CHAPTER 69-09-07
SMALL POWER PRODUCTION AND COGENERATION

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69-09-07-01. Definitions.

As used throughout this chapter, except where otherwise indicated:

1. "Avoided costs" means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.

2. "Backup power" means electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the facility.

3. "Biomass" means any organic material not derived from fossil fuels.

4. "Bottoming-cycle cogeneration facility" means a cogeneration facility in which the energy input to the system is first applied to a useful thermal energy process, and the reject heat emerging from the process is then used for power production.

5. "Cogeneration facility" means equipment used to produce electric energy and forms of useful thermal energy, such as heat or steam, used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy.

6. "Commission" means the public service commission, or such other department, bureau, or commission as may lawfully succeed to the powers and duties of that commission.

7. "Electric utility" means an "electric public utility" as defined in subsection 1 of North Dakota Century Code section 49-03-01.5.

8. "Interconnection costs" means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent such costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs.

9. "Interruptible power" means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions.

10. "Maintenance power" means electric energy or capacity supplied by an electric utility during the scheduled outages of the qualifying facility.

11. "Natural gas" means either natural gas unmixed, or any mixture of natural gas and artificial gas.

12. "Oil" means crude oil, residual fuel oil, natural gas liquids, or any refined petroleum products.

13. "Primary energy source" means the fuel or fuels used for the generation of electric energy, except that such term does not include the minimum amounts of fuel required for ignition, startup, testing, flame stabilization, and control uses, and the minimum amounts of fuel required to alleviate or prevent unanticipated equipment outages, and emergencies, directly affecting the public health, safety or welfare, which would result from electric power outages.

14. "Purchase" means the purchase of electric energy or capacity or both from a qualifying facility by an electric utility.

15. "Qualifying cogeneration facility" means a cogeneration facility that is a qualifying facility under subsection 2 of section 69-09-07-03.

16. "Qualifying cogenerator" means the owner or operation of a qualifying cogeneration facility.

17. "Qualifying facility" means a cogeneration facility or a small power production facility which is a qualifying facility under section 69-09-07-03.

18. "Qualifying small power producer" means the owner or operator of a qualifying small power production facility.

19. "Qualifying small power production facility" means a small power production facility that is a qualifying facility under subsection 1 of section 69-09-07-03.

20. "Rate" means any price, rate, charge, or classification made, demanded, observed, or received with respect to the sale or purchase of electric energy or capacity, or any rule, regulation, or practice respecting any such rate, charge, or classification, and any contract pertaining to the sale or purchase of electric energy or capacity.

21. "Sale" means the sale of electric energy or capacity or both by an electric utility to a qualifying facility.

22. "Small power production facility" means a facility which produces electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources, or any combination thereof, and has a power production capacity which, together with any other facilities located at the same site, is not greater than eighty megawatts.

23. "Supplementary firing" means an energy input to the cogeneration facility used only in the thermal process of a topping-cycle cogeneration facility, or only in the electric generating process of a bottoming-cycle cogeneration facility.

24. "Supplementary power" means electric energy or capacity supplied by an electric utility, regularly used by a qualifying facility in addition to that which the facility generates itself.

25. "System emergency" means a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

26. "Topping-cycle cogeneration facility" means a cogeneration facility in which the energy input to the facility is first used to produce useful power output, and the reject heat from power production is then used to provide useful thermal energy.

27. "Total energy input" means the total energy of all forms supplied from external sources other than supplementary firings to the facilities.

28. "Total energy output" of a topping-cycle cogeneration facility is the sum of the useful power output and useful thermal energy output.

29. "Useful power output" of a cogeneration facility means the electric or mechanical energy made available for use, exclusive of any such energy used in the power production process.

30. "Useful thermal energy output" of a topping-cycle cogeneration facility means the thermal energy made available for use in any industrial or commercial process, or used in any heating or cooling application.

31. "Waste" means byproduct materials other than biomass.

History: Effective June 1, 1981.
General Authority: NDCC 49-02-02
Law Implemented: NDCC 49-02-02

69-09-07-02. Scope - Applicability - Negotiated rates or terms.

1. **Applicability.** This chapter applies to the regulation of sales and purchases between qualifying facilities and electric utilities.

2. **Negotiated rates or terms.** Nothing in this chapter:

   a. Limits the authority of any electric utility or any qualifying facility to agree to a rate for any purchase, or terms or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be required by this chapter; or

   b. Affects the validity of any contract entered into between a qualifying facility and an electric utility for any purchase.

History: Effective June 1, 1981.
General Authority: NDCC 49-02-02
Law Implemented: NDCC 49-02-02

69-09-07-03. Qualifying facilities - General requirements for qualification.

1. Small power production facilities. A small power production facility is a qualifying facility if it:

   a. Meets the maximum size criteria specified in subsection 1 of section 69-09-07-04;

   b. Meets the fuel use criteria specified in subsection 2 of section 69-09-07-04; and

   c. Meets the ownership criteria specified in section 69-09-07-06.

2. Cogeneration facilities. Unless excluded under subsection 3, a cogeneration facility is a qualifying facility if it:

   a. Meets any applicable operating and efficiency standards specified in subsections 1 and 2 of section 69-09-07-05; and

   b. Meets the ownership criteria specified in section 69-09-07-06.

3. Any cogeneration facility which is a new diesel cogeneration facility may not be a qualifying facility. A new diesel cogeneration facility is a cogeneration facility:

   a. Which derives its useful power output from a diesel engine; and

   b. The installation of which began on or after March 13, 1980.

4. Any cogeneration facility which is a new dual-fuel cogeneration facility which seeks to obtain qualifying status must follow the procedures set forth in subsection 2 of section 69-09-07-06. A new dual-fuel cogeneration facility is a cogeneration facility:

   a. Which derives its useful power output from an internal combustion piston engine capable of changing automatically between gas and oil operation; and

   b. The installation of which began on or after May 15, 1980.

History: Effective June 1, 1981.
General Authority: NDCC 49-02-02
Law Implemented: NDCC 49-02-02

69-09-07-04. Criteria for qualifying small power production facilities.

1. **Size of the facility.**

   a. Maximum size. The power production capacity of the facility for which qualification is sought, together with the capacity of any other facilities which use the same energy resource, are owned by the same person, and are located at the same site, may not exceed eighty megawatts.

   b. Method of calculation.

      (1) For purposes of this subsection, facilities are considered to be located at the same site as the facility for which qualification is sought if they are located within one mile [1.61 kilometers] of the facility for which qualification is sought and, for hydroelectric facilities, if they use water from the same impoundment for power generation.

      (2) For purposes of making the determination in paragraph 1, the distance between facilities shall be measured from the electric generating equipment of a facility.

   c. Waiver. The commission may modify the application of subdivision b for good cause.

2. **Fuel use.**

   a. The primary energy source of the facility must be biomass, waste, renewable resources, or any combination thereof, and more than seventy-five percent of the total energy input must be from these sources. Any primary energy source which, on the basis of its energy content, is fifty percent or more biomass shall be considered biomass.

   b. Use of oil, natural gas, and coal by a facility may not, in the aggregate, exceed twenty-five percent of the total energy input of the facility during any calendar year period. Energy input in the case of energy in the form of natural gas or oil is to be measured by the lower heating value of the natural gas or oil.

History: Effective June 1, 1981.
General Authority: NDCC 49-02-02
Law Implemented: NDCC 49-02-02

69-09-07-05. Criteria for qualifying cogeneration facilities.

1. **Operating standard for topping-cycle facilities.** For any topping-cycle cogeneration facility, the useful thermal energy output of the facility must, during any calendar year period, be no less than five percent of the total energy output.

2. **Efficiency standard for topping-cycle facilities.**

   a. For any topping-cycle cogeneration facility for which any of the energy input is natural gas or oil, and the installation of which began on or after March 13, 1980, the useful power output of the facility plus one-half the useful thermal energy output, during any calendar year period, must:

      (1) Subject to paragraph 2, be no less than forty-two and one-half percent of the total energy output of natural gas and oil to the facility; or

      (2) If the useful thermal energy output is less than fifteen percent of the total energy output of the facility, be no less than forty-five percent of the total energy input of natural gas and oil to the facility.

   b. For any topping-cycle cogeneration facility not subject to subdivision a, there is no efficiency standard.

3. **Efficiency standard for bottoming-cycle facilities.**

   a. For any bottoming-cycle cogeneration facility for which any of the energy input as supplementary firing is natural gas or oil, and the installation of which began on or after March 13, 1980, the useful power output of the facility must, during any calendar year period, be no less than forty-five percent of the energy input of natural gas and oil for supplementary firing.

   b. For any bottoming-cycle cogeneration facility not covered by subdivision a, there is no efficiency standard.

4. **Waiver.** The commission may waive any of the requirements of this section upon a showing that the facility will produce significant energy savings.

History: Effective June 1, 1981.
General Authority: NDCC 49-02-02
Law Implemented: NDCC 49-02-02

69-09-07-06. Ownership criteria.

1. **General rule.** A cogeneration facility or small power production facility may not be owned by a person primarily engaged in the generation or sale of electric power, other than electric power solely from cogeneration facilities or small power production facilities.

2. **Ownership test.** For purposes of this section, a cogeneration or small power production facility shall be considered to be owned by a person primarily engaged in the generation or sale of electric power, if more than fifty percent of the equity interest in the facility is held by an electric utility or utilities, or by a public utility holding company, or companies, or any combination thereof. If a wholly or partially owned subsidiary of an electric utility or public utility holding company has an ownership interest in a facility, the subsidiary's ownership interest shall be considered as ownership by an electric utility or public utility holding company.

History: Effective June 1, 1981.
General Authority: NDCC 49-02-02

Law Implemented: NDCC 49-02-02

69-09-07-07. Procedures for obtaining qualifying status.

1. **Qualification.** A small power production facility or cogeneration facility which meets the criteria for qualification set forth in section 69-09-07-03 is a qualifying facility. The owner or operator of any facility qualifying under this subsection shall furnish notice to the commission providing the information set forth in paragraphs 1 through 4 of subdivision b of subsection 2.

2. **Optional procedure.**

   a. Application for commission certification. Pursuant to the provisions of this subsection, the owner or operator of the facility may file with the commission an application for commission certification that the facility is a qualifying facility.

   b. General contents of application. The application shall contain the following information:

      (1) The name and address of the applicant and the location of the facility;

      (2) A brief description of the facility, including a statement indicating whether such facility is a small power production facility or a cogeneration facility;

      (3) The primary energy source used or to be used by the facility;

      (4) The power production capacity of the facility; and

      (5) The percentage of ownership by any electric utility or by any public utility holding company, or by any person owned by either.

   c. Additional application requirements for small power production facilities. An application by a small power producer for commission certification shall contain the following additional information:

      (1) The location of the facility in relation to any other small power production facilities located within one mile [1.61 kilometers] of the facility, owned by the applicant which use the same energy source; and

      (2) Information identifying any planned usage of natural gas, oil, or coal.

   d. Additional application requirements for cogeneration facilities. An application by a cogenerator for commission certification shall contain the following additional information:

      (1) A description of the cogeneration system, including whether the facility is a topping or bottoming cycle and sufficient information to determine that any applicable requirements under section 69-09-07-05 will be met; and

      (2) The date installation of the facility began or will begin.

   e. Commission action. Within ninety days of the filing of a complete application, the commission shall issue an order granting or denying the application, tolling the time for issuance of an order, or setting the matter for hearing. Any order denying certification shall identify the specific requirements which are not met. If no order is issued within ninety days of the filing of a complete application, the application shall be deemed to have been granted.

3. **Notice requirements for facilities of five hundred kilowatts or more.** An electric utility is not required to purchase electric energy from a facility with a design capacity of five hundred

kilowatts or more until ninety days after the facility notifies the utility that it is a qualifying facility, or ninety days after the facility has applied to the commission under subsection 2.

4. **Revocation of qualifying status.**

   a. The commission may revoke the qualifying status of a qualifying facility which has been certified under this section if such facility fails to comply with any of the statements contained in its application for commission certification.

   b. Prior to undertaking any substantial alteration or modification of a qualifying facility which has been certified under this section, a small power producer or cogenerator may apply to the commission for a determination that the proposed alteration or modification will not result in a revocation of qualifying status.

History: Effective June 1, 1981.
General Authority: NDCC 49-02-02
Law Implemented: NDCC 49-02-02

69-09-07-08. Electric utility obligations.

1. **Obligation to purchase from qualifying facilities.** Each electric utility shall purchase, in accordance with section 69-09-07-09, any energy and capacity which is made available from a qualifying facility:

   a. Directly to the electric utility; or

   b. Indirectly to the electric utility in accordance with subsection 4.

2. **Obligation to sell to qualifying facilities.** Each electric utility shall sell to any qualifying facility, in accordance with section 69-09-07-10, any energy and capacity requested by the qualifying facility.

3. **Obligation to interconnect.** An electric utility shall make such interconnections with any qualifying facility as may be necessary to accomplish purchases or sales under this chapter. The obligation to pay for any interconnection costs shall be determined in accordance with section 69-09-07-11.

4. **Transmission to other electric utilities.** If a qualifying facility agrees, an electric utility which would otherwise be obligated to purchase energy or capacity from such qualifying facility may transmit the energy or capacity to any other electric utility. Any electric utility to which such energy or capacity is transmitted shall purchase such energy or capacity under this chapter as if the qualifying facility were supplying energy or capacity directly to such electric utility. The rate for purchase by the electric utility to which such energy is transmitted shall be adjusted up or down to reflect line losses pursuant to subdivision d of subsection 6 of section 69-09-07-09.

5. **Parallel operation.** Each electric utility shall offer to operate in parallel with a qualifying facility.

History: Effective June 1, 1981.
General Authority: NDCC 49-02-02
Law Implemented: NDCC 49-02-02

69-09-07-09. Rates for purchases.

1. Rates for purchases must:

   a. Be just and reasonable to the electric consumer of the electric utility and in the public interest; and

b. Not discriminate against qualifying cogeneration and small power production facilities.

2. Relationship to avoided costs.

a. For purposes of this subsection, "new capacity" means any purchase from capacity of a qualifying facility, construction of which began on or after November 9, 1978.

b. Subject to subdivision c of this subsection and subdivision a of subsection 3, a rate for purchases satisfies the requirements of subsection 1 if the rate equals the avoided costs determined after consideration of the factors set forth in subsections 5 and 6.

c. A rate for purchases (other than from new capacity) may be less than the avoided cost if the commission determines a lower rate is consistent with subsection 1, and is sufficient to encourage cogeneration and small power production.

d. Rates for purchases from new capacity must be in accordance with subdivision b, regardless of whether the electric utility making the purchase is simultaneously making sales to the qualifying facility.

e. When rates for purchases are based on estimates of avoided costs over the term of a contract or other legally enforceable obligation, the rates for the purchases do not violate this chapter if the rates for the purchases differ from avoided costs at the time of delivery.

3. Standard rates for purchases.

a. Qualifying facilities with a design capacity of one hundred kilowatts or less are entitled to net energy billing where the output from the qualifying facility reverses the electric meter used to measure sales from the electric utility to the qualifying facility. For each qualifying facility opting for net energy billing:

(1) The purchasing electric utility shall file an annual report of total monthly energy produced with the commission.

(2) The purchasing electric utility may recover metering costs associated with production monitoring from the qualifying facility.

b. Each electric utility must have standard offer contracts for capacity payments, when required by subsection 6, to qualifying facilities operating as peaking units with a design capacity of one megawatt or less. These standard offer contracts:

(1) Must base payments for avoided capacity on the projected cost per kilowatt of a new peaking facility, and adjust the amount of payment to reflect the length of contract overlap into the projected lifetime of the new facility.

(2) Must be accompanied by an annually updated table of capacity payment per kilowatt as a function of contract length.

(3) Must be dependant upon the following capacity factor adjustment for determining capacity payment amounts:

Payment = (Qualifying facility's capacity factor) (Projected capacity factor of the facility to be avoided) (Contracted capacity payment price)

"Capacity factor" means the average on peak period metered capacity delivered to the utility for the billing period divided by the greatest fifteen-minute metered capacity delivered for the on peak period of the same billing period.

c. Each electric utility may have standard rates for purchases from qualifying facilities with a design capacity greater than in subdivisions a and b.

d. The standard rates for purchases under subdivisions b and c of this subsection:

(1) Must be consistent with subsections 1, 5, and 6; and

(2) May differ based on the supply characteristics of various technologies.

4. Purchases "as available" or under a legally enforceable obligation. Each qualifying facility may either:

a. Provide energy the qualifying facility determines to be available, in which case the rates for the purchases shall be based on the purchasing utility's avoided costs calculated at the time of delivery; or

b. Provide energy or capacity under a legally enforceable obligation for the delivery of energy or capacity over a specified term, in which case the rates for the purchases must, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on either:

(1) The avoided costs calculated at the time of delivery; or

(2) The avoided costs calculated at the time the obligation is incurred.

5. Factors affecting rates for purchases. In determining avoided costs, the following factors shall, to the extent practicable, be taken into account:

a. The data provided under 18 CFR 292.302, including commission review of the data;

b. The availability of capacity or energy from a qualifying facility during the system daily and seasonal peak periods, including:

(1) The ability of the utility to dispatch the qualifying facility;

(2) The expected or demonstrated reliability of the qualifying facility;

(3) The terms of any contract or other legally enforceable obligation, including the duration of the obligation, termination notice requirements and sanctions for noncompliance;

(4) The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the utility's facilities;

(5) The usefulness of energy and capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation;

(6) The individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system; and

(7) The smaller capacity increments and the shorter lead times available with additions of capacity from qualifying facilities.

c. The relationship of the availability of energy or capacity from the qualifying facility, as derived in subdivision b, to the ability of the electric utility to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use;

d. The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a qualifying facility, if the purchasing electric

utility generated an equivalent amount of energy itself or purchased an equivalent amount of electric energy or capacity; and

e. The costs or savings resulting from variations in total air polluting emissions from those that would have existed in the absence of purchases from a qualifying facility.

6. Qualifying facilities are entitled to payment for avoided capacity when utility load forecasts project capacity deficits within ten years and the qualifying facility has entered into a power supply contract with the utility that extends into projected deficit period.

7. Periods during which purchases not required.

   a. Any electric utility which gives notice under subdivision b will not be required to purchase electric energy or capacity during any period during which, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases, but instead generated an equivalent amount of energy itself.

   b. Any electric utility seeking to invoke subdivision a of this subsection must notify, in writing, each affected qualifying facility in time for the qualifying facility to cease the delivery of energy or capacity to the electric utility, and must also send a copy of the notice to the commission.

   c. Any electric utility which fails to comply with the provisions of subdivision b will be required to pay the same rate for such purchase of energy or capacity as would be required had the period described in subdivision a not occurred.

   d. A claim by an electric utility that such a period has occurred or will occur is subject to verification the commission determines appropriate, either before or after the occurrence.

   e. This subsection does not apply to purchases made under subdivision a of subsection 3.

History: Effective June 1, 1981; amended effective May 1, 1991.
General Authority: NDCC 49-02-02
Law Implemented: NDCC 49-02-02

OBJECTION

THE LEGISLATIVE COUNCIL'S COMMITTEE ON ADMINISTRATIVE RULES OBJECTS TO CHANGES TO NORTH DAKOTA ADMINISTRATIVE CODE SECTION 69-09-07-09 ADOPTED BY THE PUBLIC SERVICE COMMISSION EFFECTIVE MAY 1991 RELATING TO THE RATES THAT ELECTRIC UTILITIES MUST PAY FOR POWER PURCHASED FROM QUALIFYING FACILITIES.

The committee objects to this rule because:

1. North Dakota Administrative Code Section 69-09-07-09 establishes rates that investor-owned utilities must pay for power purchased from qualified facilities and requires net energy billing.

2. 1991 Senate Bill No. 2463, which would have required net energy billing for sales involving investor-owned utilities and rural cooperatives, failed to pass the Senate on a vote of 6 to 43.

3. It is clearly a violation of legislative intent for the Public Service Commission to adopt rules requiring net energy billing by investor-owned utilities when the 1991 Legislative Assembly defeated a bill that would have required the same.

Section 28-32-03.3 provides that after the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment shall be rendered against the agency for court costs.

History: Effective August 9, 1991.
General Authority: NDCC 28-32-03.3

69-09-07-10. Rates for sales.

1. **General rules.**

   a. Rates for sales:

      (1) Shall be just and reasonable and in the public interest; and

      (2) Shall not discriminate against any qualifying facility in comparison to rates for sales to other customers served by the electric utility.

   b. Rates for sales which are based on accurate data and consistent systemwide costing principles shall not be considered to discriminate against any qualifying facility to the extent that such rates apply to the utility's other customers with similar load or other cost-related characteristics:

2. **Additional services to be provided to qualifying facilities.**

   a. Upon request of a qualifying facility, each electric utility shall provide:

      (1) Supplementary power;

      (2) Backup power;

      (3) Maintenance power; and

      (4) Interruptible power.

   b. The commission may waive any requirement of subdivision a if, after notice in the area served by the electric utility and after opportunity for public comment, the electric utility demonstrates and the commission finds that compliance with such requirement will:

(1) Impair the electric utility's ability to render adequate service to its customers; or

(2) Place an undue burden on the electric utility.

3. **Rates for sales of backup and maintenance power.** The rate for sales of backup power or maintenance power:

   a. Shall not be based upon an assumption (unless supported by factual data) that forced outages or other reductions in electric output by all qualifying facilities on an electric utility's system will occur simultaneously, or during the system peak, or both; and

   b. Shall take into account the extent to which scheduled outages of the qualifying facilities can be usefully coordinated with scheduled outages of the utility's facilities.

History: Effective June 1, 1981.
General Authority: NDCC 49-02-02
Law Implemented: NDCC 49-02-02

69-09-07-11. Interconnection costs.

1. **Obligation to pay.** Each qualifying facility shall be obligated to pay any interconnection costs which the commission may assess against the qualifying facility on a nondiscriminatory basis with respect to other customers with similar load characteristics.

2. **Reimbursement of connection costs.** The commission shall determine the manner for payments of interconnection costs, which may include reimbursement over a reasonable period of time.

History: Effective June 1, 1981.
General Authority: NDCC 49-02-02
Law Implemented: NDCC 49-02-02

69-09-07-12. System emergencies.

1. **Qualifying facility obligation to provide power during system emergencies.** A qualifying facility shall be required to provide energy or capacity to an electric utility during a system emergency only to the extent:

   a. Provided by agreement between such qualifying facility and electric utility; or

   b. Ordered under section 202(c) of the Federal Power Act [16 U.S.C. 824a(c)].

2. **Discontinuance of purchases and sales during system emergencies.** During any system emergency, an electric utility may discontinue:

   a. Purchases from a qualifying facility if such purchases would contribute to such emergency; and

   b. Sales to a qualifying facility; provided, that such discontinuance is on a nondiscriminatory basis.

History: Effective June 1, 1981.
General Authority: NDCC 49-02-02
Law Implemented: NDCC 49-02-02

69-09-07-13. Exemption for qualifying facilities.

1. Applicability. This section applies to:

a. Any qualifying cogeneration facility;

b. Any qualifying small power production facility which has a power production capacity which does not exceed thirty megawatts; and

c. Any qualifying small power production facility which has a power production capacity over thirty megawatts if such facility produces electric energy solely by the use of biomass as a primary energy source.

2. A qualifying facility described in subsection 1 shall not be considered to be an "electric public utility" as defined in subsection 1 of North Dakota Century Code section 49-03-01.5.

3. Any qualifying facility shall be exempted, except as provided in subsection 4, from any state law or regulation respecting:

a. The rates of electric utilities; and

b. The financial and organizational regulation of electric utilities.

4. A qualifying facility may not be exempted from the provisions of this chapter.

History: Effective June 1, 1981.
General Authority: NDCC 49-02-02
Law Implemented: NDCC 49-02-02