed by a public utility to acquire easements for a facility subject to
9 this chapter may not use any harassment, threat, intimidation, misrepresentation,
10 deception, fraud, or other unfair tactics to induce the owner of the land to be affected
11 by the facility to grant or agree to any easements.
- 12 2. If at least five landowners aggrieved by the conduct of a person or persons, acting on
13 behalf of the same utility, acquiring easements for a site or route of a facility allege use
14 of harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair
15 tactics by the person or persons acquiring or attempting to acquire the easement, an
16 action may be brought in the appropriate district court.
- 17 3. Upon a determination by the court that a person employed by the utility used
18 harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair
19 tactics in acquiring or attempting to acquire an easement from at least five separate
20 landowners, the court, by order, shall declare the easements void and may order any
21 compensation paid therefor returned to the offending utility, or allow the landowner to
22 retain the compensation, or award to the landowner up to three times the amount of
23 the compensation involved as damages, punitive or compensatory. The court shall
24 award costs and reasonable attorney's fees to the plaintiff if the court rules in favor of
25 the plaintiff.
- 26 4. Upon a determination by the court that the utility involved did knowingly allow,
27 encourage, or operate in active consort or participation with a person utilizing an unfair
28 tactic, the court shall cause a copy of its memorandum opinion or order to be filed with
29 the commission.
- 30 5. Upon receiving a copy of a memorandum opinion or order issued by a district court
31 pursuant to this section, the commission may revoke or suspend the permit issued

1 with respect to the route affecting the aggrieved landowners. If a permit has not been
2 issued with respect to a site or route affecting the aggrieved landowners, the
3 commission may refuse to issue a permit for such portion of the route.

4 **49-22.1-14. Route adjustment before or during construction for gas or liquid**
5 **transmission line.**

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

- 10 a. The construction activities will be within the designated corridor;
11 b. The construction activities will not affect any known exclusion or avoidance areas
12 within the designated corridor; and
13 c. The utility will comply with the commission's order, laws, and rules designating
14 the corridor and designating the route.

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

- 19 a. Files with the commission certification and supporting documentation that:
20 (1) The construction activities are within the designated corridor;
21 (2) The construction activities will not affect any known exclusion areas within
22 the designated corridor;
23 (3) The construction activities are expected to impact an avoidance area with a
24 specific description of the avoidance area expected to be impacted;
25 (4) Each owner of real property on which the adjustment is to be located and
26 any applicable governmental entity with an interest in the same adjustment
27 area do not oppose the adjustment, unless the utility previously received
28 authorization from the commission for the impact to the avoidance area;
29 (5) For an impact for which the utility does not already have approval or has not
30 filed the approval in paragraph 4, the utility has good cause and a specific

1 reason to impact the avoidance area, and a reasonable alternative does not
2 exist; and

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

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

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

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

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

18 (2) The route outside the corridor is no longer than one and one-half miles
19 [2.41 kilometers];

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

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

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

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

- 1 a. Files with the commission certification and supporting documentation that:
2 (1) The construction activities will not affect any known exclusion areas;
3 (2) The construction activities are expected to impact an avoidance area with a
4 specific description of the avoidance area expected to be impacted;
5 (3) The utility has good cause and a specific reason to impact the avoidance
6 area, and a reasonable alternative does not exist;
7 (4) The route outside the corridor is no longer than one and one-half miles
8 [2.41 kilometers];
9 (5) The utility will comply with the commission's order, laws, and rules
10 designating the corridor and designating the route; and
11 (6) Each owner of real property on which the adjustment is to be located and
12 any applicable governmental entity with an interest in the same adjustment
13 area do not oppose the adjustment.
- 14 b. Files detailed field studies indicating exclusion and avoidance areas for an area
15 encompassing the route outside the designated corridor equal to the length of the
16 adjustment of the proposed corridor.
- 17 c. Receives the commission's written authorization that the utility may impact the
18 avoidance area. If the commission does not authorize the impact to the
19 avoidance area, the utility must obtain siting authority for the affected portion of
20 the route adjustment. If the commission fails to act within ten working days of
21 receipt of the utility's filing of the certification and supporting documentation under
22 subdivisions a and b of subsection 4, the route adjustment is deemed approved.
- 23 5. The commission is not required to hold a public hearing or publish a notice of
24 opportunity for a public hearing for any route adjustment under this section.

25 **49-22.1-15. Improvement of sites or locations.**

26 Utilities that have acquired a gas or liquid energy conversion facility site or gas or liquid
27 transmission line route in accordance with this chapter may proceed to construct or improve
28 such site or route for the intended purposes at any time, subject to subsections 2 and 3 of
29 section 49-22.1-12; provided, that if the construction and improvement commences more than
30 four years after a certificate or permit for the site or route has been issued, the utility must
31 certify to the commission that the site or route continues to meet the conditions upon which the

1 certificate of site compatibility or gas or liquid transmission facility construction permit was
2 issued.

3 **49-22.1-16. Rules and regulations.**

4 The commission shall adopt rules in conformity with this chapter and prescribe methods
5 and procedures required therewith.

6 **49-22.1-17. Hearing - Judicial review.**

7 Any party aggrieved by the issuance of a certificate of site compatibility or gas or liquid
8 transmission facility construction permit from the commission, certification of continuing
9 suitability filed by a utility with the commission, or promulgation of a final order by the
10 commission, may request a rehearing by the commission. The hearing must be conducted
11 pursuant to chapter 28-32. There is a right of appeal to the district court from any adverse ruling
12 by the commission.

13 **49-22.1-18. Revocation or suspension of certificate or permit.**

14 A certificate of site compatibility or permit for the construction of a gas or liquid transmission
15 facility may be revoked or suspended for:

- 16 1. Any material false statement in the application or in accompanying statements or
17 studies required of the applicant.
- 18 2. Failure to comply with the certificate or permit or any terms, conditions, or
19 modifications contained in the certificate or permit.
- 20 3. Violations of this chapter or rules adopted pursuant to this chapter by the commission.
- 21 4. A determination by a district court pursuant to section 49-22.1-13.

22 **49-22.1-19. Penalties.**

- 23 1. Any person required by this chapter to have a certificate or permit who willfully begins
24 construction of a gas or liquid energy conversion facility or gas or liquid transmission
25 facility without previously securing a certificate or permit as prescribed by this chapter,
26 or who willfully constructs, operates, or maintains a gas or liquid energy conversion
27 facility or gas or liquid transmission facility other than in compliance with the certificate
28 or permit and any terms, conditions, and modifications contained in the certificate or
29 permit is guilty of a class A misdemeanor.
- 30 2. Any person who willfully violates any regulation issued or approved pursuant to this
31 chapter or who willfully falsifies, tampers with, or renders inaccurate any monitoring

- 1 device or method required to be maintained under this chapter is guilty of a class A
2 misdemeanor.
- 3 3. Any person who willfully engages in any of the following conduct is subject to a civil
4 penalty of not to exceed ten thousand dollars for each violation for each day the
5 violations persist, except the maximum penalty may not exceed two hundred thousand
6 dollars for any related series of violations:
- 7 a. Begins construction of a gas or liquid energy conversion facility or a gas or liquid
8 transmission facility without having been issued a certificate or permit pursuant to
9 this chapter.
- 10 b. Constructs, operates, or maintains a gas or liquid energy conversion facility or a
11 gas or liquid transmission facility other than in compliance with the certificate or
12 permit and any terms, conditions, or modifications contained therein.
- 13 c. Violates any provision of this chapter or any rule adopted by the commission
14 pursuant to this chapter.
- 15 d. Falsifies, tampers with, or renders inaccurate any monitoring device or method
16 required to be maintained pursuant to a certificate or permit issued pursuant to
17 this chapter.
- 18 4. The civil penalty provided for in subsection 3 may be compromised by the
19 commission. The amount of the penalty when finally determined or agreed upon in
20 compromise must be deposited in the general fund and, if not paid, may be recovered
21 in a civil action in the courts of the state.
- 22 5. Notwithstanding any other provision of this chapter, the commission may, by injunctive
23 procedures, without bond or other undertaking, proceed against any person that
24 willfully engages in any conduct described in subsection 3. No liability may accrue to
25 the commission or its authorized representative in proceeding against any person
26 pursuant to this section.
- 27 **49-22.1-20. Siting process expense recovery - Deposit in special fund - Continuing**
28 **appropriation.**
- 29 1. Every applicant under this chapter shall pay to the commission an application fee:
- 30 a. An applicant for a certificate of site compatibility shall pay an amount equal to five
31 hundred dollars for each one million dollars of investment in the facility.

- 1 b. An applicant for a certificate of corridor compatibility shall pay an amount equal to
2 five thousand dollars for each one million dollars of investment in the facility.
- 3 c. An applicant for a waiver shall pay the amount that would be required for an
4 application for a certificate of site or corridor compatibility for the proposed facility.
5 If a waiver is not granted for a proposed facility, the application fee paid must be
6 allowed as a credit against fees payable under this section in connection with an
7 application under this chapter for a certificate or permit for the proposed facility.
- 8 d. An applicant for a transfer of a certificate or permit shall pay an amount to be
9 determined by the commission to cover anticipated expenses of processing the
10 application.
- 11 e. An applicant certifying to the commission under subsection 3 of section
12 49-22.1-01 or obtaining siting authority under subdivision b of subsection 2 or
13 subdivision c of subsection 4 of section 49-22.1-14, shall pay an amount to be
14 determined by the commission to cover anticipated expenses of processing the
15 application.
- 16 f. The application fee under subdivision a, b, or c may not be less than ten
17 thousand dollars nor more than one hundred thousand dollars.
- 18 2. At the request of the commission and with the approval of the emergency commission,
19 the applicant shall pay any additional fees as are reasonably necessary for completion
20 of the gas or liquid energy conversion facility site, gas or liquid transmission facility
21 corridor, or gas or liquid transmission facility route evaluation and designation process
22 by the commission. The application fee under subsection 1 and any additional fees
23 required of the applicant under this subsection may not exceed an amount equal to
24 one thousand dollars for each one million dollars of investment in a proposed energy
25 conversion facility or ten thousand dollars for each one million dollars of investment in
26 a proposed gas or liquid transmission facility.
- 27 3. A siting process expense recovery fund is established in the state treasury. The
28 commission shall deposit payments received under subsections 1 and 2 in the siting
29 process expense recovery fund. All moneys deposited in the fund are appropriated on
30 a continuing basis to the commission to pay expenses incurred in the siting process.
31 The commission shall specify the time and method of payment of any fees and shall

1 refund the portion of fees collected under subsections 1 and 2 which exceeds the
2 expenses incurred for the evaluation and designation process.

3 **49-22.1-21. Safety.**

4 Every utility that owns or operates electric generation of any size for the primary purpose of
5 resale shall comply with the standards of the national electrical safety code in effect at the time
6 of construction of the generation.

7 **SECTION 26. AMENDMENT.** Subsection 1 of section 54-17.7-08 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 1. Until sold or disposed of by the authority, the authority and the pipeline facilities built
10 under this chapter are exempt from the provisions of title 49 except for
11 ~~chapter~~chapters 49-22 and 49-22.1 and sections 49-02-01.2 and 49-07-05.1. Upon
12 sale or disposal by the authority, pipeline facilities built under this chapter are subject
13 to the provisions of title 49.

14 **SECTION 27. AMENDMENT.** Section 61-24.3-03 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **61-24.3-03. Authorization of southwest pipeline project.**

17 The preliminary designs for a water supply facility for supplementation of the water
18 resources of a portion of the area of North Dakota south and west of the Missouri River for
19 multiple uses, as set forth in the engineering preliminary design final report for the southwest
20 pipeline project, state water commission project no. 1736, dated September 1982, are hereby
21 confirmed and approved, under the designation of the southwest pipeline project, and the
22 construction of the southwest pipeline project shall be initiated and completed by the state water
23 commission substantially in accordance with plan B of the engineering preliminary design final
24 report, state water commission project no. 1736, dated September 1982, except as otherwise
25 specifically provided in this chapter. The commission shall have the authority to eliminate the
26 construction of any primary or secondary transmission mains which are part of plan B of the
27 engineering preliminary design final report if the water user entities to be served by the primary
28 or secondary transmission mains do not execute water service contracts for the purchase of a
29 sufficient quantity of water, as determined by the commission, to justify the construction of the
30 primary or secondary transmission mains. ~~Chapter~~Chapters 49-22 and 49-22.1 shall not apply
31 to this chapter. The right of way is hereby given, dedicated, and set apart, to locate, construct,

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1 and maintain such works over and through any of the lands which are or may be the property of
2 the state.

3 **SECTION 28. REPEAL.** Sections 49-22-01 and 49-22-16.3 of the North Dakota Century
4 Code are repealed.