Legislative Council
Administrative Rules Committee

Presentation by: Annette Bendish, Attorney
Public Service Commission

Before: Administrative Rules Committee
Senator Tom Fischer, Chairman

Date: June 11, 2008

TESTIMONY

	ND ADMINISTRATIVE CODE SECTION	PSC CASE NO.
A.	**ND Admin. Code § 69-09 (Wind Turbine Decommissioning)**	**PU-07-642**
B.	**ND Admin. Code § 69-06-01-05 (Siting Fee Refunds)**	**PU-06-501**
C.	**ND Admin. Code §69-09-02.35 (National Electrical Safety Code)**	**PU-06-490**
D.	**ND Admin. Code § 69-09-05.1 (Accounting Rules for Electric and Gas Utilities)**	**PU-06-486**
E.	**ND Admin. Code § 69-10 (Weights and Measures)**	**WM-07-203**

Mr. Chairman and committee members, my name is Annette Bendish. I am an attorney with the North Dakota Public Service Commission. With me today is Kevin Hanson, State Metrologist and Assistant Director of the Commission's Testing and Safety Division, and Jerry Lein, an analyst with the Commission's Public Utilities Division. We are here to respond to questions posed to us by the Legislative Council's staff concerning a recent rulemaking proceeding.

Please note that the rules on pages 239 through 249 were not intended to be submitted for adoption at this time. Please disregard these, as they will be submitted in the future.

The rules submitted by the Public Service Commission for your consideration today begin on page 250. The rules in question involve wind turbine decommissioning (A); siting fee refunds (B); use of the National Electrical Safety Code (C); accounting

rules for electric and gas utilities (D); and weights and measures (E). However, the rules in your packet for (A) wind turbine decommissioning (pages 254 through 256 of your packet) are not the wind turbine decommissioning rules as finally adopted by the Commission. The wrong set of wind turbine decommissioning rules was inadvertently included in your packet. As requested by John Walstad, the correct wind turbine decommissioning rules as adopted by the Commission and approved by the Attorney General are attached to this testimony, together with version showing the differences between the two.

Our responses to the questions posed are presented below.

1. **Whether the rules resulted from statutory changes made by the Legislative Assembly.**

   A: Yes (2007)
   B. Yes (2005)
   C. No
   D. No
   E. Yes (in part, 2007)

2. **Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.**

   A: No

   B: No

   C. No; the rules adopt the National Electric Safety Code (NESC) by reference, which is an industry standard to ensure that North Dakota safety requirements keep pace with the latest safety developments.

   D: No

   E: No

3. **A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.**

A – E: A notice of the rulemakings was published in daily newspapers throughout the state as required by N.D.C.C. Chapter 28-32. A public hearing was held at 1:00 p.m. CST, on November 26, 2007, in the Commission Hearing Room, 12th Floor, State Capitol, Bismarck, North Dakota.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until December 6, 2007, during which data, views, or oral arguments concerning the proposed rulemaking could be received by the Commission and made a part of the rulemaking record to be considered by the Commission. Additionally, a follow-up work session requested in Case PU-07-642 was conducted on January 8, 2008.

4. **Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.**

A: Comments were received on this case. Below are excerpts from the Public Service Commission order discussing the comments as well as the Commission's response to the comments. Note that although the order indicates that (at the time of the order) an Attorney General's opinion request was pending, we did receive the opinion on April 2, 2008.

Comments from Basin Electric Power Cooperative:

Basin Electric Power Cooperative (Basin Electric) commented that under proposed section 69-09-10-03 twelve months of non-production is too short of a period for assuming a turbine is at the end of its useful life and suggested 24 months would be better given long lead times sometimes experienced for repairs. Basin Electric was further concerned that reclaiming original top soil quality under proposed section 69-09-10-05 could require stockpiling of the original topsoil and suggested that the area disturbed be reclaimed on a best engineering practice basis with a goal of achieving comparative topsoil quality and topography. Basin Electric further requested greater specify in options for demonstrating financial assurance under proposed section 69-09-10-08. Basin Electric preferred that corporate guarantees be available to companies that meet certain financial worthiness standard.

Comments from Cass County Electric Cooperative:

Cass County Electric Cooperative (Cass Electric) concurred with proposed section 69-09-10-05 with the exception of the requirement to remove underground cables to a depth of 48 inches. Cass Electric commented that removal of abandoned underground power cables is a time-consuming and expensive process that yields little benefit and might be more detrimental to the land than any benefit gained. Cass Electric commented that removal of abandoned underground power cables is a time-consuming and expensive process that yields little benefit and might be more detrimental to the land than any benefit gained. Cass Electric recommended not requiring cable removal beyond a depth of 36 inches in the immediate site area of a wind turbine and not beyond a depth of 24 inches outside of the immediate site area.

FPL Energy, LLC:

FPL Energy, LLC (FPL Energy) questioned the Commission's authority to regulate wind farms with less than 100 MW of generating capacity and requested the Commission conduct a working session, in which interested parties may participate to consider comments being submitted by FPL Energy and others. FPL Energy requested that section 69-09-10-05 be revised to clarify that underground cables and other structures need only be removed to a depth of four feet. FPL Energy was concerned that reclaiming original top soil quality was impractical as it could require stockpiling of the original topsoil and suggested that the standard for reclamation be set instead at "good or prudent engineering practices." FPL Energy as further concerned with the requirement for Commission approval of a decommissioning plan under proposed section 69-09-10-06. Specifically, FPL Energy questioned what happens if a plan is disapproved and noted that there were no standards proposed for approving or disapproving a plan. FPL Energy also suggested that creditworthiness standards should be established for the qualification of corporate guarantees as sufficient financial assurance under proposed section 69-09-10-08.

North Dakota Chapter of The Wildlife Society:

North Dakota Chapter of The Wildlife Society (The Wildlife Society) commented in general support of the proposed rules, but recommended there be a requirement that disturbed areas of native prairie be reseeded with a high-diversity native seed mixture to minimize the invasion of non-native species. The Wildlife Society questioned how the 10 year indicator for determining whether to require bonds or other financial assurance under proposed section 69-09-10-08 was chosen and why financial assurance would not be required from start-up. Additionally, The Wildlife Society proposed strengthening the wording in section 69-09-10-08 be changed from "may require a performance bond...." to "will require a performance bond..." and recommended the bond be sufficient to complete reclamation to state standards.

Otter Tail Corporation:

Otter Tail Corporation d/b/a Otter Tail Power Company (Otter Tail) commented that the requirements for reclamation to a depth of four feet under section 69-09-10-05 would be unnecessarily burdensome in view of new structure footing designs and should be reduced to a reclamation depth of three feet below the surface.

Public Service Commission Discussion

In response to jurisdictional questions raised by FPL Energy, the Commission sent a letter to the Attorney General's Office requesting an opinion on whether the Commission has authority to establish decommissioning rules for facilities with less than 100MW of generating capacity. A response to that request is pending.

Proposed Section 69-09-10-03:

The Commission agrees with concerns raised by Basin Electric and the assumption of when a turbine is at the end of its useful life is revised from 12 months of non-production to 24 months as Basin Electric proposed.

Proposed Section 69-09-10-05:

The Commission agrees with Otter Tail's concerns that reclamation to a depth of four feet would be burdensome and the depth is revised to 36 inches for everything except the removal of underground cables. For underground cables the Commission agrees with Cass Electric's concern that removal at depths greater than 24 inches for areas outside the immediate project area would be unnecessarily burdensome and could do more harm to the land than benefit. The Commission does not find it necessary or practical to define boundaries for different depth requirements and the proposed rule is revised to require removal of underground cable only to a depth of 24 inches.

The Commission agrees with FPL Energy and Basin Electric that proposed language regarding top soil restoration was impractical and could infer that stockpiling would be necessary. Therefore, the proposed rule is revised to clarify that the area need only be returned to the same general topography with topsoil to a depth similar to what it was before the project.

The Commission agrees with The Wildlife Society that more specific reseeding requirements are needed and proposed section 69-09-10-05 is revised to incorporate reseeding requirements commonly specified by the Commission for other site reclamations.

Proposed Section 69-09-10-06:
The Commission agrees with FPL Energy that there are no formal standards or consequences proposed for approval or disapproval of decommissioning plans and so Commission approval of plans should not be required. Proposed section 69-09-10-06 is revised to require that plans be filed for Commission review rather than for approval.

Proposed Section 69-09-10-08:
The Commission agrees with FPL Energy and Basin Electric that creditworthiness standards for accepting corporate guarantees should be established. Standards currently being used for accepting corporate guarantees for financial assurance in coal mine reclamation were discussed during the January 8th workshop and a resulting modified version is incorporated into proposed section 69-09-10-08.

B. No comments received other than those of Commission Staff

C. No comments received other than those of Commission Staff

D. No comments received other than those of Commission Staff

E. No comments received other than those of Commission Staff

5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.

Legal notices associated with this rulemaking proceeding (which included the five rules packages under consideration here, plus two additional rules proposals) cost $2,096.50. Other than staff time, no other significant costs were incurred.

6. An explanation of the subject matter of the rules and the reasons for adopting those rules.

A. The rule change in the Wind Turbine Decommissioning case will establish a new Chapter 69-09-10 of the North Dakota Administrative Code with requirements for the decommissioning of commercial wind turbines. N.D.C.C. section 49-02-27 provides that the Commission may adopt rules governing the decommissioning of commercial wind energy conversion facilities and that the rules may address:

1. The anticipated life of the project;
2. The estimated decommissioning costs in current dollars;
3. The method and schedule for updating the costs of the decommissioning and restoration;
4. The method of ensuring that funds will be available for decommissioning and restoration; and
5. The anticipated manner in which the project will be decommissioned and the site restored.

B. The rule on Siting Fee Refunds sets forth administrative procedures for returning siting application fees that were not needed for processing energy conversion or transmission facility siting applications in accordance with N.D.C.C. section 49-22-22.

C. The rules adopt the National Electric Safety Code (NESC) by reference. The NESC is updated periodically, with a new edition issued every five years. The changes simply adopt the latest NESC 2007 Edition instead of the previously adopted 2002 Edition. The purpose of adoption the 2007 Edition is to ensure that North Dakota safety requirements keep pace with industry standards.

D. The Accounting rules will require regulated gas and electric companies to use a standard system of accounts prescribed by the Federal Energy Regulatory Commission and will limit the amount a utility can capitalize for the cost of funds used during the construction of assets.

E. The following summary is taken from the Commission's Order:

Two changes implement changes in laws from the 2007 legislative session. These changes are to Section 69-10-01-01, Definitions and Section 69-10-01-02.3, Recertification.

The first such change adds the word "permit" to the definition of a variance, and to any existing rules dealing with variances, in order to match language in Section 64-02-02 of the North Dakota Century Code which was modified by the 2007 legislature. Prior to the 2007 legislative session, variances or "permits could only be issued on weighing devices. Legislative changes allowed the Commission to issue variance permits for both weighing and measuring devices, which was needed in order to allow mitigating enforcement of design requirements for liquid devices as well as weighing devices.

The second such change is a new rule that clarifies who may recertify commercial devices; whose responsibility it is to insure the devices are recertified; how often the devices must be recertified; and

what type of enforcement actions will take place if the rule is violated. This new rule is needed because of changes made during the 2007 legislative session in the wording of North Dakota Century Code Section 64-02-13 requiring the commission to determine the frequency of required testing for each category of weighing and measuring device, as long as the frequency is not less than once every twenty-four months.

Section 69-10-02-26 is a new rule that provides for design and access requirements for all new large hopper scales installed after the effective date of this rule, and new modification requirements to all existing large hopper scales. The first section of this rule provides for design requirements to safely aid testing for existing hopper scales. Because of the large capacity of commercial hopper scales currently in service and with the capacities of new ones increasing every year the old test method involving the stacking or hanging of individual 50 lb weights is no longer acceptable. Our large scale inspectors need these modifications so that these devices may be safely tested using adequate test weight. The second section of the rule provides for adequate clearance to facilitate testing with large test weights on newly installed hopper scales. The third section sets forth exemptions from the rule.

Other changes included in this rulemaking are as follows:

- Repeal section 69-10-01-07 in order to provide retail operators an option to sell refined fuels through a temperature compensated meter and to allow wholesale operators to continue to provide wholesale fuels through temperature compensated loading rack meters;
- Section 69-10-02-12 changes the word "weighman" to non gender specific "scale operator";
- Section 69-10-02-25 adds the term "portable wheel-load scale" to clarify that both permanent axle load scales and portable wheel-load scales are to be tested annually not to exceed 15 months;
- Section 69-10-03-02 clarifies that an up to date copy of the metrology certificate of traceability for all standards be maintained on file with the commission so that it can enforce recertification requirements, changes the requirement for the recertification of automatic bulk-weighing system standards to once every 5 years to more closely follow NIST recommendations, disallows the use of LPG master meters as testing standards because they do not meet NIST requirements for use as a testing standard, and, allows that any standard may be recertified sooner if inspection shows a need because some standards may be affected by environmental damage before their recertification date;

- Section 69-10-04-02 clarifies what type of registered service person test must be taken, where the test questions are taken from, and changes where the test may be administered by replacing the phrase "metrology lab" with the phrase "at a location designated by the Commission";
- Section 69-10-04-06 deletes the phrase "while evaluating that person" in order to clarify intent.
- A few additional minor changes that deal with housekeeping or clarity issues.

7. **Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.**

A. Yes; a copy is attached.

B. No; not required.

C. No, not required.

D. No; not required.

E. Yes; a copy is attached.

8. **Whether a regulatory analysis or economic impact statement of impact on small entities as required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide a copy.**

A. Yes; a copy is attached.

B. Yes; a copy is attached.

C. Yes; a copy is attached.

D. No; no impact on small entities.

E. Yes; a copy is attached.

9. **Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. Please provide a copy if one was prepared.**

A. Yes; a copy is attached.

B. Yes; a copy is attached .

C. Yes; a copy is attached.

D. Yes; a copy is attached.

E. No; not required.

10. **If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.**

A – E: These rules were not adopted as emergency rules.

Mr. Chairman, that completes our testimony. We would be happy to respond to any questions that the committee might have.

(A)

Wind Turbine Decommissioning

NDAC 69-09

Proposed Rule

Regulatory Analysis

Small Entity Analysis

Takings Assessment

Public Service Commission
Wind Turbine Decommissioning
Rulemaking

Case No. PU-07-642

Proposed Rule

A new Chapter to Article 69-09:

69-09-10

01. Definitions:

1. "Commercial wind energy conversion facility" means a wind energy conversion facility of equal to or greater than five hundred kilowatts in total nameplate generating capacity.
2. "Commission" means the public service commission
3. "Wind turbine" means a wind turbine of equal to or greater than five hundred kilowatts in total nameplate generating capacity.

General Authority: NDCC 28-32-02, 49-02-27
Law Implemented: NDCC 49-02-27

02. Decommissioning Responsibility: The owner or operator of a commercial wind energy conversion facility is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities.

General Authority: NDCC 28-32-02, 49-02-27
Law Implemented: NDCC 49-02-27

03. Useful Life: A commercial wind energy conversion facility or individual wind turbine is presumed to be at the end of its useful life if the facility or turbine generates

no electricity for a continuous period of 24 months. The presumption may be rebutted by submitting to the commission for approval a plan outlining the steps and schedule for returning the commercial wind energy conversion facility or wind turbine to service.

General Authority: NDCC 28-32-02, 49-02-27
Law Implemented: NDCC 49-02-27

04. **Decommissioning Period:** The facility owner or operator shall begin decommissioning a commercial wind energy conversion facility or wind turbine within 8 months after the time the facility or turbine reaches the end of its useful life, as determined in (#3). Decommissioning must be completed within 18 months after the facility or turbine reaches the end of its useful life.

General Authority: NDCC 28-32-02, 49-02-27
Law Implemented: NDCC 49-02-27

05. **Decommissioning Requirements:** Decommissioning and site restoration includes dismantling and removal of all towers, turbine generators, transformers, and overhead cables; removal of underground cables to a depth of 24 inches; removal of foundations, buildings and ancillary equipment to a depth of 36 inches; and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the commercial wind energy conversion facility or wind turbine. The site must be restored and reclaimed to the same general topography that existed just prior to the beginning of the construction of the commercial wind energy conversion facility or wind turbine and with topsoil respread over the disturbed areas at a depth similar to that in existence prior to

the disturbance. Areas disturbed by the construction of the facility and decommissioning activities must be graded, topsoiled and reseeded according to Natural Resource Conservation Service technical guide recommendations and other agency recommendations, unless the landowner requests in writing that the access roads or other land surface areas be retained.

General Authority: NDCC 28-32-02, 49-02-27
Law Implemented: NDCC 49-02-27

06. Decommissioning Plan: Prior to commencement of operation of a commercial wind energy conversion facility or wind turbine, the facility or turbine owner or operator shall file for commission review the estimated decommissioning cost per turbine, in current dollars at the time of filing, for the proposed facility or turbine and a comprehensive decommissioning plan that describes how the facility or turbine owner or operator plans to pay for decommissioning the facility or turbine as required by section 69-09-10-05 at the appropriate time. The commission may at any time require the owner or operator of a commercial wind energy conversion facility or wind turbine to file a report with the commission describing how the facility or turbine owner or operator is fulfilling this obligation.

General Authority: NDCC 28-32-02, 49-02-27
Law Implemented: NDCC 49-02-27

07. Existing Facilities: Owners and operators of existing commercial wind energy conversion facilities shall file with the commission the information required in section 6 within one year of the effective date of the rules.

General Authority: NDCC 28-32-02, 49-02-27
Law Implemented: NDCC 49-02-27

08. Financial Assurance: After the 10th year of operation of a commercial wind energy conversion facility or wind turbine, the commission, by order, may require the owner or operator to secure a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the commission to cover the anticipated costs of decommissioning the commercial wind energy conversion facility or turbine. The commission may accept a corporate guarantee if the corporation has a tangible net worth of at least ten million dollars, a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liabilities of 1.2 or greater; or if it has an investment grade current rating for its most recent bond issuance of "Baa" or higher as issued by Moody's Investors Service, "BBB" or higher as issued by Standards and Poor's Corporation, or an equivalent rating by any other nationally recognized statistical rating organization, as defined and approved by the United States securities and exchange commission.

General Authority: NDCC 28-32-02, 49-02-27
Law Implemented: NDCC 49-02-27

09. Failure to Decommission: If the commercial wind energy conversion facility owner or operator does not complete decommissioning, the commission may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs,

successors, and assigns, that the commission may take such action as may be necessary to decommission a commercial wind energy conversion facility or wind turbine, including the exercise by the commission, commission staff, and their contractors of the right of ingress and egress for the purpose of decommissioning the commercial wind energy conversion facility.

General Authority: NDCC 28-32-02, 49-02-27
Law Implemented: NDCC 49-02-27

CHAPTER 69-09-09
WIND TURBINE DECOMMISSIONING

Section	
69-09-09-01	Definitions
69-09-09-02	Cost Responsibility
69-09-09-03	Useful Life
69-09-09-04	Decommissioning Period
69-09-09-05	Decommissioning Requirements
69-09-09-06	Decommissioning Plan
69-09-09-07	Existing Facilities
69-09-09-08	Financial Assurance
69-09-09-09	Failure to Decommission

69-09-09-01. Definitions.

1. "Commercial wind energy conversion facility" means a wind energy conversion facility of equal to or greater than five hundred kilowatts in total nameplate generating capacity.

2. "Commission" means the public service commission.

3. "Wind turbine" means a wind turbine of equal to or greater than five hundred kilowatts in total nameplate generating capacity.

History: Effective July 1, 2008.
General Authority: NDCC 28-32-02, NDCC 49-02-27
Law Implemented: NDCC 49-02-27

69-09-09-02. ~~Cost~~ Decommissioning responsibility. The owner or operator of a commercial wind energy conversion facility is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities.

History: Effective July 1, 2008.
General Authority: NDCC 28-32-02, NDCC 49-02-27
Law Implemented: NDCC 49-02-27

69-09-09-03. Useful life. A commercial wind energy conversion facility or individual wind turbine is presumed to be at the end of its useful life if the facility or turbine generates no electricity for a continuing period of ~~twelve~~ twenty-four months. The presumption may be rebutted by submitting to the commission for approval a plan outlining the steps and schedule for returning the commercial wind energy conversion facility or wind turbine to service.

History: Effective July 1, 2008.
General Authority: NDCC 28-32-02, NDCC 49-02-27
Law Implemented: NDCC 49-02-27

69-09-09-04. Decommissioning period. The facility owner or operator shall begin decommissioning a commercial wind energy conversion facility or wind turbine within eight months after the time the facility or turbine reaches the end of its useful life, as determined in section 69-09-09-03. Decommissioning must be completed within eighteen months after the facility or turbine reaches the end of its useful life.

History: Effective July 1, 2008.
General Authority: NDCC 28-32-02, NDCC 49-02-27
Law Implemented: NDCC 49-02-27

69-09-09-05. Decommissioning requirements. Decommissioning and site restoration includes dismantling and removal of all towers, turbine generators, transformers, and overhead ~~and underground~~ cables~~;~~, removal of underground cables to a depth of 24 inches; removal of foundations, buildings, and ancillary equipment to a depth of ~~four~~ three feet ~~(1.22 meters)~~ and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the commercial wind energy conversion facility or wind turbine. ~~To the extent possible, t~~The site must be restored and reclaimed to the same general topography ~~and topsoil quality~~ that existed just prior to the beginning of the construction of the commercial wind energy conversion facility or wind turbine and with topsoil respread over the disturbed areas at a depth similar to that in existence prior to the disturbance. Areas ~~D~~disturbed ~~earth~~ by the construction of the facility and decommissioning activities must be graded, topsoiled and reseeded according to Natural Resource Conservation Service technical guide recommendations and other agency recommendations, unless the landowner requests in writing that the access roads or other land surface areas be retained.

History: Effective July 1, 2008.
General Authority: NDCC 28-32-02, NDCC 49-02-27
Law Implemented: NDCC 49-02-27

69-09-09-06. Decommissioning plan. Prior to commencement of operation of a commercial wind energy conversion facility or wind turbine, the facility or turbine owner or operator shall file for commission review ~~with the commission~~ the estimated decommissioning cost per turbine, in current dollars at the time of filing ~~the application~~, for the proposed facility or turbine and a comprehensive decommissioning plan that describes how the facility or turbine owner or operator ~~will ensure that resources are available~~ plans to pay for decommissioning the facility or turbine ~~at the appropriate time~~as required by section 69-09-10-05 at the appropriate time. ~~The commission shall review a plan filed under this section and shall issue an order approving or disapproving the plan within six months after the decommissioning plan was filed.~~ The commission may at any time require the owner or operator of a commercial wind energy conversion facility or wind turbine to file a report with the commission describing how the facility or turbine owner or operator is fulfilling this obligation.

History: Effective July 1, 2008.
General Authority: NDCC 28-32-02, NDCC 49-02-27
Law Implemented: NDCC 49-02-27

69-09-09-07. Existing facilities. Owners and operators of existing commercial wind energy conversion facilities shall file with the commission the information required in section 69-09-09-06 within one year after July 1, 2008.

History: Effective July 1, 2008.
General Authority: NDCC 28-32-02, NDCC 49-02-27
Law Implemented: NDCC 49-02-27

69-09-09-08. Financial assurance. After the tenth year of operation of a commercial wind energy conversion facility or wind turbine, the commission, by order may require the owner or operator to secure a performance bond, surety bond, letter of credit, corporate guarantee, or other form of financial assurance that is acceptable to the commission to cover the anticipated costs of decommissioning the commercial wind energy conversion facility or turbine. The commission may accept a corporate guarantee if the corporation has a tangible net worth of at least ten million dollars, a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liabilities of 1.2 or greater; or if it has an investment grade current rating for its most recent bond issuance of "Baa" or higher as issued by Moody's Investors Service, "BBB" or higher as issued by Standards and Poor's Corporation, or an equivalent rating by any other nationally recognized statistical rating organization, as defined and approved by the United States securities and exchange commission.

History: Effective July 1, 2008.
General Authority: NDCC 28-32-02, NDCC 49-02-27
Law Implemented: NDCC 49-02-27

69-09-09-09. Failure to decommission. If the commercial wind energy conversion facility owner or operator does not complete decommissioning, the commission may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the commission may take such action as may be necessary to decommission a commercial wind energy conversion facility or wind turbine, including the exercise by the commission, commission staff, and their contractors of the right of ingress and egress for the purpose of decommissioning the commercial wind energy conversion facility.

History: Effective July 1, 2008.
General Authority: NDCC 28-32-02, NDCC 49-02-27
Law Implemented: NDCC 49-02-27

State of North Dakota
Public Service Commission

Public Service Commission
Wind Turbine Decommissioning
Rulemaking

Case No. PU-07-642

Regulatory Analysis, Takings Assessment, and Small Entity Analysis

October 3, 2007

N.D.C.C. Section 49-02-27 provides that the commission may adopt rules governing the decommissioning of commercial wind energy conversion facilities. The rules may address:

1. The anticipated life of the project;
2. The estimated decommissioning costs in current dollars;
3. The method and schedule for updating the costs of the decommissioning and restoration;
4. The method of ensuring that funds will be available for decommissioning and restoration; and
5. The anticipated manner in which the project will be decommissioned and the site restored.

Regulatory Analysis

North Dakota Century Code Section 28-32-08 requires that an agency issue a regulatory analysis if the proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars or if a written request for the analysis is filed by the governor or a member of the legislative assembly.

The proposed rule would require owners and operators of new and existing commercial wind energy conversion facilities with total nameplate generating capacity ratings of 500 kW or more to decommission all such facilities and be responsible for all costs of decommissioning when a project has reached the end of its useful life. The proposal would require establishment of a decommissioning plan and, to the extent that it causes decommissioning of facilities that would otherwise be abandoned, the proposal will likely have an impact on the regulated community in excess of fifty thousand dollars. Therefore, a regulatory analysis is being issued.

Section 28-32-08 provides that a regulatory analysis must contain:

a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule:
   - Wind project owner and operators are expected to bear the costs of decommissioning when wind projects are retired. It is expected that the costs of decommissioning will be recovered from consumers of the electricity produced – just as other costs, including competing generation project decommissioning costs, are recovered.

- Landowners should benefit from the proposed rule as it will help ensure they are not stuck with abandoned facilities on their land.
- The general public will benefit from not having abandoned wind turbines spread across the countryside.

b. A description of the probable impact, including economic impact, of the proposed rule;
   - The probably impact will be to decommission wind turbine facilities that might otherwise be abandoned when no longer useful for generating electricity. Actual decommissioning costs per turbine will depend on the number of turbines in the facility and other factors such as salvage value or whether there is a market for used towers, etc. An example was provided in testimony before the ND Legislature's Natural Resources Committee regarding 2007 HB 1506 where the Minnesota Public Utilities Commission estimated in 2006 that decommissioning of a 100 MW facility could cost in a range of approximately $10,000 to $30,000 per turbine. However, absent decommissioning, there may also be an impact from decreased land values if facilities were abandoned in place.

c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues:
   - Implementation and enforcement costs are expected to be limited to existing staff time. Revenue could be impacted by penalties assessed for non-compliance.

d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.
   - No reasonable alternatives were identified or seriously considered.

Takings Assessment

North Dakota Century Code Section 28-32-09(1) requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private property. The assessment must:

a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
   - To the extent that the proposed rule results in the removal of wind generating facilities that otherwise would be abandoned in place, then the rule would limit the use of private property by not allowing "junk" wind turbines to remain erected upon it.

b. Clearly and specifically identify the purpose of the proposed rule.
   - The purpose of the proposed rule is to ensure that wind generating facilities are properly decommissioned at the end of their useful life rather than simply abandoned in place.

c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
   - The proposed rule will establish requirements, and require a funding plan, for decommissioning of wind generating facilities that may not otherwise be properly decommissioned at the end of their useful life. The legislature has authorized the establishment of the rule and no alternative action has been identified that will ensure proper decommissioning of the facilities

d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
   - We do not have sufficient expertise to estimate potential cost to the government. However, there could be salvage value or other factors that may affect the cost to government.

e. Identify the source of payment within the agency's budget for any compensation that may be ordered.
   - There are no sources in this agency's budget without further appropriation from the Legislature.

f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.
   - So certified by the State Legislature. Proposed rule authorized under NDCC 49-02-27.

Small Entity Regulatory Analysis

An economic impact analysis under North Dakota Century Code Section 28-32-08.1 requires a regulatory analysis which considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. Subsection 2 states that the agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:

a. Establishment of less stringent compliance or reporting requirements for small entities.
b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities.
c. Consolidation or simplification of compliance or reporting requirements for small entities.
d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule.
e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

Small entities employ fewer than 25 full-time employees or have gross annual revenue sales of less than $2.5 million dollars.

As proposed, the rules would provide flexibility for the Commission to establish project-specific decommissioning plans to assist wind energy developers that are small entities to fund decommissioning of facilities. Absent a decommissioning plan it is likely more difficult for small entities to fund decommissioning and more likely that facilities will be abandoned in place.

No additional compliance standards, reporting requirements or performance standards are proposed by the rule changes. Small entities will not be exempt from any part of the requirements contained in the proposed rule

Section 28-32-08.1 provides that before adoption of any proposed rule that may have an adverse impact on small entities, the adopting agency shall prepare an economic impact statement that includes consideration of:

a. The small entities subject to the proposed rule;
   - There are some small entity developers, but generally commercial wind energy facility owners and operators are unlikely to be small entities because of the financial and operating resources necessary to develop commercial scale wind energy projects. Possible exceptions include possible school or small community based projects.

b. The administrative and other costs required for compliance with the proposed rule;
   - Aside from the cost of decommissioning the facilities, administrative and other costs are expected to be limited to the cost of preparing and obtaining approval of a decommissioning plan and the costs of a bond if one is needed.

c. The probable cost and benefit to private persons and consumers who are affected by the proposed rule;
   - Wind energy facility owners and operators typically enter into a lease arrangement with private land owners and consequently the landowner can be left with facility removal if the developer fails to do so. The proposed rule will benefit private land owners by ensuring that a plan is in place to remove abandoned facilities from their land.

d. The probable effect of the proposed rule on state revenues:
   - If facilities are abandoned then the state could end up removing them at state expense. The proposed rule will benefit the state by ensuring that a plan is in place to ensure that the state will be left to remove abandoned facilities.

e. Any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule:
   - No less intrusive or less costly alternatives have been identified.

(B)

Siting Fee Refunds

NDAC 69-06-01-05

Small Entity Analysis

Takings Assessment

State of North Dakota
Public Service Commission

Public Service Commission
Public Utilities – Siting
Rulemaking

Case No. PU-06-501

Statement Regarding Regulatory Analysis, Takings Assessment, and Small Entity Analysis

September 13, 2007

The proposed rule sets forth administrative procedures for returning siting application fees that were not needed for processing energy conversion or transmission facility siting applications in accordance with N.D.C.C. section 49-22-22.

Statement Regarding Regulatory Analysis:
The proposed changes set forth administrative procedures for returning siting application fees to applicants in compliance with state law. The changes are not expected to have a negative impact on the regulated community in excess of fifty thousand dollars. Rather, applicants will receive a benefit they did not have prior to the refund law.

Statement Regarding Takings Assessment:
North Dakota Century Code Section 28-32-09(1) requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private property. The assessment must:

a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
b. Clearly and specifically identify the purpose of the proposed rule.
c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
e. Identify the source of payment within the agency's budget for any compensation that may be ordered.
f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

This proposed rule change does not affect the use of private real property and therefore will not result in any taking.

We do not expect any impact on private property owners as a result of the proposed rules.

We do not expect the proposed rules to constitute a taking; therefore, there should be no cost to the state.

Subsection e is not applicable because the proposed rule changes will not limit the use of private real property.

Subsection f is not applicable because the proposed rule changes will not limit the use of private real property.

Statement Regarding Small Entity Regulatory Analysis:
An economic impact analysis under North Dakota Century Code Section 28-32-08.1 requires a regulatory analysis which considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. Subsection 2 states that the agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:

a. Establishment of less stringent compliance or reporting requirements for small entities.
b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities.
c. Consolidation or simplification of compliance or reporting requirements for small entities.
d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule.
e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

No additional compliance standards or reporting requirements are proposed by the rule changes.

No additional performance standards are proposed by these rule changes.

Small entities will not be exempt from any part of the requirements contained in the proposed rule.

(C)

National Electrical Safety Code

NDAC 69—09-02.35

Regulatory Analysis

Small Entity Analysis

Takings Assessment

State of North Dakota
Public Service Commission

Public Service Commission **Case No. PU-06-490**
Public Utilities - Electric
Rulemaking

Statements Regarding Regulatory Analysis, Takings Assessment, and Small Entity Analysis

September 6, 2007

Statement Regarding Regulatory Analysis:
North Dakota Century Code Section 28-32-08 requires that an agency issue a regulatory analysis if the proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars or if a written request for the analysis is filed by the governor or a member of the legislative assembly.

Adopting the latest 2007 edition of the National Electric Safety Code is not expected to have a $50,000 impact on the regulated Community. Electric transmission and distribution facilities are constructed in accordance with current codes as a matter of sound engineering and construction practice regardless whether the Commission's rules reflect the latest code issuance. Therefore, a regulatory analysis is not needed.

Statement Regarding Takings Assessment:
N.D.C.C. Section 28-32-09 requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. Subsection 28-32-09(3) states:

> In an agency's analysis of the takings implications of a proposed rule, "taking" means the taking of private real property, as defined in section 47-01-03, by government action which requires compensation to the owner of that property by the fifth or fourteenth amendment to the Constitution of the United States or section 16 of article I of the Constitution of North Dakota. "Regulatory taking" means a taking of real property through the exercise of the police and regulatory powers of the state which reduces the value of the real property by more than fifty percent. However, the exercise of a police or regulatory power does not effect a taking if it substantially advances legitimate state interests, does not deny an owner economically viable use of the owner's land, or is in accordance with applicable state or federal law.

This proposed rule to adopt an updated 2007 Edition of the National Electric Safety Code does not constitute a taking or regulatory taking. Adoption of the 2007 Edition is not expected to reduce the value of any real property by more than fifty percent because adequate safety standards should reduce the impact of utility facilities on

people and property, and we believe the utilities are already in substantial compliance with the new code. Even if adopting the 2007 Edition were to somehow cause some devaluation, it still should not be considered a taking because adoption would substantially advance legitimate state interests in safety.

Statement Regarding Small Entity Analysis:

N.D.C.C. subsections 28-32-08.1 requires agencies to perform a small entities analysis when proposing rules. The statute states:

> *28-32-08.1. Rules affecting small entities - Analysis - Economic impact statements - Judicial review.*
> *1. As used in this section:*
> *a. "Small business" means a business entity, including its affiliates, which:*
> *(1) Is independently owned and operated; and*
> *(2) Employs fewer than twenty-five full-time employees or has gross annual sales of less than two million five hundred thousand dollars;*
> *b. "Small entity" includes small business, small organization, and small political subdivision;*
> *c. "Small organization" means any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; and*
> *d. "Small political subdivision" means a political subdivision with a population of less than five thousand.*
> *2. Before adoption of any proposed rule, the adopting agency shall prepare a regulatory analysis in which, consistent with public health, safety, and welfare, the agency considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:*
> *a. Establishment of less stringent compliance or reporting requirements for small entities;*
> *b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;*
> *c. Consolidation or simplification of compliance or reporting requirements for small entities;*
> *d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and*
> *e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.*
> *3. Before adoption of any proposed rule that may have an adverse impact on small entities, the adopting agency shall prepare an economic impact statement that includes consideration of:*
> *a. The small entities subject to the proposed rule;*
> *b. The administrative and other costs required for compliance with the proposed rule;*

c. The probable cost and benefit to private persons and consumers who are affected by the proposed rule;
d. The probable effect of the proposed rule on state revenues; and
e. Any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.

Response to subsection 2: There are no reporting requirements under the proposed rule. Establishing an exemption from the code or less stringent standards for small entities would not be consistent with public safety.

Response to subsection 3: The National Electric Safety Code applies to facilities owned by electric utilities, which usually are not small entities. However, some North Dakota municipal or cooperative electric suppliers may be small entities under subsection 28-32-08.1(1). Costs of compliance with this proposed rule update are expected to be minimal or non-existent because sound engineering and construction practices require compliance with the code in effect at the time of construction, regardless whether Commission rules have been updated to reflect the latest code issuance. No effect is anticipated on state revenues. The purpose of updating this rule is to maintain public safety. No less intrusive or less costly alternatives for achieving that purpose have been identified.

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Public Utilities – Electric
Rulemaking

Case No. PU-06-490

STAFF TESTIMONY

November 26, 2007

My name is Jerry Lein. I am employed as a Public Utility Analyst within the Public Utility Division of the Public Service Commission. The purpose of my testimony is to explain and provide support for changes proposed to the Commission's administrative rules in section 69-09-02-35 of the North Dakota Administrative Code. This section adopts the National Electric Safety Code (NESC) by reference.

The NESC is updated periodically, with a new edition issued every five years. The changes proposed would simply adopt the latest NESC 2007 Edition instead of the previously adopted 2002 Edition. The purpose of adopting the 2007 Edition is to ensure that North Dakota safety requirements keep pace with industry standards. In practice, the utilities are very committed to safety and are already applying the 2007 Edition.

A summary of changes for the 2007 Edition is attached to my testimony.

A small entities analysis under N.D.C.C. section 28-32-08 was prepared with the conclusion that any costs of small entity compliance with this proposed rule update are expected to be minimal or non-existent.

A regulatory analysis under N.D.C.C. section 28-32-08 was not performed because no requests were received and because the proposed rule is not expected to have an impact on the regulated community in excess of fifty thousand dollars.

A takings assessment under N.D.C.C. section 28-32-09 was prepared with the conclusion that the proposal is not a taking or regulatory taking.

That concludes my testimony. Thank You.

(D)

Accounting Rules for Electric and Gas Utilities

NDAC 69-09-05.1

Takings Assessment

Memo

To: Illona Jeffcoat-Sacco

From: Mike Diller, Annette Bendish

Date: December 7, 2006

Re: Regulatory Analysis of Proposed Accounting Rules (PU-06-486)

According to Section 28-32-08 of the Administrative Agencies Practice Act, the commission is required to complete a regulatory analysis if a proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars. The accounting rules proposed in this case do not require a regulatory analysis.

Staff believes the proposed rules to require electric and gas companies to use the Uniform System of Accounts as prescribed by the Federal Energy Regulatory Commission will have no impact, financial or otherwise, on the regulated community. The rule merely formalizes the current accounting practice of the regulated utilities and ensures its continued use.

Staff believes that the proposed rules for the capitalization of Allowance for Funds Used During Construction (AFUDC) will not have significant impact on the regulated community.

While the limitations the rule imposes on the capitalization of AFUDC may be different than what is currently being used by some of the regulated utilities, the capitalization or non-capitalization of finance costs are recovered through rates one way or another. In other words, ratepayers can pay the utility companies now or they can pay them later but in the end the utility companies will be paid based on the actual cost of service. If more finance costs are capitalized initially during the construction of the asset, ratepayers will pay less initially and more over the life of the asset. On the other hand, if less costs are capitalized initially, ratepayers will pay more initially and less over the life of the asset. Either way, when taking the time value of money into consideration, one is equal to the other and there is no financial impact to the regulated community over time.

Memorandum

To: Illona Jeffcoat-Sacco

CC: Commissioners, Public Utility Division & Regulated Companies

From: Mike Diller

Date: 9/13/2007

Re: Accounting Rules (Case No. PU-06-486)

According to the Administrative Agencies Practice Act, a regulatory analysis for any proposed rule is required if the governor or member of the legislative assembly requests it or if the proposed rule is expected to impact the regulated community by more than $50,000. On December 6, 2006, I issued a memo concluding that the proposed accounting rules do not require a regulatory analysis. See attached rules and analysis.

The Administrative Act also requires that the agency consider the impact of its proposed rules on small entities as well as a "takings" assessment. If adopted, the proposed rules will not impact small entities nor will it limit the use of private real property. See attached rules and analysis.

Reason for Purposed Rules

Staff is advocating a standard system of accounts for North Dakota's regulated gas and electric companies to ensure comparability of financial data from one year to the next as well as between different entities. Using a standard system of accounts makes auditing, training of employees, finding information, movement of personnel and the preparation of financial statements easier and better. Staff is advocating standard rules for the capitalization of AFUDC for similar reasons with comparability and financial reporting being foremost in staff's consideration.

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission
Accounting, Electric and Gas
Rulemaking

Case No. PU-06-486

STAFF TESTIMONY

November 26, 2007

My name is Mike Diller. I am Director of Accounting, responsible for the commission's accounting and data processing operations and any assigned public utility matters. I have about 24 years of public utility regulatory experience with both the Oklahoma Corporation Commission and now the North Dakota Public Service Commission. I received a Bachelor of Science Degree in Accounting from Oklahoma Christian College in Edmond, Oklahoma in 1981. I am a Certified Public Accountant licensed in the state of Oklahoma, and I am a member of the American Institute of Certified Public Accountants.

I am appearing today to testify in support of the accounting rules proposed by staff, Case No. PU-06-486. The rules require regulated gas and electric companies to use a standard system of accounts and a prescribed method for capitalizing the cost of funds used during the construction of assets. To my knowledge, no one is opposed to these proposed rules.

The regulated gas and electric companies have been using the Federal Energy Regulatory Commission's system of accounts for a long time. The proposed rule simply codifies what is already occurring. The FERC has spent a lot of time over the years developing and refining its system of accounts. Further, most people in the industry recognize the value of using this one standard system. Using a standard system of accounts ensures comparability of financial data from one year to the next as well as between different entities. Using a standard system of accounts makes auditing, training of employees, finding information and the preparation of financial statements easier and more productive.

With regard to the capitalization of Allowance for Funds Used During Construction (AFUDC) by the regulated gas and electric companies of North

Dakota, the AFUDC is nothing new. The only "new" thing about staff's proposal is the limitation for using AFUDC. The proposed rule does not permit the capitalization of AFUDC on projects costing less than $10,000 and taking less than 30 days to complete. Staff understands that the current practices of regulated utilities within North Dakota are within this limitation.

The capitalization of AFUDC, or the cost of funds used to construct an asset, is tied to an old regulatory principle known as "used and useful". The idea behind AFUDC is to match the cost of providing service to the customers using the service. Accordingly, AFUDC provides a method for capitalizing all finance costs related to a particular asset and then amortizing those costs over the in-service life of the asset. In this way, the beneficiaries of the new plant pay for the plant and finance costs rather than charging some previous generation of customers for finance costs that occurred during the construction phase of an asset. The dollar and time limit of this rule recognizes that smaller jobs are occurring on a regular basis and therefore any associated finance costs do not need to be capitalized and are appropriately expensed when incurred.

A small entities analysis under N.D.C.C. section 28-32-08 was prepared with the conclusion that any costs of small entity compliance with this proposed rule are minimal or non-existent.

A regulatory analysis under N.D.C.C. section 28-32-08 was not performed because no requests were received and because the proposed rule is not expected to have an impact on the regulated community in excess of fifty thousand dollars.

A takings assessment under N.D.C.C. section 28-32-09 was prepared with the conclusion that the proposal will not impact the use of private real property.

This concludes my testimony.

(E)

Weights and Measures

NDAC 69-10

Regulatory Analysis

Small Entity Analysis

State of North Dakota
Public Service Commission

Public Service Commission
Weights and Measures
Rulemaking

Case No. WM-07-203

Regulatory Analysis, Small Entity Analysis and Takings Assessment
September 28, 2007

The Testing and Safety Division has conducted the regulatory assessments required by North Dakota Century Code (NDCC) Sections 28-32-08, 28-32-08.1 and 28-32-09 for the weights and measures rules changes proposed in Case No. WM-07-203. Section 28-32-08 requires a regulatory analysis if the proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars. Section 28-32-08.1 requires a regulatory analysis which considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. NDCC Section 28-32-09 requires an agency to prepare a written assessment if the proposed rule changes are considered a constitutional takings that may limit the use of private real property.

Proposed Rule Changes:

- 69-10-01-01, paragraph 18., 69-10-01-03.2, 69-10-01-04.1, 69-10-01-04.2, 69-10-01-05, 69-10-01-05.1, 69-10-02-05, 69-10-02-16, 69-10-02-19, 69-10-02-20, 69-10-03-08, and 69-10-04-03: we propose adding the word "permit" to the definition of a variance in these rules to match the change made to NDCC, Chapter 64 by the 2007 legislature.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by these rule changes and they will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with these proposed changes.

- 69-10-01-02.3: is a proposed new rule that will clarify who may recertify commercial devices; whose responsibility it is to ensure the devices are recertified; how often the devices must be recertified; and what type of enforcement actions will take place if the rule is violated.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-01-03: we propose to delete the requirement in this rule that requires an address on the adhesive stickers used as part of the sealing process because there is not enough space to fit this information on the sticker.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-01-03.2 b: we propose to add the word "or" to this rule to clarify that the rule references two different measuring device types; and in 69-10-01-03.2 c. we propose to delete any reference to the use of an LPG master meter as a standard. Under this proposal, use of an LPG master meter as a standard will no longer be allowed because they are not recognized by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST).

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-01-07: we propose to repeal this rule in order to allow the sale of refined fuels through a temperature compensated meter.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

69-10-01-13: we propose adding the term "1999 edition" to this rule to clarify which edition of NIST handbook 44 is adopted by ND.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-01-16: in this rule we propose lowering the time limit registered service companies have to test a commercial device under contract to them from 13 months to 12 months, and also would change the requirement that the commission "must" schedule a device for testing that was not tested on time. These changes are needed as a result of the 2007 legislative reduction in the Commission's inspection staff in order to better allocate time and resources.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-02-08 and 69-10-02-11: we propose repealing these two existing rules in order to combine these manufacturer specifications together in new proposed rule 69-10-01-17. This section will now include all weighing and measuring devices, and will be placed in the general section of the administrative rules.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-12: we propose to change the "weighman" terminology in this rule to eliminate use of gender specific terminology.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-02-24: we propose to clarify this rule by changing the following: adds "on commercial scales after", changes "audit" to "audit trail", and changes "recall" to "recalled".

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-02-25: we propose to add the term "portable wheel-load scale" to this rule to clarify that both permanent axel load scales and portable wheel-load scales are included in this rule.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-02-26: is a proposed new rule that provides design and access requirements for all new large hopper scales installed after January 1, 2008, and new modification requirements for all existing large hopper scales. These changes are intended to prevent injury to personnel during testing and to prevent damage to the device. It also sets forth exemptions for smaller hopper scales 5,000 lbs. in capacity or less because these scales require much less testing weight.

NDCC 28-32-08 Regulatory Analysis – New device installations will be impacted, but the economic impact should be greatly reduced by design before construction and much less than $50,000 per year. If, in order to comply with this rule, an operator experiences excessive expense, an economic hardship variance is available from the commission under administrative rule 69-10-01-04.1 provided all safety requirements are met.

NDCC 28-32-08.1 – Small Entity Analysis - The compliance requirement proposed by this rule change may impact small entities but cannot be less stringent for small entities. The rule is intended to protect the hoppers from damage and the personnel involved with the testing from injury.

No additional reporting requirements are proposed by this rule change.

rule change has no deadline proposed for existing device installations and since most of the existing devices have already been modified no impact is associated.

This rule change is intended to clarify, consolidate, and simplify this requirement for all impacted entities.

This design requirement cannot be replaced with a performance standard. The proposed change is intended to protect the device from damage and the personnel involved with the testing from injury.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-03-02: we propose to reorganize and clarify this rule. The proposed changes are as follows: clarify that an up to date copy of the metrology certificate of traceability for all standards be on file with the commission; require the certification of automatic bulk-weighing system (bulkweigher) standards once every 5 years; no longer allow the use of LPG master meters as testing standards; require recertification of any standard if upon inspection the physical condition of a standard indicates a need for recertification.

NDCC 28-32-08 Regulatory Analysis - The proposed change requiring certification of jurisdictional bulkweigher standards every 5 years will affect approximately 85 device operators throughout the state and could have an economic impact in excess of $50,000 for the first year and every five years thereafter.

For example, a bulkweigher operator in Crosby, North Dakota could incur the following impact every five years: Crane service to remove the standards from the elevator and place them onto a flatbed truck for transport: $3,010. Cost to transport to the metrology laboratory in Bismarck, North Dakota: $635. Metrology fee: $200. Total: $3,845. However, a bulkweigher operator in New Salem, North Dakota could incur the following impact every five years: No crane service fees since the standards are located on the ground floor of the elevator. Cost to load and transport the standards to the metrology laboratory in Bismarck, North Dakota: $125. Metrology fee: $200. Total: $325. The two above examples represent the worst and best case cost scenarios. Costs for the remaining 83 operators would vary between the above two totals.

LPG master meter were only used by state weights and measures staff and one private service company. However, that company also has a compliant LPG standard currently in service. In addition, four other service companies have compliant LPG standards currently in service to test the LPG devices potentially affected so small entities will still be able to receive this service. No economic impact concerning LPG device testing will result from this rule change.

There is no alternative to this proposed change. These devices must be tested every 15 months by either commission staff or by private registered service providers as required under current law. There is no other way to ensure accuracy and traceability of the standards.

NDCC 28-32-08.1 Small Entity Analysis - The 5 year certification interval proposed in this rule for automatic bulk weighing system (bulkweigher) standards only applies to a bulkweigher with integral standards if the device is being used commercially and if the integral standards are being used to annually test and certify the device, then those standards fall under the jurisdiction of the public service commission under:

NDCC Section 64-02-07 Duties of commission. The commission shall:

1. Maintain the calibration of the state weights and measures standards that are traceable to the United States standards. All secondary standards must be calibrated by a national institute of standards and technology-recognized metrology laboratory as often as the commission deems necessary.

e compliance requirement proposed by this rule change cannot be less stringent for small entities. The weights and measures program promotes equity in the commercial market place by maintaining secondary standards used in the state and through commercial weighing and measuring device enforcement by the weights and measures program. Therefore we cannot bias rule requirements to favor the buyer or seller regardless of the economic disposition of either party.

The proposed reporting requirement in this rule is needed to comply with:

> NDCC Section 64-02-07 Duties of commission. The commission shall:
>
> 3. Test, correct, and seal, when found to be accurate, all copies of the standards used in the state for the purpose of testing the weighing or measuring devices used in the state, and keep a record thereof.

We consider the proposed 5 year certification interval for these jurisdictional bulkweigher standards reasonable. Bulkweigher standards that are under Federal Grain Inspection Service (FGIS) jurisdiction require a 3 year certification interval. However this certification interval could be negotiated with operators but should in no case be greater than 5 years.

The proposed rule has been clarified with this change and it is intended to simplify compliance for small entities. The reporting requirement for jurisdictional bulkweigher standards will have no impact on small entities.

performance standard can replace this operational rule requirement. The change is intended to bring jurisdictional bulkweigher standards into compliance with the applicable requirements of the North Dakota Century Code and other administrative rules.

Since the State Metrologist is paid a monthly salary, any increase in metrology hours incurred from testing these bulkweigher standards (approximately 51 hours per year) would not have an impact on the Commission's budget.

This proposed rule change could increase state revenue up to $3,468 annually by providing metrology service for the bulk weigher test weights. There are approximately 85 bulkweighers in the state. The time involved to certify the test weights of each device is about 3 hours per device. The current metrology fee is $68 per hour. For a five year recertification rotation then it would be approximately: 85 operators divided by 5 years = 17 devices per year x 3 hours per device x $68 per hour metrology fee = $3,468 in possible additional revenue to the general fund.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-03-06: we propose to change paragraph 4 of this rule in order to clarify how to make a metrology appointment, the proposed change to paragraph 6 by replacing the word "accredited" with the word "recognized" is in order to match the correct terminology used by the U.S. Department of Commerce National Institute of Standards and Technology which is to ensure that all NIST recognized labs, not just NIST accredited labs are recognized by the Commission.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-03-07: we propose to change paragraph 4 of this rule to clarify the design requirement for leveling a volumetric prover; and in paragraph 16, add the word "permit", in order to match the change made to North Dakota Century Code, Chapter 64 by the 2007 legislature.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-04-02: we propose to change paragraph b in this rule, by adding clarifications to show what type of registered service person test must be taken and where the test questions originate. Change paragraph c. of 69-10-04-02 by replacing the phrase "metrology lab" with the phrase "a state facility" in order to clarify where the test may be administered.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.

- 69-10-04-06: we propose some minor clarifying language changes to this rule.

NDCC 28-32-08 Regulatory Analysis – the proposal is not expected to impact the regulated community in excess of fifty thousand dollars.

NDCC 28-32-08.1 Small Entity Analysis - no additional compliance standards or reporting requirements are proposed by this rule change and it will have no economic impact on small entities.

NDCC 28-32-09 Takings Assessment - no regulatory taking of private real property is associated with this proposed change.