

ND Energy Conversion Facility Siting Overview

(N.D.C.C. Chapter 49-22 and North Dakota Administrative Code Article 69-06)

- **Jurisdictional Energy Conversion Facilities:** (49-22-03(5)) Any plant, addition, or combination of plant and addition designed for or capable of:
 - Generation of 60 MW or more of electricity
 - Manufacture or refinement of 100 Million cubic feet or more of gas per day
 - Manufacture or refinement of 50,000 barrels or more of liquid hydrocarbon products per day
 - Enrichment of uranium materials
- **Letter of Intent:** (49-22-07.1 and 69-06-03) Filing required one year prior to filing of application, but Commission can designate shorter waiting period upon request. The Commission then acknowledges the letter of intent, designates a shorter waiting period if appropriate and assesses a filing fee.
- **Filing Fees:** (49-22-22) Statutory filing fees for energy conversion facilities are \$500 per \$1 million of investment, but not less than \$5,000 nor more than \$100,000. Commission may assess additional fees up to a total of \$1,000 per million of investment if needed. Commission has flexibility in time and manner of payment, but absent special request usually designates the fee due with the filing of an application. Filing fees not used for processing applications are refunded to applicant.
- **Ten-Year Plan:** (49-22-04, 69-06-02) Every Utility that owns, operates, or plans within the next ten years to own, operate or start construction shall file a ten-year plan by July 1 of each year.
- **Waiver of Procedures and Time Schedules:** (49-22-07.2, 69-06-06) Applicant may apply for waiver of any procedures and time schedules, Commission may grant the waiver after hearing and upon a finding that:
 - A demonstrable emergency exists which requires immediate construction and that adherence to the procedures and time schedules would jeopardize the utility system.
 - The proposed facility is of such length, design, location or purpose that it will produce minimal adverse effects.
- **Certificate of Site Compatibility:** (49-22-08, 69-06-04) Utility files application for Certificate of Site Compatibility, which is then reviewed for completeness. After deeming the application complete:

- The Commission issues a Notice of Filing and Notice of Hearing, which is published and served on certain state agencies and offices designated in 69-06-01-05.
- Advisory Committee may be appointed under 49-22-14
- A hearing is held in each county containing any portion of the proposed site, except the Commission may combine hearings for one or more counties.
- The Commission has 6 months to designate a site or indicate the reasons for refusal of designation, unless extended by the Commission for just cause.
- **Factors and Criteria Considered:** (49-22-09, 69-06-08-01)
 - Exclusion Areas: Geographical areas EXCLUDED from consideration such as parks, irrigated land, and areas critical to threatened or endangered species.
 - Avoidance areas: Geographical areas to be avoided unless applicant shows there is no reasonable alternative
 - Selection Criteria: Applicant to demonstrate adverse impact will be at an acceptable minimum on certain things such as agriculture, noise sensitive land use, etc.
 - Policy Criteria: Commission may give preference to an applicant that will maximize benefits from certain policies and practices such as economies of scale, etc.
 - Alternatives to the proposed site.

ND Transmission Facility Siting Overview :

(N.D.C.C. Chapter 49-22 and North Dakota Administrative Code Article 69-06)

- **Jurisdictional Electric Transmission Facilities:** (49-22-03) Electric transmission lines and associated facilities > 1 mile long with a design in excess of 115 kV, except for some temporary facilities and facilities within an existing transmission line corridor as described in the statute.
- **Letter of Intent:** (49-22-07.1 and 69-06-03) Filing required one year prior to filing of application, but Commission can designate shorter waiting period upon request. The Commission then acknowledges the letter of intent, designates a shorter waiting period if appropriate and assesses a filing fee.
- **Filing Fees:** (49-22-22) Statutory filing fees for transmission facilities are \$5,000 per \$1 Million of facility investment, but not less than \$5,000 nor more than \$100,000. Commission has flexibility in time and manner of payment, but absent special request usually designates the fee due with the filing of an application. Filing fees not used for processing applications are refunded to applicant.
- **Ten – Year Plan:** (49-22-04, 69-06-02) Every utility that owns, operates, or plans within the next ten years to own, operate or start construction shall file a ten-year plan by July 1 of each year.
- **Waiver of Procedures and Time Schedules:** (49-22-07.2, 69-06-06) Utility may make application for waiver of any procedures and time schedules, including the requirement for separate corridor and route applications. The Commission may grant the waiver after hearing and upon a finding that:
 - a demonstrable emergency exists which requires immediate construction and that adherence to the procedures and time schedules would jeopardize the utility's system.
 - the proposed facility is of such length, design, location, or purpose that it will produce minimal adverse effects
- **Two Step Transmission Facilities Application Process:**
 - **Corridor Certificate:** (49-22-08, 69-06-04) A corridor is the area within which the facility will be routed. Its width must be at least ten percent of its length, but not less than one mile or greater than six miles unless otherwise approved by the Commission. Utility files application for Certificate of Corridor Compatibility, which is then reviewed for completeness. After deeming the application complete:
 - The Commission issues a Notice of Filing and Notice of Hearing, which is published and served on certain state

agencies and officers designated in Section 69-06-01-05 of the ND Admin. Code.

- A hearing is held in each county containing a portion of the proposed corridor, except that the Commission may combine hearings for one or more counties.
- The Commission has three months to designate a corridor or indicate the reasons for refusal of designation, unless extended by the Commission for just cause.
- **Route Permit:** (49-22-08.1, 69-06-05) No construction may begin without first obtaining a Route Permit from the Commission. Utility files an application for a proposed route within the designated corridor, which is then reviewed for completeness. After deeming the application complete:
 - The Commission issues a Notice of Filing and Notice of Hearing, which is published and served on certain state agencies and officers designated in Section 69-06-01-05 of the ND Admin. Code.
 - A hearing is held in each county containing a portion of the proposed route, except that the Commission may combine hearings for one or more counties.
 - The Commission has six months to designate a route or indicate the reasons for refusal of designation, unless extended by the Commission for just cause.
- **Factors and Criteria Considered:** (49-22-09, 69-06-08-02,) Not inclusive.
 - Exclusion Areas: Geographical areas EXCLUDED from consideration for route, such as parks and areas critical to threatened or endangered species.
 - Avoidance areas: Geographical areas to be avoided unless applicant shows there is no reasonable alternative.
 - Selection Criteria: Applicant to demonstrate adverse impact will be at an acceptable minimum on certain things such as agriculture, noise sensitive land use, etc.
 - Policy Criteria: Commission may give preference to an applicant that will maximize benefits from certain policies and practices such as economies of scale, etc.
 - Alternatives to proposed route or corridor.

For More Information Contact Jerry Lein, ND Public Service Commission, Phone 701 328-1035, Fax 328-2410 or e-mail jlein@nd.gov

CHAPTER 69-09-09 WIND TURBINE DECOMMISSIONING

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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 October 1, 2008.

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

Law Implemented: NDCC 49-02-27

69-09-09-02. 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.

History: Effective October 1, 2008.

General Authority: NDCC 28-32-02, 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 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 October 1, 2008.

General Authority: NDCC 28-32-02, 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 October 1, 2008.

General Authority: NDCC 28-32-02, 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 cables; removal of underground cables to a depth of twenty-four [60.96 centimeters] inches; removal of foundations, buildings, and ancillary equipment to a depth of three feet [91.44 centimeters] 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.

History: Effective October 1, 2008.

General Authority: NDCC 28-32-02, 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 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.

History: Effective October 1, 2008.

General Authority: NDCC 28-32-02, 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 October 1, 2008.

General Authority: NDCC 28-32-02, 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 Standard 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 October 1, 2008.

General Authority: NDCC 28-32-02, 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 October 1, 2008.

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

Law Implemented: NDCC 49-02-27

69-06-08-01. Energy conversion facility siting criteria. The following criteria shall guide and govern the preparation of the inventory of exclusion and avoidance areas.

1. Exclusion areas. The following geographical areas shall be excluded in the consideration of a site for an energy conversion facility, and shall include a buffer zone of a reasonable width to protect the integrity of the area. Natural screening may be considered in determining the width of the buffer zone.

a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; historic districts; monuments; wilderness areas; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.

b. Designated or registered state: parks; forests; forest management lands; historic sites; monuments; historical markers; archaeological sites; grasslands; wild, scenic, or recreational rivers; game refuges; game management areas; management areas; and nature preserves.

c. County parks and recreational areas; municipal parks; parks owned or administered by other governmental subdivisions; hardwood draws; and enrolled woodlands.

d. Prime farmland and unique farmland, as defined by the land inventory and monitoring division of the soil conservation service, United States department of agriculture, in 7 C.F.R. part 657; provided, however, that if the commission finds that the prime farmland and unique farmland that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural productions, such exclusion shall not apply.

e. Irrigated land.

f. Areas critical to the life stages of threatened or endangered animal or plant species.

g. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.

2. Avoidance areas. The following geographical areas shall not be approved as a site for an energy conversion facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative sites. Economic considerations alone shall not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area shall be included. Natural screening may be considered in determining the width of the buffer zone.

- a. Historical resources which are not designated as exclusion areas.
- b. Areas within the city limits of a city or the boundaries of a military installation.
- c. Areas within known floodplains as defined by the geographical boundaries of the hundred-year flood.
- d. Areas that are geologically unstable.
- e. Woodlands and wetlands.
- f. Areas of recreational significance which are not designated as exclusion areas.