

**Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011**

SENATE BILL NO. 2322
(Senators Klein, Krebsbach, Robinson)
(Representatives Delmore, Keiser, Thoreson)

AN ACT to amend and reenact sections 49-03-01, 49-03-01.4, 49-03-01.5, 49-03-02, 49-03-03, 49-03-04, and 49-03-05 of the North Dakota Century Code, relating to electric transmission providers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

~~No~~

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

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

49-03-01.4. Enforcement of act.

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

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

2. This section does not prohibit or limit any person, who has been injured in the person's business or property by reason of a violation of sections 49-03-01 through 49-03-01.5 by any

electric public utility, electric transmission provider, or electric cooperative corporation, from bringing an action for damages in any district court of this state to recover such damages.

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

49-03-01.5. Definitions.

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

1. "Electric provider" means either an electric public utility or a rural electric cooperative.
2. "Electric public utility" means a privately owned supplier of electricity offering to supply or supplying electricity to the general public.
3. "Electric transmission line" means facilities for conducting electric energy at a design voltage of one hundred fifteen kilovolts or greater phase to phase and more than one mile long.
4. "Electric transmission provider" means an owner or operator, other than a rural electric cooperative, of a transmission line the costs of which are recovered directly or indirectly through transmission charges to an electric public utility.
5. "Person" includes an individual, an electric public utility, a corporation, a limited liability company, an association, or a rural electric cooperative.
- 4.6. "Rural electric cooperative" includes any electric cooperative organized under chapter 10-13. An electric cooperative, composed of members as prescribed by law, shall not be deemed to be an electric public utility.
- 5.7. "Service area" means a defined geographic area containing existing or future service locations established by an agreement among electric providers and approved by the commission.
- 6.8. "Service area agreement" means an agreement between electric providers establishing service areas and designating service locations to be served by each provider under section 49-03-06.
- 7.9. "Service location" means the structures, facilities, or improvements on a parcel of real property to which electric service may be provided.

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

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

1. Before any certificate may issue under this chapter, a certified copy of the articles of incorporation or charter of the utility, if the applicant is a corporation, or a certified copy of the articles of organization of the utility, if the applicant is a limited liability company, ~~shall~~must be filed with the commission. At the hearing ~~of said on the~~ application ~~upon~~after notice as provided in this title, the utility shall submit evidence showing that ~~such~~the applicant has received the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, if required, or has or is about to make application ~~therefor~~for authority. The commission shall have the power, after notice and hearing, to:
 4. a. Issue the certificate prayed for;
 2. b. Refuse to issue ~~such~~the certificate;
 3. c. Issue ~~it~~the certificate for the construction or operation of a portion only of the contemplated facility, line, plant, system, or extension ~~thereof~~of the same; or

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

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

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

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

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

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

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

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

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

~~Whenever~~ if a public utility or electric transmission provider engages or is about to engage in construction or operation as described in this chapter without having secured a certificate of public convenience and necessity as required by the provisions of this chapter, ~~or whenever~~ if a public utility or electric transmission provider constructs or extends its line, plant, or system, or supplies, or offers to supply electric service in violation of this chapter, any interested municipality, public authority, utility, electric cooperative corporation, or person, may file a complaint with the commission. The commission ~~thereupon~~ acting on the complaint, or upon its own motion without complaint, with or without notice, may make its order requiring the public utility complained of to cease and desist from ~~such~~ the construction or operation or other prohibited activity until the further order of the commission. Upon hearing had after

due notice given, the commission shall make ~~such an~~ order with respect to ~~such~~the public utility or electric transmission provider and prescribe ~~such~~ terms and conditions as are just and reasonable.

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2322 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 47 Nays 0 Absent 0

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 91 Nays 0 Absent 3

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2011.

Approved at _____ M. on _____, 2011.

Governor

Filed in this office this _____ day of _____, 2011,
at _____ o'clock _____ M.

Secretary of State