

Sixty-second  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2322

Introduced by

Senators Klein, Krebsbach, Robinson

Representatives Delmore, Keiser, Thoreson

1 A BILL for an Act to amend and reenact sections 49-03-01, 49-03-01.4, 49-03-01.5, 49-03-02,  
2 49-03-03, 49-03-04, and 49-03-05 of the North Dakota Century Code, relating to electric  
3 transmission providers; and to declare an emergency.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 49-03-01 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **49-03-01. Certificate of public convenience and necessity - Secured by electric public**  
8 **utility.**

9 ~~No~~

10 1. An electric public utility henceforth shall may not begin construction or operation of a  
11 public utility plant or system, or of an extension of a plant or system, ~~except as~~  
12 ~~provided below~~, without first obtaining from the commission a certificate that public  
13 convenience and necessity require or will require ~~such~~the construction and operation.  
14 This section does not require an electric public utility to secure a certificate for an  
15 extension within any municipality within which ~~it~~the electric public utility has lawfully  
16 commenced operations. If any electric public utility in constructing or extending its line,  
17 plant, or system, unreasonably interferes with or is about to interfere unreasonably  
18 with the service or system of any other electric public utility, or any electric cooperative  
19 corporation, the commission, on complaint of the electric public utility or the electric  
20 cooperative corporation claiming to be injuriously affected, after notice and hearing as  
21 provided in this title, may order enforcement of this section with respect to the  
22 offending electric public utility and prescribe just and reasonable terms and conditions.

23 2. An electric transmission provider may not begin construction or operation of an electric  
24 transmission line interconnecting with an existing electric transmission line owned or

1           operated by an electric public utility without first obtaining a certificate that public  
2           convenience and necessity require or will require the construction or operation.

3           **SECTION 2. AMENDMENT.** Section 49-03-01.4 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5           **49-03-01.4. Enforcement of act.**

6           1. If any electric public utility or electric transmission provider violates or threatens to  
7 violate any of the provisions of sections 49-03-01 through 49-03-01.5 or interferes with  
8 or threatens to interfere with the service or system of any other electric public utility or  
9 rural electric cooperative, the commission, after complaint, notice, and hearing as  
10 provided in chapter 28-32, shall make its order restraining and enjoining ~~said~~the  
11 electric public utility or electric transmission provider from constructing or extending its  
12 interfering lines, plant, or system. In addition to the restraint imposed, the commission  
13 shall prescribe ~~such~~any terms and conditions as ~~it shall deem~~the commission deems  
14 reasonable and proper.

15 ~~Provided, further, that nothing herein contained shall be construed to~~

16           2. This section does not prohibit or limit any person, who has been injured in the person's  
17 business or property by reason of a violation of sections 49-03-01 through 49-03-01.5  
18 by any electric public utility, electric transmission provider, or electric cooperative  
19 corporation, from bringing an action for damages in any district court of this state to  
20 recover such damages.

21           **SECTION 3. AMENDMENT.** Section 49-03-01.5 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23           **49-03-01.5. Definitions.**

24 As used in sections 49-03-01 through 49-03-01.5:

- 25           1. "Electric provider" means either an electric public utility or a rural electric cooperative.  
26           2. "Electric public utility" means a privately owned supplier of electricity offering to supply  
27 or supplying electricity to the general public.  
28           3. "Electric transmission line" means facilities for conducting electric energy at a design  
29 voltage of one hundred fifteen kilovolts or greater phase to phase and more than one  
30 mile long.

1       4. "Electric transmission provider" means an owner or operator, other than a rural electric  
2       cooperative, of a transmission line the costs of which are recovered directly or  
3       indirectly through transmission charges to an electric public utility.

4       5. "Person" includes an individual, an electric public utility, a corporation, a limited liability  
5       company, an association, or a rural electric cooperative.

6       4.6. "Rural electric cooperative" includes any electric cooperative organized under chapter  
7       10-13. An electric cooperative, composed of members as prescribed by law, shall not  
8       be deemed to be an electric public utility.

9       5.7. "Service area" means a defined geographic area containing existing or future service  
10       locations established by an agreement among electric providers and approved by the  
11       commission.

12       6.8. "Service area agreement" means an agreement between electric providers  
13       establishing service areas and designating service locations to be served by each  
14       provider under section 49-03-06.

15       7.9. "Service location" means the structures, facilities, or improvements on a parcel of real  
16       property to which electric service may be provided.

17       **SECTION 4. AMENDMENT.** Section 49-03-02 of the North Dakota Century Code is  
18       amended and reenacted as follows:

19       **49-03-02. Prerequisites to issuance of certificate of public convenience and**  
20       **necessity.**

21       1. Before any certificate may issue under this chapter, a certified copy of the articles of  
22       incorporation or charter of the utility, if the applicant is a corporation, or a certified copy  
23       of the articles of organization of the utility, if the applicant is a limited liability company,  
24       ~~shall~~must be filed with the commission. At the hearing ~~of said~~on the application  
25       ~~upon~~after notice as provided in this title, the utility shall submit evidence showing that  
26       ~~such~~the applicant has received the consent, franchise, permit, ordinance, or other  
27       authority of the proper municipality or other public authority, if required, or has or is  
28       about to make application ~~therefor~~for authority. The commission shall have the power,  
29       after notice and hearing, to:

30       4. a. Issue the certificate prayed for;

31       2. b. Refuse to issue ~~such~~the certificate;

- 1       3. ~~c.~~ Issue ~~it~~the certificate for the construction or operation of a portion only of the  
2                   contemplated facility, line, plant, system, or extension thereofof the same; or
- 3       4. ~~d.~~ Issue ~~it~~the certificate for the partial exercise of the right or privilege sought,  
4                   conditioned upon the applicant's having secured or upon the applicant's securing  
5                   the consent, franchise, permit, ordinance, or other authority of the proper  
6                   municipality or other public authority, and may attach to the exercise of the rights  
7                   granted by any certificate ~~such~~ terms and conditions as in ~~it~~the judgment of the  
8                   commission the public convenience and necessity may require.
- 9       2. Notwithstanding any ~~of the foregoing provisions~~other provision of this section, the  
10                  commission may grant a certificate if ~~no~~an interested party, including any local electric  
11                  cooperative, has not requested a hearing on ~~said~~an application after receiving at least  
12                  twenty days' notice of opportunity to request such hearing. In addition, the commission  
13                  may not issue a certificate to an electric transmission provider for construction or  
14                  operation of an electric transmission line that will interconnect with an electric  
15                  transmission line owned or operated by an electric public utility if the electric public  
16                  utility is willing and able to construct and operate a similar electric transmission line.
- 17       3. The commission may impose an application fee of up to one hundred twenty-five  
18                  thousand dollars for an application under this chapter. With the approval of the  
19                  emergency commission, the commission may impose an additional amount. The  
20                  commission shall pay the expenses of processing an application under this chapter  
21                  from the application fee paid by the public utility in accordance with section 49-02-02.

22       **SECTION 5. AMENDMENT.** Section 49-03-03 of the North Dakota Century Code is  
23       amended and reenacted as follows:

24       **49-03-03. Franchise not to be exercised without certificate.**

25       ~~No~~A public utility ~~henceforth shall~~or electric transmission provider may not exercise any  
26       right or privilege under any franchise or certificate hereafter granted, ~~or under any franchise or~~  
27       ~~certificate heretofore granted~~, the exercise of which has been suspended or discontinued for  
28       more than one year, without first obtaining from the commission a certificate that public  
29       convenience and necessity require the exercise of ~~such~~the right or privilege.

30       **SECTION 6. AMENDMENT.** Section 49-03-04 of the North Dakota Century Code is  
31       amended and reenacted as follows:

1       **49-03-04. Replacement or renewal of franchise - Certificate of public convenience and**  
2 **necessity not necessary.**

3       ~~No~~A public utility or electric transmission provider does not need to secure a renewal of the  
4 certificate of public convenience and necessity under this chapter in order to exercise rights  
5 under an ordinance ~~hereafter granted where it if either~~ has not suspended operation of its plant  
6 and where ~~such~~the franchise merely replaces or renews an expiring or expired franchise.

7       **SECTION 7. AMENDMENT.** Section 49-03-05 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9       **49-03-05. Complaint upon violation of chapter.**

10       ~~Whenever~~if a public utility or electric transmission provider engages or is about to engage in  
11 construction or operation as described in this chapter without having secured a certificate of  
12 public convenience and necessity as required by the provisions of this chapter, or ~~whenever~~if a  
13 public utility or electric transmission provider constructs or extends its line, plant, or system, or  
14 supplies, or offers to supply electric service in violation of this chapter, any interested  
15 municipality, public authority, utility, electric cooperative corporation, or person, may file a  
16 complaint with the commission. The commission ~~thereupon~~acting on the complaint, or upon its  
17 own motion without complaint, with or without notice, may make its order requiring the public  
18 utility complained of to cease and desist from ~~such~~the construction or operation or other  
19 prohibited activity until the further order of the commission. Upon hearing had after due notice  
20 given, the commission shall make ~~such~~an order with respect to ~~such~~the public utility or electric  
21 transmission provider and prescribe ~~such~~ terms and conditions as are just and reasonable.

22       **SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.