Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023

HOUSE BILL NO. 1097
(Energy and Natural Resources Committee)
(At the request of the Public Service Commission)

AN ACT to create and enact subsection 15 of section 49-22-03 and section 49-22-16.5, of the North Dakota Century Code, relating to the definition of utility-scale energy storage and route adjustments for electric transmission lines; to amend and reenact subsection 5 of section 49-22-03, subsection 4 of section 49-22-13, section 49-22-22, subsections 6 and 7 of section 49-22.1-01, subsection 4 of section 49-22.1-10, and subsection 4 of section 49-22.1-21 of the North Dakota Century Code, relating to the definition of electric energy conversion facility, the publication of notices of public hearings, payment of an administrative fee, adding hydrogen to definitions, the publication of a public hearing, and the payment of an administrative fee; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

5. "Electric energy conversion facility" means a plant, addition, or combination of plant and addition, designed for or capable of:

   a. Generation by wind energy conversion exceeding one-half megawatt of electricity; ~~or~~

   b. Generation by any means other than wind energy conversion exceeding fifty megawatts of electricity; or

   c. Utility-scale energy storage.

SECTION 2. Subsection 15 of section 49-22-03 of the North Dakota Century Code is created and enacted as follows:

15. "Utility-scale energy storage" means a plant, addition, or combination of plant and addition, designed for operation as a grid resource and capable of five megawatts or more of rated power capacity.

SECTION 3. AMENDMENT. Subsection 4 of section 49-22-13 of the North Dakota Century Code is amended and reenacted as follows:

4. Notice of a public hearing ~~shall~~must be given by the commission by service on such persons and agencies that the commission may deem appropriate and twice by publication~~, once at least twenty days prior to such hearing and a second time within twenty days prior to such~~ at a reasonable interval before the hearing. Notice of a public hearing and notice of opportunity for a public hearing on an application for a certificate, a permit, a transfer or amendment of a certificate or permit, or a waiver shall be given at the expense of the applicant. ~~In an emergency the commission, in its discretion, may notice a hearing upon less than twenty days.~~

SECTION 4. Section 49-22-16.5 of the North Dakota Century Code is created and enacted as follows:

49-22-16.5. Route adjustment before or during construction for an electric transmission line.

1. Before or during construction, a utility, without any action by the commission, may adjust the route of an electric 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 an electric transmission line within the designated corridor which 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;

      (2) The construction activities will not affect any known exclusion areas within the designated corridor;

      (3) The construction activities are expected to impact an avoidance area with a specific description of the avoidance area expected to be impacted;

      (4) 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, unless the utility previously received authorization from the commission for the impact to the avoidance area;

      (5) For an impact for which the utility does not already have approval or has not filed the approval in paragraph 4, the utility has good cause and a specific reason to impact the avoidance area, and a reasonable alternative does not exist; and

      (6) The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route.

   b. 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 subdivision a of subsection 2, the route adjustment is deemed approved.

3. Before or during construction, a utility, without any action by the commission, may adjust the route of an electric transmission line outside the designated corridor 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 or avoidance areas;

      (2) The route outside the corridor is no longer than one and one-half miles [2.41 kilometers];

(3) The utility will comply with the commission's orders, laws, and rules designating the corridor and designating the route; and

(4) 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.

4. Before or during construction, a utility may adjust the electric transmission line outside 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 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 miles [2.41 kilometers];

(5) The utility will comply with the commission's orders, 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 is not required to hold a public hearing or publish a notice of opportunity for a public hearing for any route adjustment under this section.

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

49-22-22. Siting process expense recovery - Deposit in special fund - Continuing appropriation.

1. Every applicant under this chapter shall pay to the commission an application fee:

a. An applicant for a certificate of site compatibility shall pay an amount equal to five hundred dollars for each one million dollars of investment in the facility.

b. An applicant for a certificate of corridor compatibility shall pay an amount equal to five thousand dollars for each one million dollars of investment in the facility.

c. An applicant for a waiver shall pay the amount which would be required for an application for a certificate of site or corridor compatibility for the proposed facility. If a waiver is not granted for a proposed facility, such application fee paid shall be allowed as a credit against fees payable under this section in connection with an application under this chapter for a certificate or permit for the proposed facility.

d. An applicant requesting an amendment to a certificate or permit or for a transfer of a certificate or permit shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.

e. An applicant certifying to the commission under subsection 3 of section 49-22-03 shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.

f. The application fee under subdivision a, b, or c may not be less than ten thousand dollars nor more than one hundred thousand dollars.

g. ~~If an application fee is less than twenty-five thousand dollars, an~~An applicant may agree to pay additional fees that are reasonably necessary for completion of the site, corridor, or route evaluation and designation process.

2. ~~At the request of the commission and~~If an applicant does not agree to pay additional fees reasonably necessary for completion of the site, corridor, or route evaluation and designation process, with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the electric energy conversion facility site, electric transmission facility corridor, or electric transmission facility route evaluation and designation process by the commission. The application fee under subsection 1 and any additional fees required of the applicant under this subsection may not exceed an amount equal to one thousand dollars for each one million dollars of investment in a proposed energy conversion facility or ten thousand dollars for each one million dollars of investment in a proposed electric transmission facility.

3. A siting process expense recovery fund is established in the state treasury. The commission shall deposit payments received under subsections 1 and 2 in the siting process expense recovery fund. All moneys deposited in the fund are appropriated on a continuing basis to the commission to pay expenses incurred in the siting process. The commission shall specify the time and method of payment of any fees and shall refund the portion of fees collected under subsections 1 and 2 which exceeds the expenses incurred for the evaluation and designation process.

4. Every applicant for a certificate of site compatibility, certificate of corridor compatibility and route permit, and transfer of a certificate or permit under this chapter shall pay to the commission an administrative fee equal to one hundred dollars for each one million dollars of original investment, not to exceed twenty-five thousand dollars. The administrative fee must be deposited in the public service commission program fund.

SECTION 6. AMENDMENT. Subsections 6 and 7 of section 49-22.1-01 of the North Dakota Century Code are amended and reenacted as follows:

6. "Gas or liquid energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:

a. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas or hydrogen per day, regardless of the end use of the gas;

b. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or

c. Enrichment of uranium minerals.

7. "Gas or liquid transmission facility" means any of the following:

a. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, hydrogen, or carbon dioxide. This subdivision does not apply to:

(1) An oil or gas pipeline gathering system;

(2) A natural gas distribution system;

(3) Carbon dioxide storage facility underground equipment, including a flow line, subject to chapter 38-22;

(4) A pipeline with an outside diameter of four and one-half inches [11.43 centimeters] or less which will not be trenched and will be plowed in with a power mechanism having a vertical knife or horizontally directionally drilled, and its associated facilities; or

(5) 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.

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

SECTION 7. AMENDMENT. Subsection 4 of section 49-22.1-10 of the North Dakota Century Code is amended and reenacted as follows:

4. Notice of a public hearing must be given by the commission by service on those persons the commission deems appropriate and twice by publication, ~~once at least twenty days before the hearing and a second time within twenty days~~at a reasonable interval before the hearing. Notice of a public hearing and notice of opportunity for a public hearing on an application for a certificate, a permit, a transfer or amendment of a certificate or permit, or a waiver must be given at the expense of the applicant. ~~In an emergency the commission may notice a hearing upon less than twenty days.~~

SECTION 8. AMENDMENT. Subsection 4 of section 49-22.1-21 of the North Dakota Century Code is amended and reenacted as follows:

4. Every applicant for a certificate of site compatibility, certificate of corridor compatibility and route permit, and transfer of a certificate or permit under this chapter shall pay to the commission an administrative fee equal to one hundred dollars for each one million dollars of original investment, not to exceed twenty-five thousand dollars. The administrative fee must be deposited into the public service commission program fund.

SECTION 9. EMERGENCY. This Act is declared to be an emergency measure.

Speaker of the House	President of the Senate
Chief Clerk of the House	Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1097 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 90 Nays 0 Absent 4

Speaker of the House	Chief Clerk of the House

This certifies 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

Received by the Governor at _____M. on _____, 2023.

Approved at _____M. on _____, 2023.

Governor

Filed in this office this _____day of _____, 2023,

at _____ o'clock _____M.

Secretary of State