

# PUBLIC UTILITIES

## CHAPTER 564

SENATE BILL NO. 2442  
(Senators Lodoen, W. Meyer, Nething)  
(Representatives Martinson, Koland)

### PSC RATE CHANGE HEARINGS

AN ACT to amend and reenact section 49-05-06 of the North Dakota Century Code, relating to hearings by the public service commission on proposed rate changes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-05-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-05-06. Hearing by commission on proposed change of rates. Whenever a notice or any schedule stating an individual or joint rate, classification, contract, practice, rule, or regulation, increasing or decreasing, or resulting in an increase or decrease in any rate, shall be filed with the commission, the commission may suspend by motion such rate, classification, contract, practice, rule, or regulation, but the period of suspension thereof shall not extend more than seven months for common carriers by rail and motor vehicle and for other public utilities ~~eleven months~~ beyond the time when it otherwise would go into effect. Upon complaint or upon its own initiative without complaint the commission may order a hearing, upon due notice, concerning the propriety of such rate, classification, contract, practice, rule, or regulation. On such hearing, the commission shall establish the rates, classifications, contracts, practices, rules, or regulations proposed, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable. At any such hearing, the burden to show that the increased rate or proposed change of rate, classification, regulation, rule or practice is just and reasonable shall be upon the public utility making application therefor. All such rates, classifications, contracts, practices, rules, or regulations not so suspended, on the expiration of thirty days from the time of filing the same with the commission, or of such lesser time as the commission may grant, shall go into effect and be the established and effective rates, classifications, contracts, practices, rules, and regulations, subject to the power of the commission, after a hearing had on its own motion or upon complaint, to alter or modify the same.

Approved April 1, 1987  
Filed April 2, 1987

## CHAPTER 565

SENATE BILL NO. 2561  
(Senators Kelsh, Reiten, Thane)  
(Representatives Shockman, Shaw, Tollefson)  
(Approved by the Committee on Delayed Bills)

## RAILROAD RIGHT OF WAY ACQUISITION

AN ACT to create and enact two new sections to chapter 49-09 of the North Dakota Century Code, relating to acquisition of railroad rights of way; and to amend and reenact section 49-09-11.7 of the North Dakota Century Code, relating to the rulemaking authority of the public service commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-09-11.7 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-09-11.7. Rules for enforcement. The commission ~~is authorized~~ ~~to~~ may adopt rules, in accordance with chapter 28-32, consistent with and necessary for the enforcement of sections 49-09-11.1 through 49-09-11.4, and sections 2 and 3 of this Act.

SECTION 2. A new section to chapter 49-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Identification of railroad rights of way - Duties of commission. The commission shall identify operating railroad rights of way in this state which may be sold, transferred, or leased. The commission shall report periodically to the legislative audit and fiscal review committee on the commission's performance of the duties imposed on it under this section.

SECTION 3. A new section to chapter 49-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Acquisition of right of way. An operating right of way described in section 2 of this Act may be acquired in accordance with this section. That acquisition is subject to the following requirements:

1. Each carrier or other entity intending to acquire a railroad right of way shall file a notice of intent to do so with the commission, if any of the following applies:
  - a. The acquisition would be by a party that is not a railroad carrier, and would be of rail property that would be operated by a third party.
  - b. The operation would be by a new carrier and of rail property acquired by a third party.
  - c. There would be a change of operators on the line.
2. The notice required under subsection 1 must designate the complete private or corporate identity of the acquiring party, the complete identity of the divesting carrier, and a thorough description of the line involved. The notice must include financial information as to the acquiring entity. These documents are confidential and may not be divulged by the commission to any party.
3. An acquiring or divesting carrier shall attend conferences with the commission on reasonable notice, and shall respond to all questions and requests for information which are reasonably related, or may lead to information reasonably related, to the issue of whether the proposed transaction is consistent with law.

Approved April 21, 1987

Filed April 22, 1987

## CHAPTER 566

SENATE BILL NO. 2157  
(Committee on Transportation)  
(At the request of the Public Service Commission)

### LIGNITE TRANSPORTATION

AN ACT to repeal chapter 49-10 of the North Dakota Century Code, relating to the transportation of lignite by motor carriers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. REPEAL. Chapter 49-10 of the North Dakota Century Code is hereby repealed.

Approved March 20, 1987  
Filed March 23, 1987

## CHAPTER 567

HOUSE BILL NO. 1241  
(Committee on Transportation)  
(At the request of the Public Service Commission)

**MOTOR CARRIER REGULATION**

AN ACT to amend and reenact sections 49-18-06, 49-18-08, 49-18-13, 49-18-14, 49-18-15, and 49-18-18 of the North Dakota Century Code, relating to public service commission regulation of common motor carriers; and to repeal sections 49-18-21 and 49-18-46 of the North Dakota Century Code, relating to public service commission regulation of common motor carriers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-18-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-06. Public policy affecting motor transportation. All common motor carriers, special common motor carriers of buildings, and contract motor carriers are hereby declared to be affected with a public interest and to be subject to regulation as prescribed by this chapter and other applicable provisions of law. Among the purposes to be served are:

1. ~~To relieve the existing and future undue burdens upon the highways arising by reason of the use of such highways by motor vehicles for hire.~~
- 2- To protect the safety and welfare of the traveling and shipping public in their use of the highways.
- 3- 2. To encourage sound economic conditions of efficient and well-managed carriers.
- 4- 3. To promote safe, adequate, economical, and efficient transportation.
- 5- 4. To encourage the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competitive practices.

- 6- 5. To encourage the most productive use of equipment and energy resources.
- 7- 6. To encourage the establishment and maintenance of a sound, safe, and competitive privately owned motor carrier transportation system.

**SECTION 2. AMENDMENT.** Section 49-18-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**49-18-08. Regulation of common motor carriers by commission.** The commission shall supervise and regulate all common motor carriers of property or passengers as defined in section 49-18-01 and after hearing thereon shall:

1. Fix, alter, regulate, and determine just, fair, reasonable, and sufficient rates, fares, charges, and classifications;
2. Regulate the facilities, accounts, service, and safety of operations of each such carrier;
3. Regulate operating and time schedules so as to meet the needs of any community and so as to ensure adequate transportation service to the territory traversed served by such carrier;
4. Prevent unfair competition and unjust, discrimination, or preferences between common motor carriers;
5. Require the filing of annual and other reports, tariffs, and schedules, and other data by such common motor carriers;
6. Supervise and regulate such common motor carriers in all matters affecting the relations between such common motor carriers and the public to the end that comply with the provisions of this chapter may be fully and completely carried out; and
7. Have power and authority, by general order or otherwise, to prescribe Adopt rules and regulations in conformity with this chapter applicable to any and all such common motor carriers, and to do all things necessary to carry out and enforce the provisions of this chapter.

**SECTION 3. AMENDMENT.** Section 49-18-13 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**49-18-13. Notice of opportunity for hearing on application.** Upon the filing of an application for a certificate of public convenience and necessity or a contract motor carrier permit, the commission shall

cause mail notice of opportunity for hearing to be served by mail upon every common carrier which is operating, or which has applied for a certificate to operate, in the territory proposed to be served by the applicant, and on other interested parties as determined by the commission interested parties requesting the notice.

SECTION 4. AMENDMENT. Section 49-18-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-14. Factors to be considered by commission in granting certificate. Before granting a certificate to a common motor carrier, the commission shall take into consideration:

1. The need for service proposed by the applicant;
2. The increased cost of maintaining the highway concerned;
- 3- The effect on other existing transportation facilities;
- 4- 3. The fitness and ability of applicant to provide service;
- 5- 4. Adequacy of proposed service; and
- 6- 5. Such other information as the commission may deem appropriate.

If the commission finds that the transportation to be authorized by the certificate is not consistent with the public convenience and necessity the commission shall not grant such certificate.

SECTION 5. AMENDMENT. Section 49-18-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-15. Testimony - Issuance of certificate or permit - Conditions. Any common carrier or other party upon whom notice of opportunity for hearing shall be served may request an oral evidentiary hearing and may offer testimony for or against the granting of a certificate. However, as a condition for offering testimony opposing an application at an oral evidentiary hearing, such interested party must file a protest and a request for an oral evidentiary hearing with the commission and the applicant within twenty days of receipt of the notice for opportunity for hearing and must indicate the nature of the protest, along with a list of witnesses to be called by the protestant and the approximate time needed to present the protestant's case. Any other interested person may offer testimony for the granting of a certificate at such hearing. If the commission finds from the evidence that the public convenience and necessity require the proposed service or any part thereof, it may issue the certificate as prayed for, or may issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the right granted by the certificate such terms and conditions as in its judgment the public convenience and

necessity may require. Otherwise such certificate shall be denied. A party opposing an application may offer testimony at an oral hearing if it filed a protest and request for hearing with the commission and the applicant within twenty days of receipt of the notice. The protest must state the objection, the protestant's witnesses, and the time needed to present the protestant's case. A party supporting an application may offer testimony at the oral hearing. Based upon the evidence, the commission may grant or deny, in whole or in part, the certificate or permit requested.

SECTION 6. AMENDMENT. Section 49-18-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-18. Reasonable rates to be made by common motor carrier. All rates, fares, and charges made by any common motor carrier shall be just and reasonable, and shall not be unlawfully discriminatory, prejudicial, nor preferential. No such carrier shall charge, demand, collect, or receive for the transportation of passengers or property, or for any service in connection therewith, a remuneration which is more or less than, or different from, the rates, fares, and charges which legally have been established and filed with the commission, nor shall any such carrier refund and remit in any manner or by any device any portion of the rates, fares, and charges required to be collected by the tariffs on file with the commission or ordered by the commission at the rate set in its tariff and may not refund in any manner. Rate reductions may be filed with the commission effective on one or more day's notice without commission approval. The commission shall retain the right to suspend such rate reductions within thirty days of filing.

SECTION 7. REPEAL. Section 49-18-46 of the North Dakota Century Code, and section 49-18-21 of the 1985 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 27, 1987  
Filed March 30, 1987



## CHAPTER 568

HOUSE BILL NO. 1491  
(Koland)

## HIGH VOLTAGE OVERHEAD LINES

AN ACT to create and enact a new section to chapter 49-21.1 of the North Dakota Century Code, relating to work near high voltage overhead lines; and to amend and reenact sections 49-21.1-01, 49-21.1-04, and 49-21.1-05 of the North Dakota Century Code, relating to work near high voltage overhead lines.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-21.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21.1-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "High voltage" means a voltage in excess of six hundred ~~fifty~~ volts between conductors or between any single conductor and the ground.
2. "Overhead lines or overhead conductors" means ~~all bare or insulated~~ electrical conductors installed above the ground ~~excepting these, except~~ conductors ~~that are~~ deenergized and grounded or ~~that are~~ enclosed in ~~iron pipe protective conduit~~ or other metal covering ~~of equal strength~~.
3. "Person" means a person, firm, corporation, or association, individually or through an agent or employee, or a person acting as an agent or employee of any person, firm, corporation, or association.

SECTION 2. A new section to chapter 49-21.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Work near high voltage overhead lines - Safety requirements - Notice - Costs. If any work is performed within six feet [1.83 meters] of any high voltage overhead line, or if mechanical

equipment or machinery used near high voltage overhead lines is capable of motion to within ten feet [3.05 meters] of any high voltage overhead line, the person responsible for the work shall notify the operator of the high voltage overhead line of the intent to work near the line. The work may be pursued only after the person and the operator of the line have provided protection for endangered persons by mechanical or insulated barriers, by deenergizing and grounding the line, or by temporary relocation of the line. The person working near the overhead line must pay the operator actual expenses necessary to meet the requirements of this chapter, except that the operator of the line is responsible for the cost if the line was installed closer to an existing fixture or structure than the minimum clearance required by the latest edition of the national electrical safety code, as adopted by the public service commission. The operator of the line need not take the precautions until the person working near the line pays the necessary expenses. Within five business days after payment of those expenses, or as otherwise agreed upon in writing by the person responsible for the work, the operator of the line shall complete the arrangements for protection of endangered persons.

**SECTION 3. AMENDMENT.** Section 49-21.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21.1-04. Penalty. Every Any person, firm, corporation, association, or any agent or employee of any such person, firm, corporation, or association who violates any of the provisions of this chapter shall be guilty of an infraction is subject to a civil penalty not to exceed one thousand dollars. The civil penalty may be recovered by action prosecuted by the state's attorney of the county where the violation occurred.

**SECTION 4. AMENDMENT.** Section 49-21.1-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**49-21.1-05. Exceptions.** This chapter shall does not apply to:

1. Construction, reconstruction, operation, or maintenance of any high voltage overhead conductor, supporting structure, or appurtenances for the support or operation of a high voltage conductor by persons authorized by the owner or operator.
2. Work ~~being done~~ on telecommunications, coaxial, signaling, and other communication circuits or their supporting structures, or other circuits and their supporting structures which are not high voltage ~~as defined in section 49-21-1-01.~~
3. The operation or maintenance of ~~any~~ railroad equipment or vehicles ~~traveling or moving upon~~ on fixed rails or railroad right of way.

4. Work by any employee of an industrial plant on the electrical system of the plant.
5. Work by any employee of an electrical or communications contractor performed under the employer's supervision.
6. The operation of highway vehicles, agricultural equipment, or agricultural aircraft which in normal use may incidentally pass within the ten-foot [3.05-meter] clearance limitation.
7. Governmental entities responding to an emergency situation.
8. Work by any employee of a surface coal mining company in the course of coal mining activities.
9. The state and its agencies.

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