

PUBLIC UTILITIES

CHAPTER 514

SENATE BILL NO. 2298
(Mutch)

MOTOR CARRIER IDENTIFICATION TAGS

AN ACT to amend and reenact section 49-18-41 of the North Dakota Century Code, relating to identification tags secured by motor carriers as evidence of receipt of certificate of public convenience.

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

SECTION 1. AMENDMENT. Section 49-18-41 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-41. Identification tag to be secured by motor carrier - Temporary identification certificate for certain vehicles.

1. Every Except as provided in subsection 2, each motor carrier who under the statutes of this state must register with or secure a permit or certificate of public convenience and necessity from the commission, except a common carrier of passengers, at the time of securing such certificate or permit, and annually thereafter on or before April fifteenth of each calendar year, shall secure from the commission an identification tag for each motor vehicle operated within this state, which shall be in the form, color combination, lettering, and numbering prescribed by the commission. The identification tag for each type of carrier licensed by the commission shall be identified in a manner different from that of each other type of carrier. The commission shall collect a fee of twenty dollars for each identification tag. No motor carrier shall operate in this state without having an identification tag attached to each vehicle owned and operated by such carrier. The identification plate shall be secured from the registrar of motor vehicles upon request from the commission.
2. A motor carrier operating a motor vehicle in this state for not more than thirty days a year may secure, in place

of the identification tag required under subsection 1, a temporary identification certificate for that motor vehicle from the commission. The fee for the certificate is five dollars. When a motor vehicle is operated under the authority of a certificate issued under this subsection, the operator of the motor vehicle shall carry that certificate in the motor vehicle while it is operated in this state.

Approved March 22, 1985

CHAPTER 515

SENATE BILL NO. 2201
(Committee on State and Federal Government)
(At the request of the Public Service Commission)

TELECOMMUNICATIONS REGULATION

AN ACT to create and enact four new sections to chapter 49-21 of the North Dakota Century Code, relating to the regulation of telecommunications companies by the public service commission; to amend and reenact sections 49-02-01, 49-02-01.1, subsection 7 of section 49-02-02, sections 49-02-05.1, 49-04-19, 49-05-02, 49-09-15, 49-09-16, 49-19-09, 49-19-10, 49-20-12.1, 49-21-01, 49-21-02, 49-21-04, 49-21-05, 49-21-06, 49-21-07, 49-21-08, 49-21-09, 49-21-10, and 49-21.1-05 of the North Dakota Century Code, relating to the jurisdiction of the public service commission over telecommunications companies, the regulation of telecommunications companies, security interests against telecommunications companies, conveyance of real property by a telecommunications company, right-of-way for telecommunications lines, right-of-way for pipeline telecommunications lines, compensations for damages done by laying pipeline telecommunications line, and changes in the topography of land under or adjacent to telecommunications lines; and to repeal sections 49-21-03, 49-21-11, 49-21-12, 49-21-13, and 49-21-16 of the North Dakota Century Code, relating to regulation of telephone and telegraph companies and penalties for failure to comply with a public service commission order regarding telephone and telegraph companies.

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

SECTION 1. AMENDMENT. Section 49-02-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-02-01. General jurisdiction of the public service commission over public utilities. The general jurisdiction of the commission shall extend to and include:

1. Contract and common carriers engaged in the transportation of persons and property, excluding air carriers.

2. Telephone and communications utilities Telecommunications companies engaged in the transmission of messages or conversations furnishing of telecommunications services.
3. Pipeline utilities engaged in the transportation of gas, oil, coal, and water.
4. Electric utilities engaged in the generation and distribution of light, heat, or power.
5. Gas utilities engaged in the distribution of natural, synthetic, or artificial gas.
6. All heating utilities engaged in the distribution of heat.
7. Warehouse companies engaged in the marketing, storage, or handling of agricultural products.
8. All other public utilities engaged in business in this state or in any county, city, township, or other political subdivision of the state.

SECTION 2. AMENDMENT. Section 49-02-01.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-02-01.1. Jurisdiction of commission limited as to certain utilities. Nothing in this chapter shall authorize the commission to make any order affecting rates, contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of any public utility owned and operated by the state or by any city, county, township, or other political subdivision of the state or any public utility, except a telephone telecommunications utility, that is not operated for profit, but all other provisions herein shall apply to such utilities. The rates for local exchange telecommunications service of any nonprofit telephone telecommunications company or telephone telecommunications company having less than three thousand subscribers, upon a vote of the company's owners or board of directors, shall not be subject to the jurisdiction of the commission.

SECTION 3. AMENDMENT. Subsection 7 of section 49-02-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 telecommunications 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.

SECTION 4. AMENDMENT. Section 49-02-05.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-02-05.1. Power to fix terms by which the facilities of one utility may cross those of another utility. Whenever public convenience and necessity requires that an electric or ~~telephone~~ telecommunications distribution or transmission line, pipeline, or railroad track of any public utility cross a line or track of another public utility and the public utilities have failed to agree upon the terms and conditions or compensation for the same, the commission, after notice and hearing, may prescribe reasonable terms, conditions, and compensation under which the crossing shall be permitted.

SECTION 5. AMENDMENT. Section 49-04-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-04-19. Security interests against transmitting utilities - Filing instruments with secretary of state.

1. When used in this section the term "transmitting utility" means persons, corporations or other legal entities, and lessees, trustees and receivers, now or hereafter operating, maintaining or controlling in this state equipment or facilities for the production, generation, transmission or distribution of electric, ~~telegraph or telephone~~ telecommunications services, or the transmission or distribution of crude oil, gas, petroleum products, steam or water by pipeline.
2. a. Notwithstanding the provisions of sections 41-09-23, 41-09-40, 41-09-41 and 41-09-42, all filings required

under the Uniform Commercial Code in order to perfect a security interest against the personal property or fixtures of a debtor transmitting utility shall be made and maintained only in the office of the secretary of state of North Dakota.

- b. When the financing statement covers goods of a transmitting utility as herein defined which are or are to become fixtures, no description of the real estate to which such fixtures are or may become attached is required.
 - c. Filing of a financing statement against the property of a transmitting utility is effective until five years after the maturity date contained therein in the case of personal property and until fifteen years after the maturity date in the case of fixtures annexed to real property, or if no maturity date is contained therein, until released or terminated.
3. Unless displaced by the specific provisions of this section, the Uniform Commercial Code and other applicable laws remain in full force and effect and supplement the provisions of this section.

SECTION 6. AMENDMENT. Section 49-05-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-05-02. Right to make certain complaints limited. No complaint as to the reasonableness of any rates or charges of any heat, gas, electrical, water, or ~~telephone~~ telecommunications utility shall be entertained by the commission except when made upon its own motion, unless the same is signed by the governing body of the county or city, if any, within which the alleged violation occurred, or by not less than ten percent of the consumers or purchasers of such heat, gas, electrical, water, or ~~telephone~~ telecommunications service.

SECTION 7. AMENDMENT. Section 49-09-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-09-15. Conveyance of real property other than right of way - Recording. Every such conveyance, lease, deed of trust, or mortgage, made by a public utility which covers any real property other than that used by such public utility as a right of way for its railway, ~~telegraph or telephone~~ telecommunications lines, or gas or oil pipelines, also shall be recorded in the office of the register of deeds for each county wherein such other real estate, or any part thereof, is situated. Such conveyance, lease, deed of trust, or mortgage shall not operate as a conveyance of, nor as creating any lien upon, any such real estate other than the right of way, until such instrument has been duly recorded in the office of the register of deeds of the county in which the same is situated.

SECTION 8. AMENDMENT. Section 49-09-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-09-16. Right of way - ~~Telephone~~ Telecommunications - Electric light - Gas and oil pipeline systems. The governing board of any municipal corporation may grant to any person who is a resident of this state, to any corporation organized under the laws of this state, or to any corporation licensed to do business within this state, the right of way for the construction and operation of a railway, ~~telephone~~ telecommunications line, electric light system, or a gas or oil pipeline system, over or upon any public grounds, streets, alleys, or highways under the care or supervision of the board granting such right of way. Such right of way shall be granted subject to such conditions, restrictions, and regulations as may be prescribed by the board granting the same, relative to the streets, alleys, or highways upon, over, under, or across which the way, line, or system shall be built and operated.

SECTION 9. AMENDMENT. Section 49-19-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-19-09. Permission to secure right of way - Condition. The right to lay, maintain, and operate pipelines, together with ~~telegraph and telephone~~ telecommunications lines incidental to and designed for use only in connection with the operation of such lines along, across, or under any public stream or highway in this state, is conferred upon all common pipeline carriers. Any person, firm, limited partnership, joint-stock association, or corporation may acquire the right to construct pipelines and such incidental ~~telephone and telegraph~~ telecommunications lines along, across, or over any public road or highway in this state by filing with the commission an acceptance of the provisions of this chapter, expressly agreeing in writing that in consideration of the rights so acquired, the applicant shall be and become a common pipeline carrier, subject to the duties and obligations conferred or imposed in this chapter. Such right to run along, across, or over any public road or highway, as herein provided for, can be exercised only upon condition that the traffic thereon shall not be interfered with, that such road or highway shall be restored promptly to its former condition of usefulness, and that the restoration thereof shall be subject also to the supervision of the board of county commissioners of the county in which said highway is situated.

SECTION 10. AMENDMENT. Section 49-19-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-19-10. Compensating county for damage to public road in laying pipelines. In the exercise of the privileges conferred in section 49-19-09, the common pipeline carrier shall compensate the county for any damage done to any public road in the laying of pipelines, or ~~telegraph or telephone~~ telecommunications lines, along or across the same. Nothing herein shall be construed to grant any such pipeline the right to use any public street or alley in any

incorporated city, except by express permission from the governing authority thereof.

SECTION 11. AMENDMENT. Section 49-20-12.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-20-12.1. Notice of change in topography of lands under or adjacent to electric transmission or telephone telecommunications lines. Before any change is made in the topography of lands under, or adjacent to, any electric transmission or telephone telecommunications lines, which change would increase the hazard to travel, or to persons or property, the one proposing to make such change shall, except in the case of an emergency, at least ten days before proceeding therewith, notify the public utility or cooperative corporation operating such electric transmission or telephone telecommunications lines. Such notification shall clearly state the nature and location of the proposed change in topography and shall be sent to such public utility or cooperative corporation at its principal place of business within the state by registered or certified mail. In case of an emergency, where ten days' notice cannot be given, notice shall be given, as herein provided, prior to proceeding with such change.

SECTION 12. AMENDMENT. Section 49-21-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-01. Definitions. As used in this chapter, unless the context otherwise clearly requires:

1. "Mutual telephone company" means a telephone cooperative organized and operating subject to the provisions of this chapter, and such a cooperative shall also be subject to the general law governing cooperatives, except where such general law is in conflict with this chapter.
2. "Physical connection" shall mean such number of trunk lines or complete wire circuits and connections as may be required to furnish reasonably adequate telephone service between different telephone companies or different telephone systems. "Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.
3. "Telephone company" shall include all persons, firms, corporations, or other organizations engaged in the business of furnishing means of communication by telephone within this state. "Telecommunications service" means the offering for hire of telecommunications facilities, or transmitting for hire telecommunications by means of such facilities whether by wire, radio, lightwave or other means.

SECTION 13. A new section to chapter 49-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Inapplicability of provisions of chapter. Telecommunications service does not include and the provisions of this title do not apply to:

1. The one-way transmission of radio or television signals for broadcast purposes, including the one-way transmission of video programming or other programming service by a cable system as well as subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
2. A hospital, hotel, motel, or similar place of temporary accommodation owning or operating message switching or billing equipment solely for the purpose of reselling telecommunications services to its patients or guests.
3. Telegraph service.
4. Home and business telephone terminal equipment.
5. The lease of telecommunications equipment by a telecommunications company from a person whose business is the leasing or sale of such equipment.

SECTION 14. AMENDMENT. Section 49-21-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-02. Telephone companies - Common carriers- All persons, firms, corporations, and other organizations engaged in the business of furnishing means of communication by telephone within this state shall be common carriers. The commission shall have general supervision of such common carriers. Telecommunications companies - Common carriers - Public policy. All persons providing telecommunications service within this state shall be common carriers and are hereby declared to be affected with a public interest and subject to regulation and general supervision by the commission. Among the purposes to be served by such regulation and supervision are:

1. To make available to all people of this state modern and efficient telecommunications services at the most economic and reasonable cost.
2. To allow the development of competitive markets for telecommunications services where such competition does not unreasonably distract from the efficient provision of telecommunications services to the public, and to lessen regulation in whole or in part of those telecommunications services which become subject to effective competition.

3. To establish and maintain reasonable charges for telecommunications services without unreasonable discrimination, or unfair or destructive competitive practices.
4. To ensure that regulated charges do not include the costs of unregulated activities.
5. To encourage the establishment and maintenance of a strong telecommunications industry.

SECTION 15. A new section to chapter 49-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Authority to exempt from regulation.

1. The commission may exempt a telecommunications service, a telecommunications company, or a transaction by a telecommunications company from one or more of the provisions of this title when the commission determines that the application of such provisions are not necessary to carry out the telecommunications policy of section 49-21-02; and either of the following apply:
 - a. The transaction or service is of limited scope.
 - b. The application of a provision of this title is not needed to protect subscribers because the service, company, or transaction is subject to effective competition.
2. In determining if a telecommunications service, company, or transaction is subject to effective competition, the commission shall consider all of the following:
 - a. The extent to which competing telecommunications services are available from providers in the relevant geographic area or market.
 - b. The ability of such providers to make competing telecommunications services which are equivalent or substitutable and readily available at comparable rates, terms, quality and conditions.
 - c. Other indicators of the extent of competition, including the market share, growth in the market share, and the affiliation of providers of competing telecommunications services as the commission deems appropriate.
3. The commission may begin a proceeding under this section on its own initiative or on application by an interested party. The commission may specify the period of time

during which an exemption granted under this section is effective. The commission may revoke an exemption, to the extent it specifies, when it finds that application of a provision of this title to the service, company, or transaction is necessary to carry out the telecommunications policy set forth in section 49-21-02.

4. When the commission exempts a telecommunications service from all of the provisions of this title, the investment, revenues, and expenses associated with the service shall not be considered by the commission in setting rates for the telecommunications company's regulated services unless they continue to affect the company's regulated operations. Nothing in this section precludes the commission from considering the investment, revenues and expenses associated with the sale of classified directory advertising or directory listings by a telecommunications company in determining rates for the regulated services of the telecommunications company.
5. The commission may not be unjustly discriminatory or preferential in the regulatory treatment of any telecommunications company.

SECTION 16. A new section to chapter 49-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Separation between regulated and unregulated services. Revenues obtained from regulated services shall not be used to subsidize or otherwise give advantage to a telecommunications company in its unregulated enterprises. If a telecommunications company offers both regulated services and services that are unregulated as determined under section 15 of this Act, the commission may require the telecommunications company to keep separate books of account, to allocate costs in accordance with procedures established by rule or order of the commission and to perform such other acts as will assist the commission in enforcing this section.

SECTION 17. AMENDMENT. Section 49-21-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-04. Schedules of rates to be filed with commission. The commission shall require each telephone company subject to the commission's rate jurisdiction, within such time as the commission shall fix and in such form and detail as it may require, to file with the commission. Tariffs filed with the commission. Each telecommunications company, including companies excluded from the commission's rate jurisdiction pursuant to section 49-02-01.1, shall file with the commission in such form and detail as it may require:

1. Schedules showing all rates and charges which are established and in effect at the time for any telecommunications service rendered to the public by such telephone telecommunications company within this state; and
2. All rules and regulations which in any manner affect the rates charged or to be charged for such service;

and such telephone company shall not make any changes thereafter in said schedules, rates, or charges other than those named in such schedule without first securing the consent of the commission.

SECTION 18. A new section to chapter 49-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Maximum and minimum rates - Changes. Notwithstanding the provisions of section 49-05-05 to the contrary, the commission may approve schedules of rates for a service that establishes only maximum rates, only minimum rates, or both minimum and maximum rates. A telecommunications company having such an approved schedule may, with respect to the services covered by the schedule, change its rates after such notice to the public and commission as the commission prescribes.

SECTION 19. AMENDMENT. Section 49-21-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-05. Schedule of rates to be on file for public inspection. The commission may require any telephone telecommunications company to keep on file and accessible to the public, at any city in which the telephone telecommunications company has an office, a schedule of such rates and charges as the commission may deem necessary.

SECTION 20. AMENDMENT. Section 49-21-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-06. Complaint against rates or service. Any telephone telecommunications company, municipality, or not less than ten percent of the patrons of a telephone telecommunications company within any municipality or territory contiguous thereto, may make complaint to the commission of the unreasonableness or inadequacy of any rate or charge.

SECTION 21. AMENDMENT. Section 49-21-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-07. Discrimination unlawful. It shall be unlawful for any telephone telecommunications company to make or give any undue or unreasonable preference or advantage to any person, ~~firm, or corporation,~~ or to subject any person, ~~firm, or corporation~~ to any undue or unreasonable prejudice or disadvantage in the service rendered by it to the public, or to charge or receive for any such

service rendered, more or less than the rates and charges provided for in the schedules then on file with the commission. Nothing in this chapter shall be construed to prevent any telephone telecommunications company from furnishing free telephone telecommunications service or service at reduced rates to its officers, agents, servants, or employees.

SECTION 22. AMENDMENT Section 49-21-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-08. Unnecessary duplication of exchanges prohibited. Whenever any telephone telecommunications company furnishes adequate local exchange telecommunications service and supplies the reasonable wants of the people of the city or community in which it is operating, and complies with the orders of the commission, the commission shall not grant to any other telephone telecommunications company the right to compete with such carrier telecommunications company in the provision of local exchange telecommunications service until after a public hearing of all parties interested, and a finding by the commission that the public convenience and necessity may require such competing plant. Nothing contained in this chapter shall be held to prevent any telephone telecommunications company from extending its lines within the limits of any city in which it at the time is lawfully operating a local telephone exchange.

SECTION 23. AMENDMENT. Section 49-21-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-09. Telephone Telecommunications - Connections - Rates. Whenever the commission shall find, ~~after hearing, upon notice,~~ that a physical connection can be made reasonably between the lines facilities of two or more telephone corporations, or by the construction and maintenance of suitable connections telecommunications companies for the transfer of messages or conversations telecommunications and that public convenience and necessity will be subserved thereby, the commission, ~~by its order,~~ may require that such connection be made. The commission, ~~after hearing,~~ may establish rates for the transfer of messages or conversations over two or more telephone lines telecommunications between telecommunications companies and may order that conversations telecommunications be transmitted and messages transferred by the companies owning the same.

SECTION 24. AMENDMENT. Section 49-21-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-10. Transmitting messages telecommunications from other telephone telecommunications companies. Every telephone corporation telecommunications company operating in this state shall receive, transmit, and deliver, without discrimination or delay, the conversations and messages telecommunications of every other

~~telephone corporation telecommunications company with whose line a physical which a connection may have has~~ been made.

SECTION 25. AMENDMENT. Section 49-21.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21.1-05. Exceptions. This chapter 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 telecommunications~~, 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 49-21.1-01.
3. The operation or maintenance of any railroad equipment or vehicles traveling or moving upon fixed rails or railroad right of way.

SECTION 26. REPEAL. Sections 49-21-03, 49-21-11, 49-21-12, 49-21-13, and 49-21-16 of the North Dakota Century Code are hereby repealed.

Approved March 31, 1985

CHAPTER 516

HOUSE BILL NO. 1523
(Representatives Strinden, A. Olson, Myrdal)

TRANSMISSION FACILITY LEGISLATIVE APPROVAL

AN ACT to create and enact a new section to chapter 49-22 of the North Dakota Century Code, relating to legislative approval prior to construction of hydroelectric transmission facilities which transmit hydroelectric power produced outside the United States.

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

SECTION 1. A new section to chapter 49-22 of the North Dakota Century Code is hereby created and enacted to read as follows:

Approval of hydroelectric transmission facilities by legislative assembly required. After compliance with the applicable requirements of this chapter, any hydroelectric transmission facility that transmits hydroelectric power produced outside the United States, and which crosses any portion of this state, must have the approval of the legislative assembly by concurrent resolution. A person may not begin construction of a hydroelectric transmission facility in this state that transmits hydroelectric power produced outside the United States, or exercise the right of eminent domain in connection with such construction, without first having complied with this chapter and obtained the approval of the legislative assembly. This section shall not apply to any transmission facility for which a route permit and certificate of corridor compatibility has been issued prior to the effective date of this Act, or any extension thereof issued after the effective date of this Act.

Approved April 15, 1985

CHAPTER 517

HOUSE BILL NO. 1522
(Representatives Strinden, A. Olson, Myrdal)
(Senator Vosper)

MANDAN PROJECT ROUTE PERMIT REVOKED

AN ACT to provide for the discretionary revocation, and subsequent discretionary reinstatement, by executive order of the governor, of the route permit and certificate of corridor compatibility issued for the MANDAN power project; to provide an expiration date; and to declare an emergency.

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

SECTION 1. MANDAN power project permit and certificate approval revoked. The governor may, by executive order, revoke the route permit and certificate of corridor compatibility issued pursuant to chapter 49-22 of the North Dakota Century Code under public service commission case no. 10,349 to the Nebraska public power district for the MANDAN (Manitoba, Dakotas and Nebraska) project for an electric transmission facility through the state of North Dakota. Revocation of the permit and certificate pursuant to this Act by the governor must be based upon relevant statutory guidelines, including the factors considered in the issuance of a certificate of public convenience and necessity and the factors to be considered in evaluating applications and designations of sites, corridors, and routes as provided in section 49-22-09, and upon the governor's determination that the MANDAN project is not consistent with the public convenience and necessity of this state, or is not consistent with the general health and welfare of the citizens of this state, or the utility has abandoned the project. If the permit and certificate are revoked pursuant to this Act, the governor may, by executive order, reinstate the permit and certificate based upon the guidelines provided for revocation and upon the governor's determination that the MANDAN project is consistent with the public convenience and necessity of this state, and is consistent with the general health and welfare of the citizens of this state.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 1987, and after that date is ineffective.

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

Approved April 15, 1985

CHAPTER 518

SENATE BILL NO. 2148
(Committee on Natural Resources)
(At the request of the Public Service Commission)

CIVIL PENALTIES FOR SITING ACT VIOLATIONS

AN ACT to amend and reenact subsection 3 of section 49-22-21 of the North Dakota Century Code, relating to civil penalties for violations of the North Dakota Energy Conversion and Transmission Facility Siting Act.

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

SECTION 1. AMENDMENT. Subsection 3 of section 49-22-21 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Any person who willfully engages in any of the following conduct shall be subject to a civil penalty of not more than ten thousand dollars not to exceed ten thousand dollars for each such violation for each day that such violations persist, except that the maximum penalty may not exceed two hundred thousand dollars for any related series of violations:
 - a. Begins construction of an energy conversion facility or a transmission facility without having been issued a certificate or permit pursuant to this chapter.
 - b. Constructs, operates, or maintains an energy conversion facility or a transmission facility other than in compliance with the certificate or permit and any terms, conditions, or modifications contained therein.
 - c. Violates any provision of this chapter or any rule adopted by the commission pursuant to this chapter.
 - d. Falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained pursuant to a certificate or permit issued pursuant to this chapter.

The civil penalty provided for in this subsection may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise shall be deposited in the general fund and, if not paid, may be recovered in a civil action in the courts of the state.

Approved February 6, 1985

CHAPTER 519

SENATE BILL NO. 2149
(Committee on Transportation)
(At the request of the Public Service Commission)

CONTRACT MOTOR CARRIER PERMIT

AN ACT to amend and reenact sections 49-18-13, 49-18-21, 49-18-23, and 49-18-39.1 of the North Dakota Century Code, relating to notice of opportunity for hearing on application for a certificate of public convenience and necessity, notice of opportunity for hearing for a contract motor carrier permit, issuance of a contract carrier permit, and motor vehicle leases.

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

SECTION 1. AMENDMENT. Section 49-18-13 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-13. Notice of opportunity for hearing on application. Upon the filing of an application for a certificate of public convenience and necessity, the commission shall cause notice of opportunity for hearing to be served by ~~registered or certified~~ mail upon every ~~railroad corporation or other~~ common carrier which is operating, or which has applied for a certificate to operate, in the territory proposed to be served by the applicant, and on other interested parties as determined by the commission.

SECTION 2. AMENDMENT. Section 49-18-21 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-21. Contract motor carriers - Notice of opportunity for hearing for permit. Upon the filing of an application for a permit, the commission shall cause notice of opportunity for hearing to be served by ~~registered or certified~~ mail upon every ~~railroad corporation or other~~ common carrier which is operating or which has applied for a certificate 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 request an oral evidentiary hearing and may offer testimony for or against the granting of such permit.

However, as a condition for offering testimony opposing an application at an oral evidentiary hearing, such interested party must file a protest and a request for an oral evidentiary hearing with the commission and the applicant within twenty days of receipt of the notice for opportunity for hearing 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 permit at such hearing.

SECTION 3. AMENDMENT. Section 49-18-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-23. Issuance of contract carrier permit - Factors considered. The commission is vested with power and authority to grant or deny, ~~after hearing,~~ the permit prayed for by a contract motor carrier, or to grant it for the partial exercise only of the privilege sought. It may attach to the exercise of the privilege granted by such permit, such terms and conditions as in its judgment will carry out the purposes of this chapter. No permit shall be granted unless the applicant has established to the satisfaction of the commission that the privilege sought will not endanger the safety of the public nor interfere with the public use of the public highways, nor impair the condition or maintenance of such highways directly or indirectly, nor impair the efficient public service of any authorized common carrier then adequately serving the same territory.

SECTION 4. AMENDMENT. Section 49-18-39.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-39.1. Motor vehicle leases. A common or contract motor carrier of property or passengers may transport property or passengers using a motor vehicle acquired by lease, with or without driver, from the owner of the motor vehicle. A lease of a motor vehicle need not be for any minimum duration.

Approved March 22, 1985