

PUBLIC UTILITIES

CHAPTER 359

SENATE BILL NO. 2174

(Senators Wardner, Klein, Lyson)
(Representatives Dockter, N. Johnson, Nathe)

AN ACT to create and enact a new section to chapter 49-04 of the North Dakota Century Code, relating to the requirement that a public utility regulated by the public service commission provide advance notification of discontinuance of electric or gas service.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-04 of the North Dakota Century Code is created and enacted as follows:

Notification before discontinuance of utility service.

1. A public utility shall provide notice to a customer of the utility's intention to discontinue utility service for payment delinquency in accordance with commission rules.
2. A public utility shall provide notice to a third party designated by a customer of the utility's intention to discontinue electric or natural gas service to the customer for payment delinquency. The customer shall designate the third party on a form provided by or approved by the public utility. The public utility may elect to provide notice to a designated third party by mail or electronic means. Notice by mail must be made not less than five days before discontinuance and notice by electronic means must be made not less than three days before discontinuance. A public utility is immune from civil liability for failing to provide notice or providing incorrect notice to a third party of its intention to discontinue utility service to a customer.

Approved March 18, 2013
Filed March 18, 2013

CHAPTER 360

SENATE BILL NO. 2112

(Industry, Business and Labor Committee)
(At the request of the Public Service Commission)

AN ACT to amend and reenact subsection 3 of section 49-03-02, subsection 11 of section 49-05-04, subsection 2 of section 49-05-04.2, subsection 2 of section 49-05-04.3, and subsection 1 of section 49-05-16 of the North Dakota Century Code, relating to fees for public utility applications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 49-03-02 of the North Dakota Century Code is amended and reenacted as follows:

3. The commission may impose an application fee of up to one hundred ~~twenty-five~~seventy-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 2. AMENDMENT. Subsection 11 of section 49-05-04 of the North Dakota Century Code is amended and reenacted as follows:

11. An application fee in the amount of one hundred ~~twenty-five~~seventy-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. Subsection 2 of section 49-05-04.2 of the North Dakota Century Code is amended and reenacted as follows:

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;
 - 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-one hundred~~ 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.

SECTION 4. AMENDMENT. Subsection 2 of section 49-05-04.3 of the North Dakota Century Code is amended and reenacted as follows:

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;
 - 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 ~~forty one hundred~~ fifty one hundred 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.

SECTION 5. AMENDMENT. Subsection 1 of section 49-05-16 of the North Dakota Century Code is amended and reenacted as follows:

1. The commission may issue an order approving the prudence of a 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 resource addition;
 - b. The public utility files with its application a fee in the amount of one hundred ~~twenty five~~ seventy-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
 - d. The commission determines that the resource addition is prudent. For facilities located or to be located in this state the commission, in determining whether the resource addition is prudent, shall consider the benefits of having the resource addition located in this state.

Approved March 21, 2013
Filed March 21, 2013

CHAPTER 361

HOUSE BILL NO. 1064

(Energy and Natural Resources Committee)
(At the request of the Public Service Commission)

AN ACT to amend and reenact section 49-07-05.1 of the North Dakota Century Code, relating to the maximum penalty for a violation of pipeline safety standards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-07-05.1 of the North Dakota Century Code is amended and reenacted as follows:

49-07-05.1. Violations of pipeline safety standards - Penalties.

Any person who violates ~~any~~ rule or order ~~issued by~~ of the commission pursuant to section 49-02-01.2 is subject to a civil penalty to be imposed by the commission of not to exceed ~~ten~~two hundred thousand dollars for each ~~such~~ violation for each day that ~~such~~the violation ~~persists~~continues, except that the maximum penalty may not exceed ~~five hundred thousand~~two million dollars for any related series of violations. ~~Any such~~A civil penalty may be compromised by the commission. In determining the amount of ~~such~~a civil penalty, or the amount agreed upon in compromise, the commission shall consider the appropriateness of ~~such~~the penalty to the size of the business of the person charged, the nature, circumstances, and gravity of the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, ~~the ability to pay the penalty~~, the good faith of the person charged in attempting to achieve compliance, after notification of a violation, and such other matters as justice may require ~~must be considered~~. The amount of ~~such~~the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the state of North Dakota to the person charged or may be recovered in a civil action in the district court of Burleigh County.

Approved March 27, 2013
Filed March 27, 2013

CHAPTER 362

SENATE BILL NO. 2055

(Natural Resources Committee)
(At the request of Public Service Commission)

AN ACT to amend and reenact subsection 6 of section 49-21-01.7 of the North Dakota Century Code, relating to delivery of bills for public service commission expenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 49-21-01.7 of the North Dakota Century Code is amended and reenacted as follows:

6. Employ and fix the compensation of experts, engineers, auditors, attorneys, and other such assistance for complaints, investigations, and other proceedings relating to telecommunications companies. The expense of any hearings, and the compensation and actual expenses of any employees of the commission while engaged upon any such hearings must, ~~upon the order of the commission,~~ be paid by the telecommunications company involved in such hearings. The commission shall ascertain the exact cost and expenditure. ~~After giving the telecommunications company notice and opportunity to demand a hearing, and after a hearing, if any, is held, the commission may and~~ render a bill ~~and make an order~~ for payment. The bill ~~and order~~ must be delivered by certified electronic or paper mail or personal delivery to the managing officer of the telecommunications company. Upon receipt of the bill ~~and order~~ for payment, the telecommunications company has thirty days within which to pay the amount billed. All amounts not paid within thirty days after receipt of the bill ~~and order for payment~~ thereafter draw interest at the rate of six percent per annum. If the telecommunications company disputes the amount of the bill, the company shall request a hearing. Amounts collected by the commission under this subsection must be deposited in a special account within the public service commission.

Approved March 14, 2013

Filed March 15, 2013

CHAPTER 363

SENATE BILL NO. 2139

(Senators Klein, Murphy, Robinson)
(Representatives Delzer, Monson, Vigesaa)

AN ACT to amend and reenact section 49-22-04 of the North Dakota Century Code, relating to the submission of ten-year plans by a utility.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-22-04 of the North Dakota Century Code is amended and reenacted as follows:

49-22-04. Ten-year plans - Contents.

Every utility that owns or operates, or plans within the next ten years to own, operate, or start construction on any facility shall ~~annually~~ develop a ten-year plan as specified in this section. ~~Or and submit the plan to the commission on or before July first of each even-numbered year, the. The utility shall submit its ten-year plan to the commission.~~ update its plan every second year after its initial submission. The ten-year plan may be appropriate portions of a single regional plan or may be jointly prepared and submitted by two or more utilities and must contain the following information:

1. A description of the general location, size, and type of all facilities to be owned or operated by the utility during the ensuing ten years, as well as those facilities to be removed from service during the ten-year period.
2. An identification of the location of the tentative preferred site for all energy conversion facilities and the tentative location of all transmission facilities on which construction is intended to be commenced within the ensuing five years and such other information as may be required by the commission. The site and corridor identification shall be made in compliance with the criteria published by the commission pursuant to section 49-22-05.1.
3. A description of the efforts by the utility to coordinate the plan with other utilities so as to provide a coordinated regional plan for meeting the utility needs of the region.
4. A description of the efforts to involve environmental protection and land-use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process.
5. A statement of the projected demand for the service rendered by the utility for the ensuing ten years and the underlying assumptions for the projection, with that information being as geographically specific as possible, and a description of the manner and extent to which the utility will meet the projected demands.
6. Any other relevant information as may be requested by the commission.

Upon receipt of the ten-year plans the commission shall proceed to assess the impact of the development proposed within the state to ensure that energy conversion facilities and transmission facilities will be sited in an orderly manner compatible with environmental preservation and efficient use of resources.

Approved March 18, 2013

Filed March 18, 2013

CHAPTER 364

SENATE BILL NO. 2209

(Senators Klein, Cook, Lyson)
(Representatives Belter, Keiser, Porter)

AN ACT to amend and reenact sections 32-15-21 and 49-22-07 of the North Dakota Century Code, relating to eminent domain siting of an energy conversion facility or a transmission facility.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-15-21 of the North Dakota Century Code is amended and reenacted as follows:

32-15-21. Power of court.

1. The court shall have power:
 1. a. To regulate and determine the place and manner of making connections and crossings, or of enjoying the common use mentioned in subsection 6 of section 32-15-04.
 2. b. To hear and determine all adverse or conflicting claims to the property sought to be condemned and to the damages therefor for the property.
 3. c. To determine the respective rights of different parties seeking condemnation of the same property.
2. Notwithstanding any other provision of law, if a route permit is required under chapter 49-22, the court may order the taking by eminent domain conditioned on the receipt of the route permit.

SECTION 2. AMENDMENT. Section 49-22-07 of the North Dakota Century Code is amended and reenacted as follows:

49-22-07. Certificate of site compatibility or route permit required.

1. A utility may not begin construction of an energy conversion facility or transmission facility in the state, ~~or exercise the right of eminent domain in connection with that construction,~~ without first having obtained a certificate of site compatibility or a route permit from the commission pursuant to this chapter. The facility must be constructed, operated, and maintained in conformity with the certificate or permit and any terms, conditions, or modifications of the certificate or permit. A certificate or permit may be transferred, subject to the approval of the commission, to any person who agrees to comply with its terms, conditions, and modifications.
2. If a power emergency exists which necessitates the relocation of a portion of an electric transmission line and associated facilities from the designated route, the owner of the line shall give telephonic notice to the commission in advance of the relocation. The line may then be relocated to restore power as

soon as practicable. After the line has been relocated, the owner shall file with the commission a request to approve the relocated route.

Approved March 27, 2013

Filed March 27, 2013

CHAPTER 365

HOUSE BILL NO. 1147

(Representatives Keiser, Porter)
(Senator Lyson)

AN ACT to create and enact a new section to chapter 49-22 of the North Dakota Century Code, relating to route adjustments for gas and liquid transmission lines; to amend and reenact subsections 4 and 10 of section 49-22-03 of the North Dakota Century Code, relating to definitions for siting a gas or liquid transmission line; to repeal section 49-22-07.1 of the North Dakota Century Code, relating to a letter of intent; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 10 of section 49-22-03 of the North Dakota Century Code are amended and reenacted as follows:

4. "Corridor" means the general location of area of land in which a designated route may be established for a transmission facility.
10. "Route" means the specific location of a transmission facility within a designated corridor.

SECTION 2. A new section to chapter 49-22 of the North Dakota Century Code is created and enacted as follows:

Route adjustment before or during construction for gas or liquid transmission line.

1. Before or during construction, a utility, without any action by the commission, may adjust the route of a gas or liquid transmission line within the designated corridor if, before conducting any construction activities associated with the adjustment, the utility files with the commission certification and supporting documentation that:
 - a. The construction activities will be within the designated corridor;
 - b. The construction activities will not affect any known exclusion or avoidance areas within the designated corridor; and
 - c. The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route.
2. Before or during construction, a utility may adjust the route of a gas or liquid transmission line within the designated corridor that may affect an avoidance area if, before conducting any construction activities associated with the adjustment, the utility:
 - a. Files with the commission certification and supporting documentation that:
 - (1) The construction activities are within the designated corridor;

area if, before conducting any construction activities associated with the adjustment, the utility:

- a. Files with the commission certification and supporting documentation that:
 - (1) The construction activities will not affect any known exclusion areas;
 - (2) The construction activities are expected to impact an avoidance area with a specific description of the avoidance area expected to be impacted;
 - (3) The utility has good cause and a specific reason to impact the avoidance area, and a reasonable alternative does not exist;
 - (4) The route outside the corridor is no longer than one and one-half mile [2.41 kilometers];
 - (5) The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route; and
 - (6) Each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment.
 - b. Files detailed field studies indicating exclusion and avoidance areas for an area encompassing the route outside the designated corridor equal to the length of the adjustment of the proposed corridor.
 - c. Receives the commission's written authorization that the utility may impact the avoidance area. If the commission does not authorize the impact to the avoidance area, the utility must obtain siting authority for the affected portion of the route adjustment. If the commission fails to act within ten working days of receipt of the utility's filing of the certification and supporting documentation under subdivisions a and b of subsection 4, the route adjustment is deemed approved.
5. The commission may not be required to hold a public hearing or publish a notice of opportunity for a public hearing for any route adjustment under this section.

SECTION 3. REPEAL. Section 49-22-07.1 of the North Dakota Century Code is repealed.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 2, 2013
Filed April 2, 2013

CHAPTER 366

HOUSE BILL NO. 1359

(Representatives N. Johnson, Klein, Delmore)
(Senators Andrist, Klein, Dotzenrod)

AN ACT to amend and reenact sections 49-07-01.1, 49-23-04, and 49-23-05 of the North Dakota Century Code, relating to the one-call notice system; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

49-07-01.1. Violation of statute, commission order, or commission rule - Assessment of civil penalty.

Any person who violates any statute, commission order, or commission rule which applies to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, 24-09, 32-25, and 51-05.1, titles 60 and 64, and title 49 except for ~~chapter chapters 49-22 and 49-23~~, shall, in addition to any other penalty provided, be subject to a civil penalty of not to exceed five thousand dollars. A violation occurring under chapter 49-23, in addition to any other penalty, is subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall develop policies for the assessment of penalties under chapter 49-23 which will take into consideration the severity of damages and the conduct of the offender. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

SECTION 2. AMENDMENT. Section 49-23-04 of the North Dakota Century Code is amended and reenacted as follows:

49-23-04. Excavation.

1. Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice at least forty-eight hours before beginning any excavation, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator. If an operator determines more time is necessary for location, the operator may request a twenty-four-hour extension of the excavation or location notice by notifying the notification center. The notification center shall notify the excavator of the extension. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice. The notice must contain:
 - a. The name, address, and telephone number of the person making the notification;
 - b. The name, address, and telephone number of the excavator;

- c. The date and time when excavation is scheduled to begin;
 - d. The depth of planned excavation;
 - e. The type and extent of excavation being planned, including whether the excavation involves tunneling or horizontal boring;
 - f. Whether the use of explosives is anticipated and any other information as may be required by the notification center; and
 - g. The location of the excavation by any one or more of the following means:
 - (1) A specific street address;
 - (2) A reference to a platted lot number of record; or
 - (3) An identifiable roadway or roadway intersection; or
 - (4) A specific quarter section by section number, range, township, and county. In this case, the location shall be further described by coordinates measured in feet from the nearest one-fourth corner or section corner.
 - h. If the location of the excavation is too large or complex to be clearly and adequately identified by description in the location request, the excavator shall provide additional location information by one or more of the following means: white marking, project staking, geographic information system shape file, detailed drawing, map, or other appropriate means. An excavator may not be required to provide additional location information if the excavator plans a meeting with the affected operators at the location of the excavation before beginning any excavation, or if the notice given under this section includes a specific street address or reference to a platted lot number of record of the location of the excavation.
 - i. A request for location is limited to the area to be excavated during the twenty-one day period following the location request.
 - j. An excavator may begin excavation in a location if the location period has passed without notification of a requested extension or prior to the expiration of the location period if the excavator has received notice that all facilities have been located or cleared.
2. The notification center shall:
- a. Provide a toll-free telephone number and assign an inquiry identification number to each excavation notice and retain a record of all excavation notices received for at least six years.
 - b. Immediately transmit the information contained in an excavation notice to every operator that has an underground facility in the area of the proposed excavation.
 - c. Inform the persons giving notice of an intent to engage in an excavation activity the names of participating operators of underground facilities to whom the notice will be given.

- d. Establish procedures for assuring positive response from the affected operator in all emergency excavation notices.
3.
 - a. An operator, within forty-eight hours, or any extension of that period, after receiving an excavation notice from the center, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator, shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator.
 - b. For purposes of this section, the approximate horizontal location of the underground facilities is a strip of land two feet [60.96 centimeters] on either side of the underground facilities. This subdivision does not apply to an underground facility to convey water.
 - c. When an operator cannot establish the exact location of the underground facility to convey water, the operator shall mark the location as accurately as possible and the excavator may proceed with caution. When excavation operations approach the estimated location of the underground facility to convey water, the exact location of the facility must be determined by safe and acceptable means. The uncovered facility must be supported and protected to prevent damage.
 - d. Markers used to designate the approximate location of underground facilities must follow the current color code standard used by the American public works association.
 - e. If the operator cannot complete marking of the excavation area before the excavation commencement time stated in the excavation notice, the operator shall promptly contact the excavator.
 - f. After facilities are located by an operator, an excavator shall notify the notification center if:
 - (1) The excavator postpones the excavation commencement time stated in the excavation notice by more than forty-eight hours, or any extension of that period, or cancels the excavation;
 - (2) The markings have been obliterated or obscured;
 - (3) Weather conditions have impeded visibility of the markings;
 - (4) The site shows evidence of recent excavation; or
 - (5) The excavator has other reason to believe the markings are incorrect or missing.
 - g. An excavator may not use a location more than ~~ten~~twenty-one days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected.
 - h. If excavation has not occurred within the initial twenty-one days of the locate, the excavator shall request that the facility be relocated before excavating unless other arrangements have been made with the underground facility owner. Upon the third locate request at the same excavation site where no excavation has occurred after the initial two

locates, the excavator is responsible for reasonable costs associated with relocating facilities in that location.

- i. If a relocate request is made for an area which includes areas where excavation has been completed, a request for relocate must be modified from the original locate request to reflect only the area to be excavated during each subsequent twenty-one-day period, otherwise the excavator is responsible for reasonable costs associated with relocating facilities in the location.
 - j. If in the course of excavation the excavator is unable to locate the underground facility or discovers that the operator of the underground facility has incorrectly located the underground facility, the excavator shall promptly notify the operator or, if unknown, the one-call notification center.
 - i-k. A facility owner, excavator, or other person may not present or presume that an underground facility is abandoned, or treat an underground facility as abandoned, unless the facility has been verified as abandoned by reference to installation records or by testing. The notification center shall establish a method of providing personnel from a facility owner qualified to safely inspect and verify whether a facility is abandoned or inactive if necessary. An inactive facility must be considered active for purposes of this section.
 - l. An underground facility owner shall make all new facilities locatable.
4. If an excavation is being made in a time of emergency, all reasonable precautions must be taken to protect the underground facilities. In an emergency, the excavator shall give notification in compliance with this chapter, as soon as practical, that an emergency exists. As soon as practical, each operator shall provide all location information that is reasonably available to the excavator.

SECTION 3. AMENDMENT. Section 49-23-05 of the North Dakota Century Code is amended and reenacted as follows:

49-23-05. Precautions to avoid damage.

To avoid damage to and minimize interference with underground facilities in and near the construction area, an excavator shall:

1. Maintain a clearance between an underground facility and the cutting edge or point of any mechanized equipment, considering the known limit of control of the cutting edge or point to avoid damage to the facility.
2. Provide support in a manner approved by the operator for underground facilities in and near the construction area, including backfill operations to protect the facilities. Backfill must be of a material equal to or better in both quality and quantity to the existing backfill.
3. Assume ownership of materials used to mark the facility, use reasonable efforts to maintain markings during excavation and when possible remove all tangible marking materials used to mark the facility.
4. Assume the cost of excavation to expose the facility unless otherwise indicated by owner of facility.

5. Conduct the excavation in a careful and prudent manner.
6. Properly manage spoil material to prevent shifting or falling material that could damage belowground facilities.

Approved April 12, 2013
Filed April 12, 2013