

## **CHAPTER 40-33.2 MUNICIPAL POWER AGENCIES**

### **40-33.2-01. Findings and purpose.**

The purpose of this chapter is to provide a means for North Dakota cities which operate a utility under law for the local distribution of electric energy to secure, by individual or joint action among themselves or by contract with other public or private entities within or outside the state, an adequate, economical, and reliable supply of energy. To accomplish this purpose it is necessary for cities to have the authority, by agreement between two or more of their number, to create a separate municipal corporation with the power and authority to finance and acquire facilities for the generation or transmission of electric energy or interests in those facilities or rights to part or all of the capacity thereof. It is determined that an adequate, economical, and reliable supply of electric energy is essential to the orderly growth and prosperity of communities, and a shortage of electrical energy is inimical to the safety, health, welfare, and prosperity of residents of the state and to the sound growth and development of its communities. Such a shortage exists and is expected to continue and increase because of the difficulty in the operation of municipal generating plants, of achieving economies of size, limiting environmental impacts, and providing for peak loads. Accordingly, it is determined that the exercise of the authority granted herein will benefit the people of the state and serve a valid public purpose in improving and otherwise promoting their health, welfare, and prosperity.

### **40-33.2-02. Definitions.**

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

1. "Agency agreement" means a written agreement between two or more cities establishing a municipal power agency.
2. "City" means a city organized under the laws of this state and authorized to engage in the local distribution and sale of electric energy, either individually or as a member of a municipal power agency.
3. "City council" means the city council or the board of city commissioners, as the case may be, of the city concerned or affected.
4. "Distribution" means the conveyance of electric energy to retail consumers from a transmission system or from a generation facility situated within or in the immediate vicinity of a city.
5. "Generation" means the production of electricity by any means and the acquisition of fuel of any kind for that purpose, and includes the acquisition of fuel deposits and the acquisition or construction and operation of facilities for extracting fuel from natural deposits, for converting it for use in another form, for burning it in place, and for transportation and storage.
6. "Governing body", with respect to a city, means the city council or, if another board, commission, or body is empowered by law or its charter or by resolution of the city council to establish and regulate rates and charges for the distribution of electric energy within the city, the board, commission, or body shall be deemed to be the "governing body". When the levy of a tax or the incurring of an obligation payable from taxes or any other action of the board, commission, or body requires the concurrence, approval, or independent action of the city council or another body under the city's charter or any other law, the action shall not be taken until concurrence or approval is received or independent action is taken and, if required under the city's charter or any other law, approved by not less than sixty percent of the qualified electors voting on the question at any regular or special election. The concurrence of the city council or other elected body charged with the general management of a city shall be required, prior to the adoption by the city of any resolution approving an agency agreement.
7. "Municipal power agency" means a separate political subdivision and municipal corporation created by agreement between two or more cities, and approved by not less than sixty percent of the qualified electors voting on the question at any regular or special election in each of those cities, pursuant to section 40-33.2-03 to exercise any of the powers of acquisition, construction, reconstruction, operation, repair, extension,

or improvement of electric generation or transmission facilities or the acquisition of any interest therein or any right to part or all of the capacity thereof.

8. "Person" means an individual, public agency, or a private corporation, limited liability company, firm, partnership, cooperative association, or business trust of any nature whatsoever, organized and existing under the laws of any state or the United States or under the laws of the Dominion of Canada or any province or political subdivision thereof.
9. "Project" means any plant, works, system, facilities, and property of any nature whatsoever, together with all parts thereof and appurtenances thereto, used or useful in the generation, production, transmission, purchase, sale, exchange, or interchange of electric energy or any interest therein or capacity thereof.
10. "Public agency" means any city or other municipal corporation, political subdivision, governmental unit, or public corporation created by or pursuant to the laws of this state or of another state or of the United States or any municipal corporation, political subdivision, governmental unit, or public corporation created by or pursuant to the laws of the Dominion of Canada or any province thereof, or other body declared by the laws of any state or the United States or the Dominion of Canada, or any province thereof to be a department, agency, or instrumentality thereof.
11. "Real property" means lands, structures, franchises, and interests in land, including lands under water, riparian rights, fees simple absolute, lesser interests such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments, legal and equitable estates, interests, and rights, terms of years, liens on real property by way of judgments, mortgages, or otherwise, and claims for damages to real property.
12. "Transmission" means the transfer of electric energy from a generating facility to or between one or more cities or municipal power agencies or other persons with whom they may contract, and includes conversion of current and voltage and transfer of energy from another source in exchange for energy supplied by such contracting parties, but does not include distribution.

#### **40-33.2-03. Municipal power agencies - Incorporation.**

1. Any two or more cities may form a municipal power agency by executing an agency agreement authorized by a resolution of the governing body of each city and approved by not less than sixty percent of the qualified electors voting on the question at any regular or special election in each of those cities. The agency agreement when completed shall state:
  - a. That the municipal power agency is created and incorporated under this chapter as a municipal corporation and a political subdivision of the state.
  - b. The name of the agency, which shall include the words "municipal power agency".
  - c. The names of the cities which have approved the agency agreement and are the initial members of the municipal power agency.
  - d. The names and addresses of the persons initially appointed by the resolutions approving the agreement to act as the representatives of the cities, respectively, in the exercise of their powers as members.
  - e. Any limitations upon the terms of representatives of the respective member cities; provided, that such representatives shall always be selected and vacancies in their offices declared and filled by resolutions of the governing bodies of the respective cities.
  - f. The names of the initial board of directors of the municipal power agency, who shall be not less than three persons who are representatives of the respective member cities, selected by such representatives. The agreement shall provide that each member city shall be represented on the board of directors.
  - g. The location of the initial registered office of the municipal power agency.
  - h. That the cities which are members of the municipal power agency are not liable for its obligations.

- i. Any other provision for regulating the business of the municipal power agency or the conduct of its affairs which may be agreed by the member cities, consistent with this chapter.
2. The agency agreement and a certified copy of the resolution of the governing body of each city shall be filed for record with the secretary of state. If the agency agreement conforms to the requirements of this section, the secretary of state shall record it and issue and record a certificate of incorporation. The certificate shall state the name of the municipal power agency and the fact and date of incorporation. Upon the issuance of the certificate of incorporation, the municipal power agency shall exist as a municipal corporation and a political subdivision of the state. The certificate of incorporation shall be conclusive evidence of the fact of incorporation.
3. The initial board of directors of the municipal power agency, unless otherwise provided by the agency agreement, shall be elected prior to the filing of the agreement by a majority vote of the persons acting as representatives of the member cities, from among their members. After commencement of existence, the first meeting of the board of directors shall be held at the call of the directors, after notice, for the purpose of adopting the initial bylaws, electing officers, and for any other business that comes before the meeting.
4. Unless otherwise provided by the agency agreement, the bylaws of the municipal power agency, and any amendments thereto, shall be proposed by the board of directors and shall be adopted by a majority vote of the representatives of the member cities, at a meeting held after notice. The initial agency agreement or the initial bylaws shall not take effect until approved by not less than sixty percent of the qualified electors voting on the question at any regular or special election in each of the member cities. The agency agreement or the bylaws shall state:
  - a. The qualifications of member cities, and any limitations upon their number.
  - b. Any conditions of membership.
  - c. Manner and time of calling regular meetings of representatives of member cities.
  - d. Manner and conditions of terminating membership.
  - e. Such other provisions for regulating the affairs of the municipal power agency as the representatives of the member cities shall determine to be necessary.
5. Every municipal power agency shall maintain an office in the state to be known as its registered office. When a municipal power agency desires to change the location of its registered office, it shall file with the secretary of state a certificate of change of location of registered office, stating the new location and the effective date of change. When the certificate of change of location has been duly filed, the municipal power agency may make the change without any further action.
6. Each of the directors shall hold office for the term selected and until a successor has been selected and has qualified. Directors shall discharge their duties in good faith and with diligence and care. The agency agreement or the bylaws may prescribe the number, term of office, powers, authority, and duties of directors, the time and place of their meetings, and other regulations concerning directors. Except when the agency agreement or bylaws prescribe otherwise, the term of office of a director shall be for one year. Except when the agency agreement or bylaws prescribe otherwise, a meeting of the board of directors may be held at any place, within or without the state, designated by the board, after notice, and an act of the majority of the directors present at a meeting at which a quorum is present is the act of the municipal power agency. Any vacancy occurring on the board shall be filled in the same manner and by a representative of the same city as on the initial board.
7. Except when the agency agreement or bylaws prescribe otherwise, the board of directors shall appoint a president from its membership, and a secretary and treasurer, and any other officers or agents deemed to be necessary, who need not be directors or representatives of the member cities. Except when the agency agreement or bylaws prescribe otherwise, an officer may be removed without cause by the board of directors. Officers of the municipal power agency shall have the authority and duties in the management of the business of the municipal power agency that the agency

agreement or bylaws prescribe, or in the absence of such prescription, as the board of directors determines.

8. Except as otherwise provided in the agency agreement or the bylaws, the duly authorized representatives of each member city shall act as, and vote on behalf of, such city. Except when the agency agreement or bylaws provide otherwise, representatives of the member cities shall hold at least one meeting each year for the election of directors and for the transaction of any other business. Except when the agency agreement or bylaws prescribe otherwise, special meetings of the representatives may be called for any purpose upon written request by any representative to the president or secretary to call the meeting. Such officer shall give notice of the meeting to be held within the time period prescribed by the agency agreement or the bylaws. Unless the agency agreement or bylaws provide for a different percentage, a quorum for a meeting of the representatives of the member cities is a majority of the total representatives of the member cities and a quorum for meetings of the board of directors is a majority of the membership of such board.
9. The agency agreement may be amended as proposed at any meeting of the representatives of the member cities for which notice, stating the purpose, shall be given to each representative and unless the agency agreement or bylaws provide otherwise, shall become effective when ratified by resolutions of the governing bodies of a majority of the member cities and approved by not less than sixty percent of the qualified electors voting on the question at any regular or special election in each of those member cities constituting the majority. Each amendment and the resolutions of the governing bodies approving it shall be filed for record with the secretary of state.
10. Each member city shall have full power and authority, within budgetary limits applicable to it, to appropriate money for the payment of expenses of the formation of the municipal power agency and of its representative or representatives in exercising its functions as a member of the municipal power agency.

#### **40-33.2-04. Municipal power agencies - Powers.**

A municipal power agency shall be a municipal corporation and a political subdivision of the state and shall have all of the powers enumerated in this section, in furtherance of the purpose stated in section 40-33.2-01, and in the exercise thereof shall be deemed to be performing an essential governmental function. All powers of the municipal power agency shall be exercised by its board of directors, unless otherwise provided by the agency agreement or bylaws. A municipal power agency:

1. May plan, acquire, construct, reconstruct, operate, maintain, repair, extend, or improve one or more projects within or outside the state or acquire any interest in or any right to capacity of a project and may act as agent, or designate one or more of the other persons participating in a project to act as its agent, in connection with the planning, acquisition, construction, reconstruction, operation, maintenance, repair, extension, or improvement of the project.
2. May investigate the desirability of and necessity for additional sources and supplies of electric energy and make studies, surveys, and estimates as may be necessary to determine the feasibility and cost thereof.
3. May cooperate with other persons in the development of sources and supplies of electric energy.
4. May apply to any public agency for consents, authorizations, or approvals required for any project within its powers and take all actions necessary to comply with the conditions thereof.
5. May perform any act authorized by this chapter through or by means of its officers, agents, or employees or by contract with any person.
6. May acquire, hold, use, and dispose of income, revenues, funds, and money.
7. May acquire, own, hire, use, operate, lease as lessor or lessee, and dispose of personal property or real property, and interests in real property, and make improvements on real property.

8. May grant the use by franchise, lease, or otherwise and make charges for the use of any property or facility owned or controlled by it.
9. May borrow money and issue negotiable bonds, notes, or other debt instruments secured or unsecured, in accordance with section 40-33.2-05.
10. Subject to any agreement with bondholders or noteholders, may invest money of the municipal power agency not required for immediate use, including proceeds from the sale of any bonds or notes, in such obligations, securities, and other investments as the municipal power agency shall deem prudent, notwithstanding the provisions of any other law relating to the investment of public funds.
11. May determine the location and character of, and all other matters in connection with, any and all projects it is authorized to acquire, hold, establish, effectuate, operate, or control.
12. May contract with any person, within or outside the state and within or outside the United States, for the construction of any project or for the sale or transmission of electric energy generated by any project, or for any interest therein or any right to capacity thereof, on such terms and for such period of time as the municipal power agency determines.
13. May purchase, sell, exchange, or transmit electric energy within and outside the state and within or outside the United States, in such amounts as it shall determine to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, and may enter into agreements with any person with respect to that purchase, sale, exchange, or transmission, on such terms and for such period of time as its board of directors determines.
14. May procure insurance against any losses in connection with its property, operations, or assets in such amounts and from such insurers as it deems desirable.
15. May contract for and accept any gifts or grants or loans of funds or property or financial or other aid in any form from any person and may comply, subject to this chapter, with the terms and conditions thereof.
16. May mortgage, pledge, and grant a security interest in any or all of its property to secure the payment of its bonds, notes, or other obligations or contracts.
17. Shall pay to each taxing authority within whose taxing jurisdiction its property is situated, in lieu of taxes on its property, the amounts of the taxes which would be payable if its property were owned by a private person. For this purpose, the property of a municipal power agency shall be valued in the same manner and by the same procedure as the property of private utility companies.
18. May sue and be sued, complain, and defend in its agency name.
19. May exercise all other powers not inconsistent with the Constitution of North Dakota or the Constitution of the United States, which powers may be reasonably necessary or appropriate for or incidental to the effectuation of its authorized purposes or to the exercise of any of the powers enumerated in this chapter, and generally may exercise in connection with its properties and affairs, and in connection with property within its control, any and all powers which might be exercised by an individual or a private corporation in connection with similar property and affairs.

#### **40-33.2-05. Bonds and notes.**

1. A municipal power agency may from time to time issue its bonds or notes in such principal amounts as the municipal power agency shall deem necessary to provide sufficient funds to carry out any of its corporate purposes and powers, including the acquisition or construction of any project to be owned or leased, as lessor or lessee, by the municipal power agency, or the acquisition of any interest therein or any right to capacity thereof, the funding or refunding of the principal of, or interest or redemption premiums on, any bonds or notes issued by it whether or not such bonds or notes or interest to be funded or refunded have or have not become due, the establishment or increase of reserves to secure or to pay such bonds or notes or interest thereon, and the payment of all other costs or expenses of the municipal power agency incident to and necessary or convenient to carry out its corporate purposes and powers.

2. Except as may be otherwise expressly provided by this chapter or by resolution of the municipal power agency, every issue of bonds or notes of the agency shall be payable out of any revenues or funds of the agency, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues or funds. A municipal power agency may issue any types of bonds or notes as it may determine, including bonds or notes as to which the principal and interest are payable exclusively from the revenues from one or more projects, or from an interest therein or a right to capacity thereof, or from one or more revenue-producing contracts made by the municipal power agency with any person, or from its revenues generally. Any bonds or notes may be additionally secured by a pledge of any grant, subsidy, or contribution from any person or a pledge of any income or revenues, funds, or moneys of the municipal power agency from any source. Any pledge of revenues or other funds made by a municipal power agency pursuant to this chapter shall be valid and binding from the date the pledge is made. The revenues and other funds pledged and held or thereafter received by the agency or any fiduciary shall immediately be subject to the lien of the pledge without physical delivery or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the agency without regard to whether the parties have notice. Neither the resolution, trust agreement, or security agreement by which a pledge is created nor any financing statement, continuation statement, or other instrument relating to the pledge need be filed or recorded in any manner. Subsection 10 shall not apply to any pledge of or grant of a security interest in any revenues or funds of a municipal power agency to secure any bonds or notes issued by a municipal power agency.
3. All bonds and notes of a municipal power agency shall be negotiable within the meaning and for all the purposes of title 41, subject only to any registration requirement.
4. Except when the agency agreement or bylaws prescribe otherwise, bonds or notes of a municipal power agency shall be authorized by resolution of its board of directors and approved by not less than sixty percent of the qualified electors in each of the member cities voting on the question at any regular or special election and may be issued under such resolution or under a trust indenture or other security agreement, in one or more series, and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such conversion, registration, and exchange privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment at such place or places within or outside the state or within or outside the United States, be subject to such terms of redemption with or without premiums, and contain or be subject to such other terms as the resolution, trust indenture, or other security agreement may provide, and shall not be restricted by the provisions of any other law limiting the amounts, maturities, interest rates, or other terms of obligations of cities, public agencies, or private persons.
5. Any bonds or notes may be issued and delivered, notwithstanding that one or more of the officers executing them shall have ceased to hold office at the time when the bonds or notes are actually delivered.
6. Pending preparation of definitive bonds, a municipal power agency may issue temporary bonds which shall be exchanged for the definitive bonds.
7. Bonds or notes of a municipal power agency may be sold at public or private sale for such price or prices and in such manner as the agency determines.
8. Bonds or notes of a municipal power agency may be issued under the provisions of this chapter, and rents, rates, and charges may be established pursuant to section 40-33.2-07 and pledged for the security of bonds or notes and interest and redemption premiums thereon, without obtaining the consent of any department, division, commission, board, bureau, or agency of this state and without any other proceeding or the happening of any other condition or occurrence except as specifically required by this chapter.

9. The resolution, trust indenture, or other security agreement under which any bonds or notes are issued shall constitute a contract with the holders of the bonds or notes, and may contain provisions, among others, prescribing:
  - a. The terms and provisions of the bonds or notes.
  - b. The mortgage or pledge of and the grant of a security interest in any property and all or any part of the revenue from any project or any revenue-producing contract made by the municipal power agency with any person to secure the payment of bonds or notes, subject to any agreements with the holders of bonds or notes which might then exist.
  - c. The custody, collection, securing, investment, and payment of any revenues, assets, money, funds, or property with respect to which the municipal power agency may have any rights or interest.
  - d. The rates or charges for electric energy sold by, or services rendered by, the municipal power agency, the amount to be raised by the rates or charges, and the use and disposition of any or all revenue.
  - e. The creation of reserves or sinking funds and the regulation and disposition thereof.
  - f. The purposes to which the proceeds from the sale of any bonds or notes then or thereafter to be issued may be applied, and the pledge of the proceeds to secure the payment of the bonds or notes.
  - g. Limitations on the issuance of any additional bonds or notes, the terms upon which additional bonds or notes may be issued and secured, and the refunding of outstanding bonds or notes.
  - h. The rank or priority of any bonds or notes with respect to any lien or security.
  - i. The creation of special funds or moneys to be held in trust or otherwise for operating expenses, payment, or redemption of bonds or notes, reserves, or other purposes, and the use and disposition of moneys held in these funds.
  - j. The procedure by which the terms of any contract with or for the benefit of the holders of bonds or notes may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto, and the manner in which consent may be given.
  - k. The definition of the acts or omissions to act which shall constitute a default in the duties of the municipal power agency to holders of its bonds or notes and the rights and remedies of the holders in the event of default, including, if the municipal power agency so determines, the right to accelerate the due date of the bonds or notes or the right to appoint a receiver or receivers of the property or revenues thereof subject to the lien of the resolution, trust indenture, or other security agreement.
  - l. Any other or additional agreements with or for the benefit of the holders of bonds or notes or any covenants or restrictions necessary or desirable to safeguard the interests of the holders.
  - m. The custody of any of its properties or investments, the safekeeping thereof, the insurance to be carried thereon, and the use and disposition of insurance proceeds.
  - n. The vesting in a trustee or trustees, within or outside the state, of such properties, rights, powers, and duties in trust as the municipal power agency may determine or the limiting or abrogating of the rights of the holders of any bonds or notes to appoint a trustee, or the limiting of the rights, powers, and duties of such trustee.
  - o. The appointment of and the establishment of the duties and obligations of any paying agent or other fiduciary within or outside the state.
10. For the security of bonds or notes issued or to be issued by a municipal power agency, the municipal power agency may, subject to approval by not less than sixty percent of the qualified electors in each of the member cities voting on the question at any regular or special election, mortgage or execute deeds of trust of the whole or any part of its property and franchises. Such mortgages or deeds of trust may by their terms include after-acquired property and shall be valid and effectual for that purpose as if

such after-acquired property were owned by, and in possession of, the municipal power agency giving such mortgage or deed of trust at the time of the execution thereof. Any mortgage, or deed of trust covering the whole or any part of easements or other interests in real estate less than fee simple used in the generation or transmission of electric power, and covering fixtures annexed to the real estate in which the municipal power agency has an easement or other less than fee simple interest, may be filed in the office of the secretary of state with or as part of the financing statement covering the fixtures. Such filing of the mortgage or deed of trust shall have the same effect, and shall be notice of the rights and interest of the mortgagee or trustee in such easements and other less than fee simple interests in real estate and in such fixtures to the same extent as if such mortgage or deed of trust were duly recorded in the office of the recorder of the county or counties in which the real estate subject to such easements or less than fee simple interests is situated. Any such mortgage or deed of trust so filed shall be deemed to contain a sufficient description to give notice of the rights and interests of the mortgagee or trustee in the easements and other less than fee simple interests in the real estate used in the generation or transmission of electric power if such mortgage or deed of trust states that the securing includes rights of way of or generation or transmission systems of or lines of the municipal power agency, or all property owned by the municipal power agency. This subsection shall not apply to any real estate owned by the municipal power agency in fee simple. All filings required under title 41 to perfect a security interest against the personal property or fixtures of a municipal power agency shall be made and maintained in the office of the secretary of state.

11. Neither the officials, the directors, nor the members of a municipal power agency nor any person executing bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof. A municipal power agency shall have power to indemnify and to purchase and maintain insurance on behalf of any director, officer, employee, or agent of the municipal power agency in connection with any action or proceeding, other than an action by or in the right of the municipal power agency, by reason of the fact that the person's status as a director, officer, employee, or agent of the municipal power agency, or as a director, officer, employee, or agent of another entity at the municipal power agency's request, against expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with such action or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in the best interests of the municipal power agency, and with respect to any criminal action or proceeding, had no reason to believe the conduct was unlawful. No indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of duty to the municipal power agency unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. The termination of any action or proceeding in any manner shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the municipal power agency, and with respect to any criminal actions or proceedings, had reasonable cause to believe that the conduct was unlawful.
12. A municipal power agency shall have power to purchase, out of any funds available therefor, its bonds or notes, and to hold, pledge, cancel, or resell the bonds or notes, subject to and in accordance with any agreements with the holders.
13. The principal of and interest upon any bonds or notes issued by a municipal power agency shall be payable solely from the revenues or funds pledged or available for their payment as authorized in this chapter. Each bond and note shall contain a statement that the principal and interest is payable solely from revenues or funds of



the municipal power agency and that neither the state nor any political subdivision thereof, other than the municipal power agency, nor any city which is a member of the municipal power agency is obligated to pay the principal or interest and that neither the faith and credit nor the taxing power of the state or any political subdivision thereof or of any such city is pledged to the payment of the principal or interest on the bonds or notes. This subsection does not preclude the use of tax or other revenue by a city for payment of amounts due and performance of covenants under any contract of the city as provided in subsection 3 of section 40-33.2-08.

14. Bonds and notes of a municipal power agency issued under the provisions of this chapter and the income therefrom shall be exempt from all taxation by the state or any political subdivision thereof, excepting inheritance, estate, or transfer taxes.
15. Any holder of bonds or notes issued by a municipal power agency under the provisions of this chapter, and the trustee under any resolution, trust indenture, or other security agreement under which any bonds or notes are issued, except to the extent that the rights herein granted may be restricted by the resolution, trust indenture, or security agreement, may bring suit upon the bonds or notes and may, either at law or in equity, by suit, action, mandamus, or other proceedings, which may include the appointment of a receiver to take control of the business and properties of the municipal power agency, protect and enforce any or all of its rights granted hereunder or under the resolution, trust indenture, or security agreement, and may enforce and compel the performance of any or all duties and obligations under this chapter and any or all covenants or obligations under the resolution, trust indenture, or security agreement to be performed by the municipal power agency or by any officer thereof, including the fixing, charging, and collecting of rents, rates, fees, and charges.

#### **40-33.2-06. Eminent domain.**

Except as otherwise provided by this section, a municipal power agency may acquire all property that it deems necessary for carrying out the purposes of this chapter, whether in fee simple absolute or a lesser interest, by condemnation and the exercise of the power of eminent domain in accordance with chapter 32-15. A municipal power agency shall have no power of eminent domain with respect to any property owned by any person as part of a system, whether existing, under construction, or being planned, of facilities for the generation, transmission, or distribution of electric power.

#### **40-33.2-07. Rules and rates.**

A municipal power agency may make and enforce bylaws or rules which it deems necessary or desirable, and may establish, levy, and collect or may authorize, by contract, franchise, lease, or otherwise, the establishment, levying, and collection of rents, rates, and other charges for the services afforded by the municipal power agency. Rents, rates, and other charges shall be at least sufficient to meet the expenses thereof, including reasonable reserves, interest, and principal payments, including payments into one or more sinking funds for the retirement of principal. A municipal power agency may pledge its rates, rents, and other revenues, or any part thereof, as security for the repayment, with interest and redemption premiums, if any, of any moneys borrowed by it or advanced to it for any of its authorized purposes and as security for the payment of amounts due and owing by it under any contract.

#### **40-33.2-08. City powers.**

1. A city may by resolution of its governing body exercise any of the powers granted in this chapter to a municipal power agency, upon fulfillment of the conditions provided in this chapter for the exercise of the power, but without complying with the terms of section 40-33.2-03 relating to incorporation, and notwithstanding any provision of any city charter or any other law denying, limiting, or placing conditions upon the exercise of the power. Nothing in this section shall be construed to repeal any charter provision or law requiring an election or other condition precedent to the establishment after January 1, 1977, of a city electric energy distribution system.

2. Every resolution adopted in accordance with subsection 1 shall be published in the official newspaper of the city. No action may be brought and no defense may be interposed in an action brought more than thirty days after publication of the resolution, placing at issue the validity of any provision of the resolution or the power of the city to make any contract or to issue any bond, note, or other obligation authorized thereby.
3. Nothing in this chapter authorizes any city to issue general obligation bonds for any purposes specified in this chapter without approval of its electors or performance of other procedural conditions as may be required by its charter or the laws of this state. Notwithstanding any limitation contained in section 40-05-05, a city may, by resolution of its governing body and without approval of the electors or performance of other conditions provided in any charter or other law, enter into contracts with a municipal power agency or any other person for the purchase, sale, exchange, or transmission of electric energy and other services, on the terms and for the period of time as the resolution may provide. A city may appropriate and use tax and other revenues received to make payments due or to comply with covenants to be performed under any contract made by the city pursuant to this section or when acting as a municipal power agency, or any contract made by the city with a municipal power agency, as contemplated by this chapter, subject to the provisions of its charter and the laws of this state regarding budget and payment procedures and annual tax levy limitations.
4. Any contract made by a city pursuant to this section or when acting as a municipal power agency, or any contract made by a city with a municipal power agency, as contemplated by this chapter, may provide for the purchase of all or a portion of the capacity or output of one or more designated projects and may provide that the city contracting shall be obligated to make the payments required by the contract whether or not a project is completed, operable, or operating, and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for. The contract may also provide that payments under the contract shall not be subject to any reduction, whether by offset or otherwise. The contract need not be conditioned upon the performance or nonperformance by any other party to the contract, or to any similar contract for the same project, under the contract or under any other instrument. The contract may also provide, in the event of default by any party to the contract or to any similar contract for the same project in the performance of its obligations thereunder, for other parties to the contract or any similar contract for the project to succeed to the rights and interests and assume the obligations of the defaulting party, pro rata or otherwise, as may be agreed upon in the contract.
5. Any contract made by a city pursuant to this section or when acting as a municipal power agency, or any contract made by a city with a municipal power agency, as contemplated by this chapter, may provide that payments by a city under the contract shall be made solely from, and shall be secured by a pledge of and lien upon, the revenues derived by the city from the ownership and operation of the electric system of the city, and that payments shall be made as an operating expense of the electric system. The contract may provide that no obligation under the contract shall constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the city or upon any of its income, receipts, or revenues, except the revenues of its electric system, and that neither the faith and credit nor the taxing power of the city are, or shall be, pledged for the payment of any obligation under the contract. The contract may provide that the city shall be obligated to fix, charge, and collect rents, rates, fees, and charges for the commodities or services sold, furnished, or supplied through its electric system sufficient to provide revenues adequate to meet its obligations under the contract and to pay any and all other amounts payable from or constituting a charge and lien upon revenues, including amounts sufficient to pay the principal of and interest on bonds of the city heretofore or hereafter issued for purposes related to its electric system. The municipal power agency may, either at law or in equity, by suit, action, mandamus, or other proceedings, enforce and compel the performance of any or all covenants or obligations of the city under the contract to be performed by the city

or any officer thereof, including the fixing, charging, and collecting of rents, rates, fees, and other charges. Any pledge of revenues made by a city pursuant to this subsection shall be valid and binding from the date the pledge is made. The revenues pledged shall immediately be subject to the lien of the pledge without physical delivery or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the city without regard to whether the parties have notice. Neither the contract, pledge agreement, or trust agreement by which a pledge is created nor any financing statement, continuation statement, or other instrument relating thereto need be filed or recorded in any manner.

**40-33.2-09. Construction contracts.**

A city or municipal power agency may contract for the planning, acquisition, construction, reconstruction, operation, maintenance, repair, extension, and improvement of generation and transmission facilities outside of its corporate limits or those of its members, or may contract with other public or private owners of these facilities to perform these functions, without advertising for bids, preparing final plans and specifications in advance of construction, or securing performance and payment bonds. If a payment bond is secured as provided in chapter 48-01.2, it is enforceable as therein provided, and no lien may be filed under chapter 35-27.

**40-33.2-10. Authorized investments - Security for public deposits.**

Notwithstanding any other law to the contrary, the state of North Dakota and all its public officers, governmental units, agencies, and instrumentalities, all banks, trust companies, savings and loan associations, investment companies, credit unions, and other persons carrying on a banking business, and all executors, administrators, guardians, trustees, and other fiduciaries, and the Bank of North Dakota, may legally invest any sinking funds, money, or other funds belonging to them or within their control in any bonds or notes issued pursuant to this chapter.

**40-33.2-11. Joint exercise of powers.**

Any power or powers exercised or capable of exercise by a city with respect to its electric utility system, or any project, or by a municipal power agency, may be exercised jointly with any other public agency having such power or powers. In furtherance of joint exercise of powers, a city or municipal power agency may enter into an agreement with one or more public agencies for joint or cooperative action pursuant to this section, including the creation of a separate entity to carry out the purpose of the agreement. Appropriate action, by resolution or otherwise pursuant to law of the governing bodies of the cities, municipal power agencies, or other public agencies involved in authorizing or approving the agreement, shall be necessary before any agreement may become effective. Any agreement shall specify its duration, the precise organization, composition, and nature of any separate legal or administrative entity created, together with the powers delegated, its purpose or purposes, the manner of financing the joint or cooperative undertaking, the permissible method or methods to be employed in accomplishing the termination of the agreement and for disposing of property upon termination, and any other matters deemed necessary or appropriate. In addition, the agreement may provide for the joint or cooperative undertaking through the use of a separate legal entity already in existence. No agreement pursuant to this section shall relieve any city or municipal power agency of any obligation or responsibility imposed upon it by law except to the extent of actual and timely performance of the agreement by another party to the agreement or by a legal or administrative entity created by the agreement, which performance may be offered in satisfaction of the obligation or responsibility. Agreements pursuant to this section shall not be subject to any of the provisions, limitations, or restrictions contained in chapter 54-40.