

PUBLIC UTILITIES

CHAPTER 402

SENATE BILL NO. 2132

(Government and Veterans Affairs Committee)
(At the request of the Public Service Commission)

AN ACT to amend and reenact section 49-01-02 of the North Dakota Century Code, relating to the election of one public service commissioner as chairman of the commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-01-02 of the North Dakota Century Code is amended and reenacted as follows:

49-01-02. Public service commission - How constituted. The three persons elected public service commissioners, pursuant to the provisions of article V, section 2, of the Constitution of North Dakota, constitute and shall be known and designated as the public service commission of the state of North Dakota. They shall elect one of their number ~~president~~ chairman of the commission and shall appoint a secretary.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 403**SENATE BILL NO. 2137**

(Natural Resources Committee)

(At the request of the Public Service Commission)

AN ACT to amend and reenact subsection 6 of section 49-02-02 and sections 49-05-04, 49-05-04.2, 49-05-04.3, and 49-05-16 of the North Dakota Century Code, relating to powers of the public service commission and electric and gas public utility application fees; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 49-02-02 of the North Dakota Century Code is amended and reenacted as follows:

6. Employ, and fix the compensation of, rate experts, engineers, auditors, attorneys, and all other expert help and assistance for hearings or investigations on ~~rate increase~~ applications filed by gas or electric public utilities. The expense of any hearings or investigations and the actual expenses of any employees of the commission while engaged upon any hearing or investigation must ~~upon the order of the commission~~ be deducted from the application fee paid by the public utility involved. The commission shall ascertain the costs and expenditures. ~~After giving the public utility notice and opportunity to demand a hearing, and after a hearing, if any, is held, the commission shall render a bill and make an order for payment by certified mail or by personal delivery to one of the managing officers of the public utility.~~ The billing and order may be made from time to time during the hearing or investigation or at the conclusion thereof, as the commission determines. Upon receipt of the bill and order for payment, as evidenced by return receipt or other proof, the public utility shall pay to the commission the amount billed. All amounts not paid within thirty days after receipt of the order for payment draw interest at the rate of six percent per annum from the date of receipt of the order. All costs and expenses collected The application fees received by the commission under this subsection chapter 49-05 must be deposited in a special account within the public service commission. All moneys deposited in the account are appropriated on a continuing basis to the commission to pay expenses incurred in the processing of cases in which application fees are required. The commission shall refund the portion of a fee collected under chapter 49-05 which exceeds the expenses incurred for processing the case for which the fee was paid.

SECTION 2. AMENDMENT. Section 49-05-04 of the North Dakota Century Code is amended and reenacted as follows:

49-05-04. Application for increase of rates - Information required - Fee. Any public utility requesting an increase in its rates above the maximum approved or prescribed by the commission shall furnish the commission:

1. The original cost of all its property.

2. The date of the acquisition of said property.
3. The amount of money invested in said property.
4. The amount of stock outstanding.
5. The amount of bonds outstanding against said property.
6. All books, papers, and memoranda of the utility showing the financial condition thereof.
7. Its total monthly salaries and wage expense for such time as the commission may request.
8. An itemized statement of its expenditures.
9. The details of its profit and loss account.
10. All other books, papers, vouchers, and accounts which the commission shall ask to have produced as evidence at the hearing.
11. An application fee in the amount of one hundred twenty-five thousand dollars. Upon request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the application process by the commission. The commission shall pay the expenses of investigating a rate increase application under this section from the application fee paid by the public utility in accordance with section 49-02-02. The commission may waive or reduce the fee.

SECTION 3. AMENDMENT. Section 49-05-04.2 of the North Dakota Century Code is amended and reenacted as follows:

49-05-04.2. Rate adjustment - Federal environmental mandate costs.

1. The commission may approve, reject, or modify a tariff filed under section 49-05-06, which provides for an adjustment of rates to recover jurisdictional capital costs and associated operating expenses incurred by a public utility to comply with federal environmental mandates on existing electricity generating stations. For purposes of this section, federal environmental mandates are limited to any requirements under the Clean Air Act, the Clean Water Act, or any other federal law or rule designed to protect the environment. Associated operating expenses are costs incurred by the public utility to comply with the environmental mandate. The tariff must:
 - a. Allow the public utility to recover on a timely basis its investment in capital costs and associated operating expenses incurred to meet federal environmental mandates not reflected in the utility's general rate schedule.
 - b. Allow a return on the public utility's investment made to meet federal environmental mandates at the level approved in the utility's most recent general rate case.

- c. Provide a current return on construction work in progress to meet federal environmental mandates provided the cost recovery from retail customers of the allowance for funds used during construction is not sought through any other means.
 - d. Terminate cost recovery after the public utility's costs and expenses to meet federal environmental mandates have been recovered fully or have been reflected in the utility's general rate tariffs.
2. Rate adjustments filed under the tariff must be accompanied by:
- a. A description and quantification of the costs and expenses incurred by the public utility to meet federal environmental mandates which are subject to recovery;
 - b. A schedule for implementation of the applicable projects; ~~and~~
 - c. Calculations to establish that the rate adjustment is consistent with the terms of the tariff; and
 - d. An application fee in the amount of fifty thousand dollars. Upon request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the application process by the commission. The commission may waive or reduce the fee.
3. Upon receipt of a rate adjustment filed under the tariff, the commission shall approve the rate adjustment to become effective unless, after notice and opportunity for hearing and comment, the commission determines the rate adjustment does not comply with the tariff or the incurred costs and expenses to meet federal environmental mandates are not reasonable and prudent. ~~The commission may order shall pay the expenses of investigating a rate adjustments adjustment to meet federal environmental mandates under this section be from the application fee paid by the public utility in accordance with section 49-02-02. The public utility has the burden of proving that the rate adjustment complies with the tariff and that the costs and expenses incurred to meet federal environmental mandates are reasonable and prudent.~~

SECTION 4. AMENDMENT. Section 49-05-04.3 of the North Dakota Century Code is amended and reenacted as follows:

49-05-04.3. Rate adjustment - Transmission facility costs.

1. The commission may approve, reject, or modify a tariff filed under section 49-05-06 which provides for an adjustment of rates to recover jurisdictional capital and operating costs incurred by a public utility for new or modified electric transmission facilities. For purposes of this section, an electric transmission facility includes an electric transmission line as defined in chapter 49-21.1 and other transmission line equipment, including substations, transformers, and other equipment constructed to improve the power delivery capability or reliability of the electric transmission system; and operating costs include federally

regulated costs charged to or incurred by the public utility to increase regional transmission capacity or reliability. The tariff must:

- a. Allow the public utility to recover on a timely basis its investment and associated costs for new or modified electric transmission facilities not reflected in the utility's general rate schedule;
 - b. Allow a return on the public utility's investment made for new or modified electric transmission facilities at the level approved in the utility's most recent general rate case;
 - c. Provide a current return on construction work in progress for new or modified electric transmission facilities, provided the cost recovery from retail customers of the allowance for funds used during construction is not sought through any other means; and
 - d. Terminate cost recovery after the public utility's costs for new or modified electric transmission facilities have been recovered fully or have been reflected in the utility's general rate tariffs.
2. Rate adjustments filed under the tariff must be accompanied by:
- a. A description and quantification of the costs incurred by the public utility for new or modified electric transmission facilities which are subject to recovery;
 - b. A schedule for implementation of the applicable transmission facility projects; ~~and~~
 - c. Calculations to establish that the rate adjustment is consistent with the terms of the tariff; and
 - d. An application fee in the amount of fifty thousand dollars. Upon request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the application process by the commission. The commission may waive or reduce the fee.
3. Upon receipt of a rate adjustment filed under the tariff, the commission shall approve the rate adjustment to become effective unless, after notice and opportunity for hearing and comment, the commission determines the rate adjustment does not comply with the tariff or the incurred costs for new or modified electric transmission facilities are not reasonable and prudent. The commission ~~may order the public utility to~~ shall pay the expenses of investigating a rate adjustment ~~adjustment~~ for recovery of transmission facility costs under this section from the application fee paid by the public utility in accordance with section 49-02-02.

SECTION 5. AMENDMENT. Section 49-05-16 of the North Dakota Century Code is amended and reenacted as follows:

49-05-16. Advance determination of prudence. A public utility proposing to construct, lease, or make improvements to an energy conversion facility, renewable energy facility, transmission facility, or proposed energy purchase contract from another entity or person for the purpose of ensuring reliable electric

service to its customers may file an application with the commission for an advance determination of prudence regarding the proposal. The commission ~~may order that shall pay the~~ expenses associated with investigating the application made by the public utility for prudence of a resource addition ~~be~~ from the application fee paid by the public utility in accordance with section 49-02-02.

1. The commission may issue an order approving the prudence of an electric resource addition if:
 - a. The public utility files with its application a projection of costs to the date of the anticipated commercial operation of the electric resource addition;
 - b. The public utility files with its application a fee in the amount of one hundred twenty-five thousand dollars. Upon request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the application process by the commission. The commission may waive or reduce the fee.
 - c. The commission provides notice and holds a hearing, if appropriate, in accordance with section 49-02-02; and
 - ~~e.~~ d. The commission determines that the resource addition is reasonable and prudent. For facilities located or to be located in this state the commission, in determining whether the resource addition is reasonable and prudent, shall consider the benefits of having the energy conversion facility, renewable energy facility, transmission facility, or facility generating the energy to be purchased located in this state.
2. The commission order must be rendered no later than seven months after the public utility files its application requesting a prudence determination of an electric resource addition.
3. A resource addition approved by the commission is subject to annual reporting requirements until commercial operation of the resource addition.
4. The commission's order determining prudence of the resource adjustment is binding for ratemaking purposes.
5. If at any time following an initial commission order, the commission, following a subsequent hearing, determines that continuation of a project is no longer prudent or that its prior order should be modified, the public utility may recover in its rates, and in a timely manner consistent with the public utility's financial obligations, the amounts the public utility already has expensed, incurred, or obligated on a project, including interest expense and a return on equity invested in the project up to the time the new order is entered even though the project may never be fully operational or used by the public utility to serve its customers.

6. There is a rebuttable presumption that an energy conversion facility, renewable energy facility, transmission facility, or facility generating the energy to be purchased which is located in the state is prudent.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 404

HOUSE BILL NO. 1449 (Representative DeKrey)

AN ACT to amend and reenact section 49-02-27 and subdivision a of subsection 5 of section 49-22-03 of the North Dakota Century Code, relating to the decommissioning of wind energy conversion facilities and to the definition of energy conversion facility; and to provide for a legislative council study of the development of wind and other natural resources.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-02-27 of the North Dakota Century Code is amended and reenacted as follows:

49-02-27. Power of commission to establish rules to decommission Decommissioning of wind energy conversion facilities.

1. The commission ~~may~~ shall adopt rules governing the decommissioning of commercial wind energy conversion facilities. The rules ~~may~~ must address:
 - 1- a. The anticipated life of the project;
 - 2- b. The estimated decommissioning costs in current dollars;
 - 3- c. The method and schedule for updating the costs of the decommissioning and restoration;
 - 4- d. The method of ensuring that funds will be available for decommissioning and restoration; ~~and~~
 - 5- e. The anticipated manner in which the project will be decommissioned and the site restored; and
 - f. Present and future natural resource development.
2. The facility owner or operator of a commercial wind energy facility shall record the location of any portion of underground foundation not removed during decommissioning with the county recorder in the county in which any such underground foundation is located.

¹⁶⁴ **SECTION 2. AMENDMENT.** Subdivision a of subsection 5 of section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

- a. Generation ~~of one hundred thousand kilowatts or more~~ exceeding sixty megawatts of electricity;

¹⁶⁴ Section 49-22-03 was also amended by section 1 of House Bill No. 1032, chapter 406.

SECTION 3. LEGISLATIVE COUNCIL STUDY - DEVELOPMENT OF WIND AND OTHER NATURAL RESOURCES. During the 2009-10 interim, the legislative council shall study the development of wind resources and other natural resources in the same location. The study must include a review of laws relating to the siting and decommissioning of wind energy conversion facilities, the desirability of an environmental assessment as a condition of siting, and the desirability of regulation to address the effects of wind energy conversion facilities on water, soil, cultural resources, and future development of other natural resources. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved May 1, 2009
Filed May 5, 2009

CHAPTER 405**HOUSE BILL NO. 1342**

(Representatives Weisz, DeKrey, Delmore, R. Kelsch)
(Senators Cook, Fiebiger)

AN ACT to create and enact a new section to chapters 49-10 and 49-11 of the North Dakota Century Code, relating to public and private railroad crossings; to amend and reenact sections 49-11-21 and 49-11-22 of the North Dakota Century Code, relating to warning devices at railroad crossings; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-10 of the North Dakota Century Code is created and enacted as follows:

Railroad crossing determination. If a dispute arises as to whether a railroad grade crossing should be classified as public or private as defined in section 2 of this Act, the railroad corporation, governmental entity, or private property owner may file with the commission a petition and the commission shall determine whether the crossing is public or private.

SECTION 2. A new section to chapter 49-11 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the context otherwise requires:

1. "Public railroad crossing" means a location where a public highway, road, or street, including associated sidewalks or pathways, crosses one or more railroad tracks at grade. The term includes a crossing if a public authority maintains the roadway on both sides of the crossing.
2. "Private railroad crossing" means any railroad at grade crossing of a roadway which is not a public railroad crossing.

SECTION 3. AMENDMENT. Section 49-11-21 of the North Dakota Century Code is amended and reenacted as follows:

49-11-21. Warning device sounded at crossing by locomotive - Exception Exceptions.

1. A warning device must be placed on each locomotive engine and the device on the lead locomotive must be sounded at a distance of at least eighty rods [402.34 meters] from the place where the railroad crosses any other road or street when approaching a public railroad crossing, and must continue to be sounded until it has crossed the road or street locomotive enters the public railroad crossing.
2. The warning device may not be sounded at a private railroad crossing. However, a party may petition the commission to request that a horn be sounded at a private railroad crossing. The commission shall review the request and issue an order approving or denying the request based on

the safety concerns of the public. A party may not be subject to any liability as a result of not making a request.

3. The governing body of a city may adopt a quiet zone ordinance, as allowed by federal law and implemented under the federal railroad administration's supplemental safety measures for at-grade crossings, prohibiting a locomotive engine from sounding a warning device at crossings within the quiet zone under regular crossing conditions.
4. A crew member may sound a warning device as determined appropriate by that crew member. Notwithstanding any other provision of this section, a locomotive engineer may sound a locomotive horn at any crossing to provide a warning to animals, vehicle operators, pedestrians, trespassers, or crews on other trains in an emergency situation if in the locomotive engineer's judgment the action is appropriate to prevent imminent injury, death, or property damage.

SECTION 4. AMENDMENT. Section 49-11-22 of the North Dakota Century Code is amended and reenacted as follows:

49-11-22. Liability for failure of locomotive to sound bell, horn, or whistle at crossing.

1. A person railroad that owns or has a leasehold interest in has operational control of a locomotive that fails to sound its warning device at any road or street crossing as required by section 49-11-21 is guilty of an infraction and is liable for all damages that are sustained by any person by reason of the neglect.
2. If a crew member of a locomotive does not sound a warning device at a crossing for which the sounding of a warning device is prohibited under a city ordinance not required, any crew member or person railroad with any interest in operational control of the locomotive is may not be liable for any damages sustained by a person by reason of the failure to sound a warning device.
3. This section does not exempt a railroad corporation from any liability created under chapter 49-16 or the Federal Employers' Liability Act [45 U.S.C. 51 et seq.] for injuries to its employees or agents.

SECTION 5. EFFECTIVE DATE. This Act becomes effective on January 1, 2010.

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 406**HOUSE BILL NO. 1032**

(Legislative Council)

(Energy Development and Transmission Committee)

AN ACT to amend and reenact subsections 3 and 12 of section 49-22-03 of the North Dakota Century Code, relating to the energy conversion and transmission facility siting definitions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁵ **SECTION 1. AMENDMENT.** Subsections 3 and 12 of section 49-22-03 of the North Dakota Century Code are amended and reenacted as follows:

3. "Construction" includes any clearing of land, excavation, or other action that would affect the environment of the site after April 9, 1975, but does not include activities ~~incident~~:
 - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter or on which a facility was constructed before April 9, 1975, if:
 - (1) The activities are within the boundaries of:
 - (a) A previously issued certificate or permit;
 - (b) For an energy conversion facility constructed before April 9, 1975, the geographic location on which the facility was built; or
 - (c) For a transmission facility constructed before April 9, 1975, a width of three hundred fifty feet [106.68 meters] on either side of the centerline;
 - (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area; and
 - (3) Before conducting any activities, the utility certifies in writing to the commission that the activities will not affect any known exclusion or avoidance area and the utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
 - b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:

¹⁶⁵ Section 49-22-03 was also amended by section 2 of House Bill No. 1449, chapter 404.

- (1) Certifies in writing to the commission that:
 - (a) The activities will not affect any known exclusion area; and
 - (b) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;
 - (2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area expected to be impacted and the reasons why impact cannot be avoided; and
 - (3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission does not approve impacting the avoidance area, the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.
- c. Incident to preliminary engineering or environmental studies.
12. "Transmission facility" means any of the following:
- a. An electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts. "Transmission facility" does not include a:
 - (1) A temporary transmission line loop that is:
 - (a) Connected and adjacent to an existing transmission facility that was sited under this chapter;
 - (b) Within the corridor of the sited facility and does not cross known exclusion or avoidance areas; and
 - (c) Less In place for less than one year; or
 - (2) A transmission line that is less than one mile [1.61 kilometers] long; and
 - (4) In place for less than one year.
 - b. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide. This subdivision does not apply to a:
 - (1) An oil or gas pipeline gathering system;

- (2) A pipeline with an outside diameter of four and one-half inches [11.43 centimeters] or less that will be not trenched and will be plowed in with a power mechanism having a vertical knife or horizontally directionally drilled, and its associated facilities; or
- (3) A pipeline that is less than one mile [1.61 kilometers] long.

For purposes of this chapter, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport, or pipelines and associated facilities used to collect gas from the well to the gas processing facility at which end-use consumer-quality gas is produced, with or without the addition of odorant.

- c. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.

Approved April 21, 2009
Filed April 22, 2009