

PUBLIC UTILITIES

CHAPTER 438

HOUSE BILL NO. 1033
(Legislative Council)

(Interim Committee on Industry, Business & Labor "A")

PUBLIC SERVICE COMMISSION HEARING EXAMINERS

AN ACT to amend and reenact section 49-01-08 of the North Dakota Century Code, relating to the appointment of examiners by the public service commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 49-01-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-01-08. APPOINTMENT OF EXAMINERS BY PUBLIC SERVICE COMMISSION.) The commission may designate any special assistant attorney general appointed by the attorney general as commerce counsel or counsel to the commission, the director of auto transportation, the chief statistician, the chief engineer, or any other person qualified in the law or possessing knowledge or expertise in the subject matter of the hearing to act as examiner for the purpose of holding any hearing which the commission, or any member thereof, has power or authority to hold.

Approved March 5, 1977

CHAPTER 439

HOUSE BILL NO. 1032
(Legislative Council)
(Interim Committee on Industry, Business & Labor "A")

RATE HEARING COST ASSESSMENT

AN ACT to amend and reenact section 49-02-02 of the North Dakota Century Code, relating to commission powers with reference to public utilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 49-02-02 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-02-02. POWERS OF PUBLIC SERVICE COMMISSION WITH REFERENCE TO PUBLIC UTILITIES.) The commission shall have power to:

1. Investigate all methods and practices of public utilities or other persons, subject to the provisions of this title.
2. Require public utilities or other persons to conform to the laws of this state and to all rules, regulations, and orders of the commission not contrary to law.
3. Require copies of reports, rates, classifications, schedules, and timetables in effect and used by such utilities or other persons and all other information desired by the commission relating to such investigations and requirements to be filed with the commission.
4. Compel obedience to its lawful orders by proceedings of mandamus or injunction or other proper proceedings, in the name of the state, in any court having jurisdiction of the parties or of the subject matter.
5. Hold hearings on good cause being shown therefor or on its own motion, and to provide notice thereof and to shorten the period for which notice shall be given prior to hearing, when good cause exists for such action. Such notice, however, shall be reasonable in view of the nature, scope, and importance of the hearing. Whenever it shall appear to the satisfaction

of the commission that all of the interested parties have agreed concerning the matter at hand, the commission may issue its order without a hearing.

6. Require, in its discretion, proof that no unreasonable profit is made in the sale of materials to or services supplied for any public utility by any firm or corporation owned or controlled directly or indirectly by the public utility or any affiliate, subsidiary, parent company, associate, or any corporation whose controlling stockholders are also controlling stockholders of the public utility, before permitting the value of said materials or services to be included in valuations or cost of operations for ratemaking purposes. If unreasonable profits have been made in any such transactions, valuations of said materials and services may be reduced accordingly.
7. Employ, and fix the compensation of, rate experts, engineers, auditors, attorneys, and all other expert help and assistance for rate increase application hearings, investigations, and proceedings relating to gas, electric, or telephone public utilities. The expense of any hearings, investigations, and proceedings, and the compensation and actual expenses of any employees of the commission while engaged upon any such hearing, investigation, or proceeding, shall upon the order of the commission be paid by the public utility being investigated or involved in such hearing or proceeding. The commission shall ascertain such 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, investigation, or proceeding, or at the conclusion thereof, as the commission shall determine. Upon receipt of the bill and order for payment, as evidenced by return receipt or other proof, the public utility, within ten days after receipt, shall pay to the commission the amount billed. All amounts not paid within thirty days after receipt of the order for payment shall draw interest at the rate of six percent per annum from the date of receipt of the order. All costs and expenses collected by the commission under this subsection shall be paid into the general fund of the state treasury.

Approved March 11, 1977

CHAPTER 440

HOUSE BILL NO. 1038
(Legislative Council)

(Interim Committee on Industry, Business & Labor "A")

CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

AN ACT to create and enact chapter 49-03.1 of the North Dakota Century Code, relating to certificates of public convenience and necessity for public utilities other than electric public utilities or carriers of persons or property for hire; and to amend and reenact section 49-03-01 of the North Dakota Century Code, relating to certificates of public convenience and necessity secured by electric public utilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 49-03-01 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-03-01. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY - SECURED BY ELECTRIC PUBLIC UTILITY.) No electric public utility henceforth shall 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 construction and operation. This section does not require an electric public utility to secure a certificate for an extension within any municipality within which it 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.

SECTION 2.) Chapter 49-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

49-03.1-01. CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY - WHO TO SECURE.) No public utility shall begin construction or

operation of a public utility plant or system without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction and operation.

49-03.1-02. DEFINITIONS.) In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the public service commission.
2. "Public utility" includes any association, person, firm, corporation, or agency engaged or employed in this state to furnish its product or services to the public generally and subject to the jurisdiction of the commission. The words "public utility" as used in this chapter shall not apply to electric public utilities or carriers of persons or property for hire.

49-03.1-03. CERTIFICATE APPLICATION.) Application for a certificate of public convenience and necessity shall be made upon forms prescribed by the commission. The commission shall make regulations for the filing of such application. The application must contain a financial statement, a description of the type of service to be offered, a map and description of the area to be served, and a list of all other public utilities providing similar service in the area. Upon the filing of an application for a certificate of public convenience and necessity, the commission shall set a hearing date which shall not be less than twenty days after the filing. The commission shall cause notice of the hearing to be served by certified mail, at least ten days before the day of hearing, upon every public utility which is operating, or which has applied for a certificate of public convenience and necessity, in the area proposed to be served by the applicant, and on other interested parties as determined by the commission.

49-03.1-04. FACTORS TO BE CONSIDERED BY COMMISSION IN GRANTING OR DENYING A CERTIFICATE.) Before granting a certificate of public convenience and necessity, the commission shall take into consideration:

1. Need for the service.
2. Fitness and ability of applicant to provide service.
3. Effect on other public utilities providing similar service.
4. Adequacy of proposed service.
5. Proposed rates.
6. Proposed design.
7. Such other information as the commission may deem

appropriate.

49-03.1-05. PREREQUISITES TO ISSUANCE OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY - WAIVER OF HEARING.) Before any certificate may be issued under this chapter, a certified copy of the articles of incorporation or charter of the public utility, if the applicant is a corporation, shall be filed with the commission. At the hearing on the application as provided in section 49-03.1-03, the applicant shall submit evidence showing that 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. The commission shall have the power, after notice and hearing, to do any of the following:

1. Issue the certificate.
2. Refuse to issue the certificate.
3. Issue the certificate for the construction or operation of only a portion of the contemplated facility, line, plant, or system.
4. 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 judgment the public convenience and necessity may require.

Notwithstanding any of the foregoing provisions, the commission may grant a certificate if no interested party has requested a hearing on the application after receiving at least twenty days' notice of opportunity to request such hearing.

49-03.1-06. FRANCHISE NOT TO BE EXERCISED WITHOUT CERTIFICATE. No public utility henceforth shall 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 right or privilege.

49-03.1-07. REPLACEMENT OR RENEWAL OF FRANCHISE - CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NOT NECESSARY.) No public utility need secure a renewal certificate of public convenience and necessity under this chapter in order to exercise rights under a franchise hereafter granted where it has not suspended operation of its plant and where such franchise merely replaces or renews an expiring or expired franchise.

49-03.1-08. COMPLAINT UPON VIOLATION OF CHAPTER.) Whenever a public utility 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 this chapter, any interested municipality, public authority, public utility, corporation, or person may file a complaint with the commission. The commission thereupon, or upon its own motion without complaint, with or without notice, may order the public utility complained of to cease and desist the construction, operation, or other prohibited activity until further order of the commission. Upon hearing, after due notice, the commission shall order enforcement of this section with respect to the offending public utility and prescribe just and reasonable terms and conditions.

Approved March 12, 1977

CHAPTER 441

HOUSE BILL NO. 1039
(Legislative Council)
(Interim Committee on Industry, Business & Labor "A")

SALE OF PUBLIC UTILITY SECURITIES

AN ACT to amend and reenact section 49-04-05 of the North Dakota Century Code, relating to the consent of the public service commission to dispose of or encumber public utility franchises, works, or systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 49-04-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-04-05. CONSENT OF COMMISSION REQUIRED TO DISPOSE OF OR ENCUMBER FRANCHISES, WORKS, OR SYSTEMS - EXCEPTIONS.) No public utility shall sell, assign, lease, transfer, mortgage, or otherwise dispose of or encumber the whole or any part of its franchise, works, or system necessary or useful in the performance of its duties to the public, nor at any time, directly or indirectly merge or consolidate such works, system, franchise, or any part thereof with any other person, corporation, or public utility, without first having secured from the commission an order authorizing it to do so. No such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger, or consolidation shall be binding upon the public without the approval of the public service commission. This section does not apply to the sale by public utilities of securities registered with the federal securities and exchange commission.

Approved March 5, 1977

CHAPTER 442

HOUSE BILL NO. 1036
(Legislative Council)
(Interim Committee on Industry, Business & Labor "A")

**CIVIL PENALTY ASSESSMENT BY PUBLIC
SERVICE COMMISSION**

AN ACT to authorize the public service commission to assess a civil penalty against any person subject to the commission's authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. VIOLATION OF STATUTE, COMMISSION ORDER, OR COMMISSION REGULATION - ASSESSMENT OF CIVIL PENALTY.) Any person who violates any statute, commission order, or commission regulation which applies to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, 24-09, and 32-25, titles 60 and 64, and title 49 except for chapter 49-22, shall, in addition to any other penalty provided, be subject to a civil penalty of not to exceed five thousand dollars. 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.

Approved March 5, 1977

CHAPTER 443

HOUSE BILL NO. 1241
(Committee on Industry, Business and Labor)
(At the request of the Public Service Commission)

RAILROAD REGULATION

AN ACT to create and enact chapter 49-10.1 of the North Dakota Century Code, relating to the regulation of railroads by the public service commission; to amend and reenact section 49-04-09 of the North Dakota Century Code, relating to long and short haul rates; and to repeal chapters 49-12, 49-13, 49-14, 49-15, and 49-17, and sections 49-16-01, 49-16-06, 49-16-07, 49-16-09, and 49-16-10 of the North Dakota Century Code, relating generally to railroads.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 49-04-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-04-09. LONG AND SHORT HAULS.) It shall be unlawful for any common carrier to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of a like kind of freight or property, for a shorter than for a longer distance, all or any portion of the shorter haul being included within the longer. A common carrier shall charge no more for transporting passengers or freight to or from any point than a fair and just rate as compared with the price it charges for the same kind of transportation to or from any other point. All the provisions of this section shall apply to the transportation of passengers and all kinds of freight and property shipped and transported over one or more connecting lines. Such connecting lines shall transfer car lots without extra compensation, and shall transfer less than car lots at actual cost for such transfer. Rates shall be made and published by connecting lines for continuous shipment upon demand of any shipper or shippers and such rates so made by two or more connecting lines shall be no greater in the aggregate than the rate would be if shipped continuously upon one line of road. The commission may, upon application by a common carrier, permit and prescribe the extent to which any such carrier may be relieved from the operation of the principles contained in this section.

SECTION 2.) Chapter 49-10.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

49-10.1-01. AUTHORITY OF PUBLIC SERVICE COMMISSION.) The public service commission, hereinafter commission, to the extent hereinafter provided shall have authority and power to regulate

railroads within this state to the extent railroad activities constitute intrastate commerce. All references to railroads in the North Dakota Century Code are subject to this provision without any requirement that such references specifically mention this limited jurisdiction of the state of North Dakota.

49-10.1-02. PUBLIC POLICY CONCERNING THE REGULATION OF RAILROADS.) All railroads are hereby declared to be common carriers affected with a public interest and subject to regulation as prescribed by this chapter and other applicable provisions of law. The commission shall regulate railroads to insure that all rates, fares, and charges made by any railroad shall be just and reasonable, and shall not be unduly discriminatory, unduly or unreasonably prejudicial, nor unduly or unreasonably preferential. No railroad shall charge, demand, collect, or receive for the transportation of property or persons, or for any service in connection therewith, a remuneration which is more or less than, or different from, the rates, fares, and charges which legally have been established and filed with the commission as provided for in this chapter, nor shall any railroad refund or remit in any manner or by any device any portion of the rates, fares, and charges required to be collected by the tariffs on file with the commission or ordered by the commission. The commission shall further promote the safety and protection of persons and property being transported by, coming in contact with, or otherwise being directly affected by railroads.

49-10.1-03. REGULATORY POWERS.) The commission shall regulate all railroads carrying property or passengers within this state. The commission shall:

1. Fix, alter, regulate, and determine just, fair, reasonable and sufficient rates, fares, charges, and classifications, including joint rates, fares, charges, and classifications for the transportation of freight or passengers over continuous lines or routes in this state operated by one or more railroads.
2. Require the filing with the commission of a tariff setting forth the rates, fares, charges, and classifications in a form and in a manner that the commission may prescribe from time to time which the commission shall require the railroad to open upon request of the shipper or consignee for public inspection within this state.
3. Regulate the facilities, accounts, services, and safety of each such railroad.
4. Prevent unfair competition, unjust discrimination, or undue or unreasonable preferences between shippers or consignees by lines of competing railroads.

5. Require the filing of reports and data by railroads as the commission may from time to time determine to be necessary to allow it to carry out its regulatory functions as set forth in this chapter and other provisions of law.
6. Regulate railroads in all matters affecting the relations between railroads and the public to the end that the provisions of this chapter may be fully and completely carried out.
7. Have power and authority, by general order or otherwise, to prescribe rules and regulations in conformity with this chapter applicable to railroads, and to do all things necessary to carry out and enforce the provisions of this chapter.

49-10.1-04. EQUIPMENT DISTRIBUTION.) The commission in exercising the powers conferred upon it under this chapter shall have the authority to regulate the distribution of railroad cars for the purpose of transportation of products to give each shipper or consignee a fair opportunity to transport his product. The commission shall further have the authority to regulate demurrage charges and to regulate the time in which a shipper may hold a railroad car for the purpose of loading or unloading the same.

49-10.1-05. SECURITY OFFICERS.) Security officers hired by railroads, station agents, train crews, and trackmen, while engaged in their employment with the railroad shall have the authority of a 'law enforcement officer' pursuant to section 12.1-01-04 (18) for the purpose of arresting any person committing a felony on railroad property or associated with railroad equipment, or to arrest a person committing a misdemeanor involving railroad property or relating to persons or property being transported by the railroad, or awaiting transportation by the railroad, and shall further have the power of removing an individual from a train who has no right to be there, or who is engaging in a conduct prohibited by title 12.1. Persons so arrested shall be forthwith turned over to local or county law enforcement officers.

49-10.1-06. LOADING PLATFORMS.) The commission, upon a finding that public convenience and necessity so require it, shall order a railroad to build a platform for the purpose of loading and unloading freight and commodities at a place designated by the commission to provide reasonable access to the public for the purpose of utilizing rail transportation services. The dimensions of the platform and any improvements associated with said platform must first be approved by the commission.

49-10.1-07. SPUR TRACKS.) On a finding by the commission that public convenience and necessity so require it, a railroad shall be required to build a spur track to serve elevators, warehouses, mills or like structures, at the expense of the party

desiring the spur track to be built. The person desiring the construction of said spur track may be required by the railroad to deposit the estimated cost of the spur track with the commission before the railroad can be required to construct said spur track. The person desiring said spur track may be charged a monthly charge by the railroad for the cost of maintaining the spur track and the switch.

49-10.1-08. TAMPERING, ALTERING, OR DAMAGING RAILROAD PROPERTY - PENALTY.) Every unauthorized person who unlawfully tampers with, alters, or damages any railroad track, track mechanism, or signal, semaphore or sign, or masks any light or signal, or exhibits any false light or signal with intent to endanger person or damage property, shall be guilty of a class C felony.

49-10.1-09. SHIPMENT OF LIVESTOCK.) The commission may promulgate reasonable rules and regulations, consistent with federal requirements, governing the shipment of livestock by railroads to provide for the well-being and humane treatment of said livestock.

49-10.1-10. USE OF RAILROAD TRACKS FOR HIGHWAY PURPOSES - PENALTY.) No unauthorized person shall drive any vehicle or animal upon or use any railroad track and right-of-way in this state as a highway. This section shall not apply to highway or private crossings over any line of railway in the state, nor to depot grounds, station grounds, nor switches, sidetracks, and right-of-way intended for the use of railroad employees, shippers, or the consignees of freight. Any person violating the provisions of this section is guilty of a class B misdemeanor.

49-10.1-11. MINOR EXCLUDED FROM RAILROAD PROPERTY - EXCEPTION.) A person under fifteen years of age, unless he is accompanied by a parent or guardian or unless he has business with the railroad requiring him to approach such place shall not:

1. Approach closer than ten feet from any engine, car, train, or other rolling stock upon the tracks of any railroad in this state.
2. Enter any roundhouse, shop, yard, or upon any track bridge of any railroad company or upon the right-of-way or other place of danger owned by any railroad.

49-10.1-12. TRESPASSING AND STEALING RIDES ON CARS, ENGINES, AND TRAINS - PENALTY.) No person shall:

1. Enter, ride, or secure passage, upon a railroad car or engine of any description other than a car commonly used exclusively for the carriage of passengers, with intent thereby to obtain a ride without payment therefor,

or fraudulently to obtain carriage upon any such engine or car.

2. Take passage, ride, or enter for the purpose of taking passage or riding, upon the tracks, rods, brakebeams, or any part of any car, locomotive engine, or tender, not ordinarily and customarily used or intended for the resting place of a person riding upon or operating the same, unless the one taking such passage is a railway employee in the performance of his duty.

Any person violating any of the provisions of this section shall be guilty of a class B misdemeanor.

49-10.1-13. CLEARANCE REQUIRED FOR TRACKS.) No person unless authorized by the commission shall erect or maintain on any railroad track or railroad right-of-way any:

1. Fixed or permanent structure or obstruction at a distance of less than eight feet from a railroad track, measured from the center line of the track.
2. Overhead wires, bridges, viaducts, or other obstructions passing over and above a railroad track at a height less than twenty-one feet, measured from the top of the track rail. The commission, upon application after a thorough investigation and hearing in any particular case, may permit any railroad to which this section applies to erect or reconstruct and maintain any such railroad facility at a lesser clearance than herein provided for when in the judgment of the commission the compliance with the clearance prescribed herein would be unreasonable or unnecessary and when a lesser clearance than that hereinbefore provided for would not create a condition unduly hazardous to the employees of such railroad or any other person. Station freight house platforms which have a vertical height of not more than four feet, measured from the top of the track rail, may be erected and maintained at a less distance from the center of the track which they adjoin than herein specified.

49-10.1-14. COMMISSION TO PRESCRIBE AND ENFORCE SAFETY RULES AND REGULATIONS.) The commission, for the protection of persons and property, shall promulgate, establish, adopt, in whole or in part, and enforce, railroad safety rules and regulations not inconsistent with any federal agency having jurisdiction over railroads, by reference or otherwise, as now prescribed or which may from time to time be prescribed. The commission may adopt rules and regulations more stringent than applicable federal rules and regulations when necessary to eliminate an essentially state or local safety hazard if said rules or regulations are not incompatible with any federal law, rule, or regulation and do not create an undue burden on interstate commerce.

49-10.1-15. SEMIMONTHLY PAY TO RAILROAD EMPLOYEES.) All railroads doing business within this state are required to pay their employees, at least semimonthly, the wages earned by them within fifteen days of the date of such payment unless prevented by inevitable casualty. Whenever an employee shall be discharged, his wages shall be paid to him at the time of his discharge or whenever he shall demand the same thereafter.

49-10.1-16. INTOXICATED ENGINEER OR CONDUCTOR - PENALTY.) Every person who is intoxicated while in charge as engineer of a locomotive engine or while acting as a conductor or driver upon any railroad train or car is guilty of a class A misdemeanor.

SECTION 3. REPEAL.) Chapters 49-12, 49-13, 49-14, 49-15, and 49-17, and sections 49-16-01, 49-16-06, 49-16-07, 49-16-09, and 49-16-10 of the North Dakota Century Code are hereby repealed.

Approved March 12, 1977

CHAPTER 444

SENATE BILL NO. 2187
(Committee on Industry, Business and Labor)
(At the request of the Public Service Commission)

PROTEST OF COMMON CARRIER CERTIFICATE ISSUANCE

AN ACT to amend and reenact section 49-18-15 of the North Dakota Century Code, relating to motor carriers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 49-18-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-15. TESTIMONY - ISSUANCE OF CERTIFICATE - CONDITIONS.) Any common carrier or other party upon whom notice of hearing shall be served shall be deemed an interested party to the proceedings and may offer testimony for or against the granting of a certificate. However, as a condition for offering testimony at the hearing, such interested party must file a protest with the commission and the applicant within twenty days of receipt of notice and must indicate the nature of the protest, along with a list of witnesses to be called by the protestant and the approximate time needed to present the protestant's case. Any other interested person may offer testimony for the granting of a certificate at such hearing. If the commission finds from the evidence that the public convenience and necessity require the proposed service or any part thereof, it may issue the certificate as prayed for, or may issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the right granted by the certificate such terms and conditions as in its judgment the public convenience and necessity may require. Otherwise such certificate shall be denied.

Approved March 31, 1977

CHAPTER 445

SENATE BILL NO. 2192
(Committee on Industry, Business and Labor)
(At the request of the Public Service Commission)

PROTEST OF CONTRACT CARRIER PERMIT ISSUANCE

AN ACT to amend and reenact section 49-18-21 of the North Dakota Century Code, relating to hearings for contract motor carriers permits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 49-18-21 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-21. CONTRACT MOTOR CARRIERS - HEARING FOR PERMIT.) The commission, upon the filing of an application for a permit, as provided by section 49-18-20, may fix a time for hearing thereon, which shall be not less than ten days after such filing. The commission shall cause notice of such hearing to be served by registered or certified mail at least five days before the hearing upon every railroad corporation or other common carrier which is operating or which has applied for a certificate or permit to operate in the territory proposed to be served by the applicant and on other interested parties as determined by the commission. Any such common carrier, and any other interested person, may offer testimony for or against the granting of such permit, provided, however, that no testimony against the granting of such application shall be considered unless such party files a protest with the commission and the applicant within twenty days of receipt of notice of the scope of the application indicating the grounds for the protest.

Approved March 31, 1977

CHAPTER 446

SENATE BILL NO. 2388
(Rait, Tallackson)

ACTIVITY CLOSE TO TRANSMISSION LINES

AN ACT to provide for the governing of activity in proximity to electric transmission lines; and providing a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. DEFINITIONS.) As used in this Act, unless the context otherwise requires:

1. "High voltage" means a voltage in excess of six hundred fifty volts between conductors or between any single conductor and the ground.
2. "Overhead lines or overhead conductors" means all bare or insulated electrical conductors installed above the ground excepting those conductors that are deenergized and grounded or that are enclosed in iron pipe or other metal covering of equal strength.
3. "Person" means a person, firm, corporation, or association, individually or through an agent or employee, or a person acting as an agent or employee of any person, firm, corporation, or association.

SECTION 2. OPERATIONS WITHIN TEN FEET PROHIBITED.) No person shall store or erect any tools, machinery, equipment, supplies, materials, apparatus, house, or other building, or any part thereof, within ten feet of any high voltage overhead conductor.

SECTION 3. WARNING SIGN REQUIRED ON EQUIPMENT.) No person shall operate any crane, derrick, power shovel, drilling rig, hoisting equipment, or similar apparatus, any part of which is capable of lateral or swinging motion, unless there is posted and maintained in plain view of the operator thereof, a durable warning sign legible at twelve feet which reads: "Unlawful to operate this equipment within ten feet of high voltage lines." Each day's failure to post or maintain such signs shall constitute a separate violation.

SECTION 4. PENALTY.) Every person, firm, corporation, association, or any agent or employee of any such person, firm, corporation, or association who violates any of the provisions of this Act, shall be guilty of an infraction.

SECTION 5. EXCEPTIONS.) This Act shall not apply to:

1. Construction, reconstruction, operation, or maintenance of any high voltage overhead conductor, supporting structure, or appurtenances for the support or operation of a high voltage conductor by persons authorized by the owner or operator.
2. Work being done on telephone, coaxial, signaling, and other communication circuits or their supporting structures, or other circuits and their supporting structures which are not high voltage as defined in section 1.
3. The operation or maintenance of any railroad equipment or vehicles traveling or moving upon fixed rails or railroad right-of-way.

Approved April 9, 1977

CHAPTER 447

SENATE BILL NO. 2297
(Jacobson)

ENERGY FACILITY SITING AMENDMENTS

AN ACT to create and enact sections 49-22-05.1, 49-22-07.1, 49-22-07.2, 49-22-12.1, and 49-22-14.1 of the North Dakota Century Code, relating to inventory of exclusion areas, letters of intent prior to construction of energy conversion or transmission facilities, waiver of procedures and time schedules, emergency certification, and cooperation with state and federal agencies; to amend and reenact subsections 8, 10, 11, and 12 of section 49-22-03, sections 49-22-04, 49-22-07, 49-22-08, 49-22-10, 49-22-11, 49-22-13, 49-22-19, 49-22-21, and subsections 1, 2, and 3 of section 49-22-22 of the North Dakota Century Code, relating to definitions, ten-year plans of utilities, certificates of site compatibility, application for a certificate of site compatibility, designation of sites and corridors, approval of routes within corridors, public hearings, requests for rehearings, penalties, and application fees; to repeal sections 49-22-05, 49-22-06, 49-22-12, and 49-22-23, relating to inventory of potential sites, energy conversion and transmission facility development plans, and emergency certification.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsections 8, 10, 11, and 12 of section 49-22-03 of the 1975 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

8. "Person" includes any individual, firm, association, partnership, cooperative, corporation, or any department, agency, or instrumentality of a state or of the federal government, or any subdivision thereof.
10. "Site" means the location of an energy conversion facility or a corridor.
11. "Transmission facility" means any of the following:
 - a. An electric transmission line and associated facilities with a design of one hundred fifteen kilovolts or more.

- b. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, or liquid hydrocarbon products. The provision of this subdivision shall not apply to any person operating an oil or gas pipeline gathering system.
 - c. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.
12. "Utility" means any person engaged in and controlling the generation, manufacture, refinement, or transmission of electric energy, gas, or liquid hydrocarbon products, including, but not limited to, electric power generation or transmission, coal gasification, coal liquefaction, petroleum refinement, uranium enrichment, and the transmission of coal, gas or liquid hydrocarbon products, or the transmission of water from or to any energy conversion facility.

SECTION 2. AMENDMENT.) Section 49-22-04 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-22-04. TEN-YEAR PLANS - CONTENTS.) Every utility which 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. On or before July first of each year, every such utility shall submit its ten-year plan to the commission. 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 shall 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 inventory 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 such 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 of North Dakota, 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.

SECTION 3.) Section 49-22-05.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

49-22-05.1. INVENTORY OF EXCLUSION AND AVOIDANCE AREAS - CRITERIA - PUBLIC HEARINGS.)

1. The commission shall assemble and publish an energy conversion and transmission facility inventory of exclusion and avoidance areas. The commission shall have a continuing responsibility to evaluate, update, and publish its inventory. An exclusion or avoidance area shall be removed from the inventory if, due to changed circumstances or information, it is inconsistent with the prescribed criteria; an area shall be included in the inventory if it is found to be consistent with the prescribed criteria.
2. The inventory report prepared by the commission shall contain an identification of the exclusion and avoidance areas and the criteria used in identifying them. The criteria developed by the commission shall also guide the site or corridor suitability evaluation and designation process. A public hearing shall be held before any substantial modification to the criteria is adopted.

SECTION 4. AMENDMENT.) Section 49-22-07 of the 1975

Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-22-07. CERTIFICATE OF SITE COMPATIBILITY REQUIRED.) No utility shall begin construction of an energy conversion facility or transmission facility in the state, or exercise the right of eminent domain in connection with such construction, without first having obtained a certificate of site compatibility issued with respect to such facility by the commission pursuant to this chapter. Any facility, with respect to which a certificate is required, shall thereafter be constructed, operated, and maintained in conformity with such certificate, and any terms and conditions contained therein and subsequent modifications thereof. A certificate may be transferred, subject to the approval of the commission, to any person who agrees to comply with its terms, conditions, and modifications.

SECTION 5.) Section 49-22-07.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

49-22-07.1. LETTER OF INTENT PRIOR TO CONSTRUCTION.) Every utility which plans to construct any energy conversion or transmission facility within this state, shall submit a letter of intent to the commission in the form and manner prescribed by the commission.

SECTION 6.) Section 49-22-07.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

49-22-07.2. WAIVER OF PROCEDURES AND TIME SCHEDULES.) Any utility which proposes to construct an energy conversion facility with a design not in excess of one hundred thousand kilowatts or a transmission facility within the state may make an application to the commission for a waiver of any of the procedures set forth in this chapter. The commission, after hearing and upon a finding that the proposed facility is of such length, design, location, or purpose that it will produce minimal adverse effects, may issue an order waiving specified procedures and time schedules required by this chapter, including but not limited to applications, notices, and hearings, and may forthwith issue a certificate of site compatibility, a route permit, or both, with such conditions as the commission may require. The proposed facility shall thereafter be constructed, operated, and maintained in compliance with this chapter.

SECTION 7. AMENDMENT.) Section 49-22-08 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-22-08. APPLICATION FOR A CERTIFICATE - PROOF OF SERVICE - AMENDMENT.)

1. An applicant for a certificate shall file with the

commission an application, in such form as the commission may prescribe, containing the following information:

- a. A description of the size and type of facility.
 - b. A summary of any studies which have been made of the environmental impact of the facility.
 - c. A statement explaining the need for the facility.
 - d. An identification of the location of the preferred site for any energy conversion facility.
 - e. An identification of the location of the preferred corridor for any transmission facility.
 - f. A description of the merits and detriments of any location identified, and a comprehensive analysis with supporting data showing the reasons why the preferred location is best suited for the facility.
 - g. Such other information as the applicant may consider relevant or the commission may require.
2. After receiving the application, the commission shall serve a notice of filing of the application on the chairman of the board of county commissioners of each county in which any portion of the facility is proposed to be located, the chief executive officer of each city in the county in which any portion of the facility is proposed to be located, and the head of each government agency charged with the duty of protecting the environment or planning land use in the area in which any portion of the facility is to be located.
 3. Copies of the application shall be furnished to all entities entitled to notice of filing, upon request to the commission within thirty days of receipt of the notice of filing. In addition, the commission shall serve notice of the filing of the application or copies thereof, or both, upon such other persons as the commission may deem appropriate.
 4. An application for an amendment of a certificate shall be in such form and contain such information as the commission shall prescribe.

SECTION 8. AMENDMENT.) Section 49-22-10 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-22-10. DESIGNATION OF SITES AND CORRIDORS.) The commission shall designate a suitable site or corridor for a specific size and

type of facility following the study, evaluation, and hearings, as provided in sections 49-22-09, 49-22-13, 49-22-14, and 49-22-15, on any site or corridor proposed by an applicant. This designation by the commission shall be made in accordance with the criteria established pursuant to section 49-22-05.1 in a finding with reasons for the designation and, for a completed application received prior to July 1, 1977, shall be made in a timely manner no later than one year after the filing of a completed application for a certificate requesting designation of a site or no later than six months after the filing of a completed application for a certificate requesting designation of a corridor. For a completed application received on or after July 1, 1977, the designation shall be made in a timely manner no later than six months after the filing of a completed application for a certificate requesting designation of a site or no later than three months after the filing of a completed application for a certificate requesting designation of a corridor. The time for designation of a site or corridor may be extended by the commission for just cause. The failure of the commission to act within the time limits provided in this section shall not operate to divest the commission of jurisdiction in any certification proceeding. No site or corridor designation shall be made in violation of the criteria established pursuant to section 49-22-05.1. The commission shall indicate the reasons for any refusal and shall indicate changes necessary to allow siting in compliance with the criteria. Upon designation of the site or corridor, the commission shall issue to the applicant a certificate of site compatibility with such terms, conditions, or modifications deemed necessary by the commission.

SECTION 9. AMENDMENT.) Section 49-22-11 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-22-11. APPROVAL OF A SPECIFIC TRANSMISSION FACILITY ROUTE WITHIN A DESIGNATED CORRIDOR.) No later than two years after the issuance of a certificate the utility shall apply to the commission for a permit for the construction of a transmission facility within the designated corridor. Following study, evaluation, and hearings on the type, design, routing, right-of-way preparation, and facility construction and operation as identified in the utility's application and alternatives to the utility's corridor development proposal as provided in sections 49-22-09, 49-22-13, 49-22-14, and 49-22-15, the commission shall issue a permit with such terms, conditions, or modifications deemed necessary by the commission for the construction and operation of a transmission facility within the designated corridor. This permit issuance by the commission shall be made in a timely manner and no later than six months after the filing of a completed application for a permit by the utility. The time for designation of a route may be extended by the commission for just cause. The failure of the commission to act within the time limit provided in this section shall not operate to divest the commission of jurisdiction in any permit proceeding.

SECTION 10.) Section 49-22-12.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

49-22-12.1. EMERGENCY CERTIFICATION.)

1. Any utility whose system requires the immediate construction of an energy conversion or transmission facility may request the commission to make a determination that a demonstrable emergency exists which requires such immediate construction and that adherence to the procedures and time schedules set forth in this chapter would jeopardize the utility's system. A public hearing shall be held within thirty days of the filing of a request with the commission, and a decision shall be issued by the commission no later than thirty days after the hearing.
2. Upon a finding by the commission that a demonstrable emergency exists which requires immediate construction and that adherence to the procedures and time schedules set forth in this chapter would jeopardize the utility's system, the utility may file an application with the commission for an emergency certificate of site compatibility for an energy conversion or transmission facility or for an emergency permit for the construction of a transmission facility. A public hearing shall be held within ninety days of filing of a completed application with the commission. The decision of the commission shall be issued in a timely manner no later than six months after the filing of a completed application with the commission.
3. The failure of the commission to act within the time limits provided in this section shall not operate to divest the commission of jurisdiction in any emergency proceeding.

SECTION 11. AMENDMENT.) Section 49-22-13 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-22-13. PUBLIC HEARINGS - NOTICE.) The commission shall hold public hearings as prescribed by regulation to afford interested persons an opportunity to be heard regarding its inventory of exclusion and avoidance areas and any other aspects of the commission's activities, duties, or policies arising under or set forth in this chapter. The commission shall hold at least one public hearing in each county where a site or corridor is being considered for designation pursuant to section 49-22-10 as suitable for construction of an energy conversion facility or transmission facility; however, where more than one county is involved, the commission may consolidate the county hearings and hold a consolidated hearing or hearings in a place designated by the commission. Notice of public hearings shall be given by the commission at the

expense of the applicant at least twenty days prior to such hearings. In an emergency, the commission, in its discretion, may notice a hearing upon less than twenty days. Notice shall be by publication in the official county newspaper of the county in which the public hearing is to be held and by mailed notice to the persons designated in subsection 2 of section 49-22-08.

SECTION 12.) Section 49-22-14.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

49-22-14.1. COOPERATION WITH STATE AND FEDERAL AGENCIES.) The commission shall have the authority to cooperate with and receive and exchange technical assistance from and with the United States, any state, or any department, agency, or officer thereof for any purpose relating to the siting of energy conversion and transmission facilities.

SECTION 13. AMENDMENT.) Section 49-22-19 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-22-19. HEARING - JUDICIAL REVIEW.) Any party aggrieved by the issuance of a certificate of site compatibility or transmission facility construction permit from the commission, certification of continuing suitability filed by a utility with the commission, or promulgation of a final order by the commission, may request a rehearing by the commission. The hearing shall be conducted pursuant to chapter 28-32. There shall be a right of appeal to the district court from any adverse ruling by the commission.

SECTION 14. AMENDMENT.) Section 49-22-21 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-22-21. PENALTIES.)

1. Any person required by this chapter to have a certificate or permit who willfully begins construction of an energy conversion facility or transmission facility without previously securing a certificate or permit as prescribed by this chapter, or who willfully constructs, operates, or maintains an energy conversion facility or transmission facility other than in compliance with the certificate or permit and any terms, conditions, and modifications contained therein is guilty of a class A misdemeanor.
2. Any person who willfully violates any regulation issued or approved pursuant to this chapter or who willfully falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this chapter shall be guilty of a class A misdemeanor.

3. Any person who violates this chapter shall be subject to a civil penalty of not more than ten thousand dollars. The civil penalty provided for in this section shall be recoverable by suit filed by the commission and shall be deposited in the general fund.
4. Notwithstanding any other provision of this chapter, the commission may, by injunctive procedures, without bond or other undertaking, proceed against any person in violation of the provisions of this chapter, or the rules and regulations issued thereunder. No liability whatsoever shall accrue to the commission or its authorized representative in proceeding against any person pursuant to this section.

SECTION 15. AMENDMENT.) Subsections 1, 2, and 3 of section 49-22-22 of the 1975 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Every applicant for a certificate of site compatibility for an energy conversion facility shall pay to the commission an application fee in an amount equal to five hundred dollars for each one million dollars of investment in the proposed installation as defined in the federal power commission uniform system of accounts. Every applicant for a certificate of site compatibility for a transmission facility shall pay to the commission an application fee in an amount equal to five thousand dollars for each one million dollars of investment in the proposed installation as defined in the federal power commission uniform system of accounts. The application fee under this subsection shall not be less than five thousand dollars nor more than one hundred fifty thousand dollars. The commission shall specify the time and manner of payment of the application fee.
2. The applicant shall pay such additional fees as are reasonably necessary for completion of the energy conversion facility site, transmission facility corridor, or transmission facility route evaluation and designation process by the commission. The commission shall specify the time and method of payment of any additional fees and shall refund the portion of such additional fees received from the applicant for completion of the site, corridor, or route evaluation and designation process which exceeds the expenses incurred for the evaluation and designation process. In no event shall the application fee under subsection 1 and any additional fees required of the applicant under this subsection 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 transmission facility.

3. All fees collected under the provisions of this chapter shall be deposited in the general fund.

SECTION 16. REPEAL.) Sections 49-22-05, 49-22-06, 49-22-12, and 49-22-23 of the 1975 Supplement to the North Dakota Century Code are hereby repealed.

Approved April 20, 1977

CHAPTER 448

HOUSE BILL NO. 1420
(Erickson, Dotzenrod)

UTILITY EASEMENT ACQUISITION TACTICS

AN ACT to provide for cancellation of easements acquired by a public utility through unfair tactics; to create and enact a new subsection to section 49-22-20 of the North Dakota Century Code, relating to revocation of a transmission facility route permit, to provide for a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. UNFAIR TACTICS IN ACQUIRING LAND OR EASEMENTS
FOR A FACILITY - COURT ACTION - CANCELLATION OF EASEMENT - PENALTY.)

1. Any person employed by a public utility to acquire easements for a facility subject to chapter 49-22 shall not use any harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics to induce the owner of the land to be affected by the facility to grant or agree to any easements.
2. If at least five landowners aggrieved by the conduct of a person or persons, acting on behalf of the same utility, acquiring easements for a site or route of a facility allege use of harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics by the person or persons acquiring or attempting to acquire the easement, an action may be brought in the appropriate district court.
3. Upon a determination by the court that the person or persons employed by the utility used harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics in acquiring or attempting to acquire an easement from at least five separate landowners, the court shall, by order, declare the easements void and may order any compensation paid therefor returned to the offending utility, or allow the landowner to retain such compensation, or award to the landowner up to three times the amount of the compensation involved as damages, punitive or compensatory. The court shall award costs and reasonable attorney fees to the

plaintiffs when the court rules in favor of the plaintiffs.

4. Upon a determination by the court that the utility involved did knowingly allow, encourage, or operate in active consort or participation with such person or persons utilizing such unfair tactic, the court shall cause a copy of its memorandum opinion or order to be filed with the public service commission.
5. Upon receiving a copy of a memorandum opinion or order issued by a district court pursuant to this section, the public service commission may revoke or suspend the permit issued with respect to the route affecting the aggrieved landowners. If a permit has not been issued with respect to a site or route affecting the aggrieved landowners, the commission may refuse to issue a permit for such portion of the route.

SECTION 2.) A new subsection to section 49-22-20 of the 1975 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

A determination by a district court pursuant to section 1 of this Act.

SECTION 3. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved April 6, 1977