CHAPTER 49-03
ELECTRIC UTILITY FRANCHISE

49-03-01. Certificate of public convenience and necessity - Secured by electric public utility.

1. An electric public utility may not begin construction or operation of a public utility plant or system, or of an extension of a plant or system without first obtaining from the commission a certificate that public convenience and necessity require or will require the construction and operation. This section does not require an electric public utility to secure a certificate for an extension within any municipality within which the electric public utility has lawfully commenced operations. If any electric public utility in constructing or extending its line, plant, or system, unreasonably interferes with or is about to interfere unreasonably with the service or system of any other electric public utility, or any electric cooperative corporation, the commission, on complaint of the electric public utility or the electric cooperative corporation claiming to be injuriously affected, after notice and hearing as provided in this title, may order enforcement of this section with respect to the offending electric public utility and prescribe just and reasonable terms and conditions.
2. An electric transmission provider may not begin construction or operation of an electric transmission line interconnecting with an existing electric transmission line owned or operated by an electric public utility without first obtaining a certificate that public convenience and necessity require or will require the construction or operation.

49-03-01.1. Limitation on electric transmission and distribution lines, extensions, and service by electric public utilities.

No electric public utility henceforth shall begin in the construction or operation of a public utility plant or system or extension thereof without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction and operation, nor shall such public utility henceforth extend its electric transmission or distribution lines beyond or outside of the corporate limits of any municipality, nor shall it serve any customer where the place to be served is not located within the corporate limits of a municipality, unless and until, after application, such electric public utility has obtained an order from the commission authorizing such extension and service and a certificate that public convenience and necessity require that permission be given to extend such lines and to serve such customer.

49-03-01.2. Limitation on issuance of orders and certificates of public convenience and necessity to electric public utilities.

Repealed by S.L. 1979, ch. 187, § 108.

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

Sections 49-03-01 through 49-03-01.5 shall not be construed to require any such electric public utility to secure such order or certificate for an extension of its electric distribution lines within the corporate limits of any municipality within which it has lawfully commenced operations; provided, however, that such extension or extensions shall not interfere with existing services provided by a rural electric cooperative or another electric public utility within such municipality; and provided duplication of services is not deemed unreasonable by the commission.

Sections 49-03-01 through 49-03-01.5 shall not be construed to require an electric public utility to discontinue service to customers thereof whose places receiving service are located outside the corporate limits of a municipality on July 1, 1965; provided, however, that within ninety days after July 1, 1965, any electric public utility furnishing service to customers whose places receiving service are located outside the corporate limits of a municipality shall file with the commission a complete map or maps of its electric distribution system showing all places in

North Dakota which are located outside the corporate limits of a municipality and which are receiving its service as of July 1, 1965. After ninety days from July 1, 1965, unless a customer whose place being served is located outside the corporate limits of a municipality is shown on said map or maps, it shall be conclusively presumed that such customer was not being served on July 1, 1965, and cannot be served until after compliance with the provisions of section 49-03-01.1.

49-03-01.4. Enforcement of act.

1. If any electric public utility or electric transmission provider violates or threatens to violate any of the provisions of sections 49-03-01 through 49-03-01.5 or interferes with or threatens to interfere with the service or system of any other electric public utility or rural electric cooperative, the commission, after complaint, notice, and hearing as provided in chapter 28-32, shall make its order restraining and enjoining the electric public utility or electric transmission provider from constructing or extending its interfering lines, plant, or system. In addition to the restraint imposed, the commission shall prescribe any terms and conditions as the commission deems reasonable and proper.
2. This section does not prohibit or limit any person, who has been injured in the person's business or property by reason of a violation of sections 49-03-01 through 49-03-01.5 by any electric public utility, electric transmission provider, or electric cooperative corporation, from bringing an action for damages in any district court of this state to recover such damages.

49-03-01.5. Definitions.

As used in sections 49-03-01 through 49-03-01.5:

1. "Electric provider" means either an electric public utility or a rural electric cooperative.
2. "Electric public utility" means a privately owned supplier of electricity offering to supply or supplying electricity to the general public. The term does not include a person that uses an electric vehicle charging station to resell electricity to the public if the reseller has procured electricity from an electric service provider that is authorized to engage in the retail sale of electricity within the service area in which the electric vehicle charging service is provided, and the resale is for the charging of electric vehicles exclusively.
3. "Electric transmission line" means facilities for conducting electric energy at a design voltage of one hundred fifteen kilovolts or greater phase to phase and more than one mile [1.61 kilometers] long.
4. "Electric transmission provider" means an owner or operator, other than a rural electric cooperative, of a transmission line the costs of which are recovered directly or indirectly through transmission charges to an electric public utility.
5. "Person" includes an individual, an electric public utility, a corporation, a limited liability company, an association, or a rural electric cooperative.
6. "Rural electric cooperative" includes any electric cooperative organized under chapter 10-13. An electric cooperative, composed of members as prescribed by law, shall not be deemed to be an electric public utility. The term does not include a person that uses an electric vehicle charging station to resell electricity to the public if the reseller has procured electricity from an electric service provider that is authorized to engage in the retail sale of electricity within the service area in which the electric vehicle charging service is provided, and the resale is for the charging of electric vehicles exclusively.
7. "Service area" means a defined geographic area containing existing or future service locations established by an agreement among electric providers and approved by the commission.
8. "Service area agreement" means an agreement between electric providers establishing service areas and designating service locations to be served by each provider under section 49-03-06.
9. "Service location" means the structures, facilities, or improvements on a parcel of real property to which electric service may be provided.

49-03-02. Prerequisites to issuance of certificate of public convenience and necessity.

1. Before any certificate may issue under this chapter, a certified copy of the articles of incorporation or charter of the utility, if the applicant is a corporation, or a certified copy of the articles of organization of the utility, if the applicant is a limited liability company, must be filed with the commission. At the hearing on the application after notice as provided in this title, the utility shall submit evidence showing that the applicant has received the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, if required, or has or is about to make application for authority. The commission shall have the power, after notice and hearing, to:
   a. Issue the certificate prayed for;
   b. Refuse to issue the certificate;
   c. Issue the certificate for the construction or operation of a portion only of the contemplated facility, line, plant, system, or extension of the same; or
   d. Issue the certificate for the partial exercise of the right or privilege sought, conditioned upon the applicant's having secured or upon the applicant's securing the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, and may attach to the exercise of the rights granted by any certificate terms and conditions as in the judgment of the commission the public convenience and necessity may require.
2. Notwithstanding any other provision of this section, the commission may grant a certificate if an interested party, including any local electric cooperative, has not requested a hearing on an application after receiving at least twenty days' notice of opportunity to request such hearing. In addition, the commission may not issue a certificate to an electric transmission provider for construction or operation of an electric transmission line that will interconnect with an electric transmission line owned or operated by an electric public utility if the electric public utility is willing and able to construct and operate a similar electric transmission line.
3. The commission may impose an application fee of up to one hundred seventy-five thousand dollars for an application under this chapter. With the approval of the emergency commission, the commission may impose an additional amount. The commission shall pay the expenses of processing an application under this chapter from the application fee paid by the public utility in accordance with section 49-02-02.

49-03-03. Franchise not to be exercised without certificate.

A public utility or electric transmission provider may not exercise any right or privilege under any franchise or certificate the exercise of which has been suspended or discontinued for more than one year, without first obtaining from the commission a certificate that public convenience and necessity require the exercise of the right or privilege.

49-03-04. Replacement or renewal of franchise - Certificate of public convenience and necessity not necessary.

A public utility or electric transmission provider does not need to secure a renewal of the certificate of public convenience and necessity under this chapter in order to exercise rights under an ordinance if either has not suspended operation of its plant and where the franchise merely replaces or renews an expiring or expired franchise.

49-03-05. Complaint upon violation of chapter.

If a public utility or electric transmission provider engages or is about to engage in construction or operation as described in this chapter without having secured a certificate of public convenience and necessity as required by the provisions of this chapter, or if a public utility or electric transmission provider constructs or extends its line, plant, or system, or supplies, or offers to supply electric service in violation of this chapter, any interested municipality, public authority, utility, electric cooperative corporation, or person, may file a complaint with the commission. The commission acting on the complaint, or upon its own

motion without complaint, with or without notice, may make its order requiring the public utility complained of to cease and desist from the construction or operation or other prohibited activity until the further order of the commission. Upon hearing had after due notice given, the commission shall make an order with respect to the public utility or electric transmission provider and prescribe terms and conditions as are just and reasonable.

49-03-06. Service agreements among electric providers.

1. This section authorizing service area agreements is intended to encourage harmony and operational efficiency among electric providers, promote safety, discourage unreasonable duplication of electric facilities, assure adequate and reliable electric service for all consumers and territories within the state, and provide antitrust immunity to electric providers that negotiate service area agreements in accordance with this section.
2. An electric provider may enter into agreements with other electric providers having adjacent or intermingled electric supply facilities for the purpose of establishing service areas and designating the service locations to be served by each electric provider. The designated service locations may include all or any portion of the service locations within a service area that are being served by the electric providers at the time of the agreement, or that could be economically served by the then existing facilities of the electric providers, or by reasonable and economic extensions of such existing facilities. The service area agreement must provide that it is subject to the continuing jurisdiction of the commission to settle all service location disputes between the contracting electric providers arising under the agreement.
3. Electric providers may enter into written agreements for the sale, transfer, exchange, or lease of equipment or facilities used to serve the areas that are the subject of a service area agreement. Any sale, exchange, transfer, or lease of equipment, plant, or facilities made under this subsection is subject to sections 49-04-05 and 10-13-08.1.
4. A service area agreement shall be promptly filed with the commission which must issue a notice of the filing within thirty days. Upon the commission's order, or if an affected electric consumer or electric provider requests a hearing within twenty days of the notice, the commission shall hold a hearing on the service area agreement.
5. The public service commission shall approve or disapprove a service area agreement. The commission may not revise a service area agreement except by mutual consent of the parties to the agreement.
6. A service area agreement shall be valid and enforceable if the commission, after notice as provided in subsection 4, approves the agreement and finds that the agreement complies with this section and is in the public interest.
7. Upon approval of a service area agreement, the commission shall issue its order and any necessary certificates of public convenience and necessity authorizing an electric public utility to extend its plant and system and to provide electric service to service locations within the service areas.
8. The governing board of a city may require approval or disapproval of a service area agreement between electric providers to the extent the agreement encompasses service locations within the city. Nothing in this chapter shall be construed to limit the authority of a governing board of a city to exercise its franchise authority under section 40-05-01.