

PUBLIC SERVICE COMMISSION
State of North Dakota

Laws and Rules
Governing
Public Utilities

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Susan E. Wefald, President
Leo M. Reinbold, Commissioner
Anthony T. Clark, Commissioner

Jon H. Mielke, Executive Secretary

Public Service Commission
State Capitol
Bismarck, North Dakota 58505-0480
701-328-2400

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PART I

NORTH DAKOTA CENTURY CODE

PART II

NORTH DAKOTA ADMINISTRATIVE CODE

PUBLIC UTILITIES DIVISION

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TITLE 49

PUBLIC UTILITIES

CHAPTER 49-01 PUBLIC SERVICE COMMISSION

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49-01-01. Definitions. In this title, unless the context or subject matter otherwise requires:

1. "Commission" shall mean the public service commission.
2. "Commissioner" shall mean one of the members of the public service commission.
3. "Public utility" shall include any association, person, firm, corporation, limited liability company, or agency engaged or employed in any business enumerated in this title.

4. "Rate" shall mean and include every compensation, charge, fare, toll, rental and classification, or any of them, demanded, observed, charged, or collected by any public utility for any service, product, or commodity, offered by it to the public, and any rules, regulations, practices, or contracts affecting any such compensation, charge, fare, toll, rental, or classification.

49-01-02. Public service commission - How constituted. The three persons elected public service commissioners, pursuant to the provisions of article V, section 12 of the Constitution of North Dakota, constitute and shall be known and designated as the public service commission of the state of North Dakota. They shall elect one of their number president of the commission and shall appoint a secretary.

49-01-03. Oath of public service commissioners. Each commissioner before entering upon the duties of the office shall take the oath required of civil officers.

49-01-04. Offices of public service commission. The commissioners shall keep their office at the seat of government and shall be provided with a suitable room, necessary office furniture, stationery, books, and maps, the expense thereof to be paid out of the state treasury pursuant to the appropriation for such purpose.

49-01-05. Salary of commissioners. The annual salary of a commissioner is sixty-six thousand five hundred nine dollars through December 31, 2001, sixty-eight thousand five hundred four dollars through June 30, 2002, and sixty-nine thousand eight hundred seventy-four dollars thereafter. All fees received or charged by any commissioner for any act or service rendered in any official capacity, must be accounted for and paid over by the commissioner monthly to the state treasurer and must be credited to the general fund of the state.

49-01-06. Public service commission - Majority vote. All questions arising in connection with the action of the commissioners shall be decided by a majority vote.

49-01-07. Proceedings of public service commission. The commission in all cases may conduct its proceedings, when not otherwise particularly prescribed by law, in a manner most conducive to the proper dispatch of business and to the ends of justice. A majority of the commission shall constitute a quorum for the transaction of business, but no commissioner shall participate in any hearing or proceeding in which he has any direct personal pecuniary interest. The commission from time to time may make or amend such general rules or orders as may be requisite for the orderly regulation of proceedings before it, including forms of notice and the service thereof, which shall conform as nearly as possible to those in use in the courts of this state. Any party may appear before the commission and may be heard in person or by attorney. Every vote and official action of the commission shall be entered of record and its proceedings shall be public upon the request of any person interested. The commission shall have an official seal, which shall be judicially noticed, and every commissioner shall have the right to administer oaths and affirmations in any proceeding pending before the commission.

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.

49-01-09. Attorneys for public service commission - Attorney general - State's attorney - Duties - Additional counsel - Compensation. The attorney general shall be ex officio attorney for the commission and personally or through commerce counsel shall:

1. Give to the commission such counsel, advice, and assistance necessary for the proper discharge of its powers and duties.
2. Appear for, and represent, the state at all hearings of the commission or appeals therefrom when necessary.
3. Institute, prosecute, or defend any action or proceeding which the commission may deem proper and expedient.

The state's attorney in any county, on request of the commission, shall institute, prosecute, appear in, and defend for the commission, any and all actions and proceedings which the commission may institute and prosecute or to which the commission is a party. The commission may employ additional counsel to assist such attorney general or state's attorney, when in its judgment the exigencies of the case may require. The fee of such additional counsel shall be determined by the commission and approved by the office of management and budget and paid out of funds appropriated for such purpose.

49-01-10. Assistants - Authority of public service commission to appoint. The commission may employ stenographers, rate experts, and such other employees as may be deemed necessary in the discharge of its official duties.

49-01-11. Enforcement of orders of commission - Costs and expenses. All costs and expenses actually incurred by or upon the order of the attorney general incident to any litigation arising in connection with the enforcement of orders of the commission or other litigation commenced by or in charge of said attorney general shall be paid out of the general fund of the state upon vouchers to be approved by the office of the budget.

49-01-12. Disposition of penalties. Except as otherwise provided, any penalty which shall be collected for violation of any provision of this title shall be paid into the state treasury for the general fund.

49-01-13. Biennial report. The commission shall submit a report to the governor and the secretary of state in accordance with section 54-06-04.

49-01-14. When copies of official documents are evidence. Copies of all official documents and orders filed or deposited according to law in the office of the commission, certified by a commissioner or by the secretary or assistant secretary of the commission under its official seal to be true copies of the originals, shall be evidence in like manner as the originals.

49-01-15. Charges for copies and records determined by the public service commission. The commission shall determine and fix all charges for furnishing copies, records, reports and evidence. All fees charged and collected under this section, except those for transcripts of evidence which shall be paid to the person preparing such transcripts, shall be paid into the general fund of the state treasury.

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49-02-23	Consideration of environmental externality values prohibited.

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. Telecommunications companies engaged in the furnishing of telecommunications services as provided for in chapter 49-21.
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.

49-02-01.1. Jurisdiction of commission limited as to certain utilities.

Nothing in this chapter or in chapter 49-21 authorizes 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, that is not operated for profit, that is operated as a nonprofit, cooperative, or mutual telecommunications company or is a telecommunications company having fewer than eight thousand local exchange subscribers. However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual telecommunications company or has fewer than eight thousand local exchange subscribers is subject to sections 49-21-01.4, 49-21-02.4, 49-21-08, 49-21-23, 49-21-24, and 49-21-25, subsections 6 through 14 of section 49-21-01.7, and to sections 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access services or connection between facilities and transfer of telecommunications between two or more telecommunications companies. Nothing in this section limits the authority of the commission under chapter 49-03.1 or sections 49-04-05 and 49-04-06.

49-02-01.2. Pipeline safety - Public service commission jurisdiction - Hazardous facility orders.

1. The commission, by rule, may establish and enforce minimum safety standards for the design, construction, and operation of gas distribution facilities and intrastate pipeline facilities used for the distribution and intrastate transportation of gas, liquefied natural gas, or hazardous liquids, regardless of whether they are owned or operated by a public utility, in order to ensure the reasonable safety thereof. Any rule issued under this

section affecting the design, installation, construction, initial inspection, and initial testing is not applicable to pipeline facilities in existence on the date such rule is adopted. Such rules may not be more stringent than the corresponding federal regulations applicable to interstate pipelines and related facilities.

2. If the commission determines that a pipeline facility is hazardous to life or property, it may issue an order requiring the operator of the facility to take corrective action. The commission may issue such an order without notice and opportunity for hearing if the commission determines that to do otherwise would result in the likelihood of serious harm to life or property. The commission shall include in such an order an opportunity for hearing as soon as practicable after issuance of the order.

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 must be given prior to hearing, when good cause exists for such action. Such notice, however, must be reasonable in view of the nature, scope, and importance of the hearing. Whenever it appears to the satisfaction of the commission that all of the interested parties have agreed concerning the matter at hand, or that no interested party has asked for a hearing, the commission may issue its order without a hearing.
6. Employ, and fix the compensation of, rate experts, engineers, auditors, attorneys, and all other expert help and assistance for hearings or investigations on rate increase applications filed by gas or electric public utilities. The expense of any hearings or investigations and the actual expenses of any employees of the commission while engaged upon any

hearing or investigation must upon the order of the commission be paid by the public utility involved. The commission shall ascertain the 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 or investigation or at the conclusion thereof, as the commission determines. Upon receipt of the bill and order for payment, as evidenced by return receipt or other proof, the public utility shall pay to the commission the amount billed. All amounts not paid within thirty days after receipt of the order for payment 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 must be deposited in a special account within the public service commission.

7. Cooperate with and receive technical and financial assistance from the United States, any state, or any department, agency, or officer thereof for any purposes relating to federal energy laws that deal with energy conservation, coal conversion, rate reform, and utilities subject to the jurisdiction of the commission. The commission shall also have the authority to file any reports, hold hearings, and promulgate regulations for any such purposes.
8. Cooperate with and receive technical and financial assistance from the United States, any state, or any department, agency, or officer thereof, and to file such reports and promulgate rules as required by federal law or regulation for any purposes relating to the regulation of safety standards for pipeline facilities and the transportation associated with those pipeline facilities.

49-02-03. Power of public service commission to establish rates. The commission shall supervise the rates of all public utilities. It shall have the power, after notice and hearing, to originate, establish, modify, adjust, promulgate, and enforce tariffs, rates, joint rates, and charges of all public utilities. Whenever the commission, after hearing, shall find any existing rates, tariffs, joint rates, or schedules unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any of the provisions of this title, the commission by order shall fix reasonable rates, joint rates, charges, or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any provision of law.

49-02-03.1. Power to fix special rates - Public service commission.
Repealed by S.L. 1963, ch. 322, § 2.

49-02-04. Power of commission to regulate services. Whenever the commission shall find, after hearing, that the rules, regulations, practices, equipment,

appliances, facilities, or service of any public utility, or the methods of manufacture, distribution, transmission, storage, or supply employed by it are unjust, unreasonable, unsafe, improper, inadequate, or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate, or sufficient rules, regulations, practices, equipment, appliances, facilities, service, or methods to be observed, furnished, constructed, enforced, or employed, and, after hearing, shall fix the same by its order, rule, or regulation. The commission shall prescribe, after hearing, rules and regulations for the performance of any service, or the furnishing of any commodity, of a character furnished or supplied by any public utility. On demand and tender of rates, such public utility shall furnish such commodity and render such service within the time and upon the conditions provided in such rules.

49-02-05. Use by one utility of the facilities of another utility. Whenever upon hearing, after due notice, the commission has found that public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes, or other equipment, or any part thereof, on, over, or under any street or highway and belonging to another public utility and that such use will not result in irreparable injury to the owner or other users of such conduits, subways, tracks, wires, poles, pipes, or other equipment, nor any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the commission, by order, may direct that such use be permitted, and may prescribe reasonable compensation and reasonable terms and conditions for such joint use. If such use is directed, the public utility to which the use is permitted shall be liable to the owner or other users of such conduits, tracks, wires, poles, pipes, or other equipment for such damage as may result therefrom to the property of such owner or other users thereof.

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 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.

49-02-06. Entering premises of public utility by public service commission for examination purposes. The commission and its officers and employees shall have the power to enter upon any premises occupied by any public utility for the purpose of:

1. Making examinations and tests;
2. Setting out and using on said premises any weights or appliances necessary therefor; or
3. Exercising any of the powers provided for in this chapter.

49-02-07. Appliances tested on request of consumer - Fee for testing. Any consumer or user of any product, commodity, or service of a public utility may have any appliance used in the measurement thereof tested by paying the fees fixed by the commission. The commission shall establish and fix reasonable fees to be paid for testing such appliances.

49-02-07. Testing meters - Gas - Electric. The commission shall make tests, from time to time, of meters of public utilities used:

1. To measure the amount of electric current passing through such meters to consumers.
2. To measure the amount of gas passing through such meters for the use of its customers.
3. To determine the British thermal unit content of natural or artificial gas distributed by public utilities in this state.

49-02-09. Purpose of testing meters. Tests shall be made for the purpose of determining the accuracy of the meters and shall determine whether or not the British thermal unit content of gas, either natural or artificial, distributed by public utilities, is of the standard that now or hereafter may be prescribed by the commission under its general powers and duties.

49-02-10. Rules and regulations for meters. The commission shall make such rules and regulations as it may deem proper and necessary as to the manner in which tests of meters and heat values shall be made.

49-02-11. Standards - Classification - Examinations - Provided by public service commission. The commission shall:

1. Ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements, or services to be furnished, imposed, observed and followed by all public utilities.
2. Ascertain and fix adequate and serviceable standards for the measurement, quantity, quality, pressure, initial voltage, or other condition pertaining to the supply of the product, commodity, or service furnished or rendered by any such public utility.
3. Prescribe reasonable regulations for the examination and testing of such product, commodity, or service and for the measurement thereof.
4. Establish reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters and appliances for measurements.

5. Provide for the examination and testing of any and all such appliances used for the measurement of any product, commodity, or service of any public utility.

49-02-12. System of accounts, records and memoranda established. The commission shall:

1. Establish a system of accounts to be kept by a public utility subject to its jurisdiction.
2. Classify public utilities, establish a system of accounts for each class, and prescribe the manner in which such accounts shall be kept.
3. Prescribe the forms for accounts, records, and memoranda to be kept by such public utilities, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys, which the commission may deem necessary to carry out any of the provisions of this title.

49-02-13. Jurisdiction of commission limited as to municipal utilities. Repealed by omission from this code.

49-02-14. Inspection of public utility accounts - Right as to examinations. The commission, and each commissioner, and each officer or other person duly authorized by the commission, shall have the right, at any time, to inspect the accounts, books, papers, and documents of any public utility. The commission, each commissioner, any officer of the commission, or any employee authorized to administer oaths, shall have the power to examine, under oath, any officer, agent, or employee of any public utility in relation to the business and affairs of such public utility.

49-02-15. Excessive or discriminatory charges - Reparation. When complaint has been made to the commission concerning any rate or charge for any product or commodity furnished or service performed by any public utility, and the commission has found, upon a hearing after notice given as required by this title, that the public utility has charged an excessive or discriminatory amount for such product, commodity, or service, in excess of the schedules, rates, and tariffs on file with the commission, or has discriminated under said schedules against the complainant, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection, if no discrimination will result from such reparation.

49-02-16. Investigation of interstate rates. The commission shall exercise constant diligence in informing itself of the rates, rules, and practices of common carriers engaged in:

1. The transportation of freight, express, and passengers;

2. The transportation by pipeline of crude petroleum, gas, or other petroleum products; or
3. The transmission of messages or intelligence,

from points in this state to points beyond its limits and from points in other states to points in this state and in territory wholly outside of this state.

49-02-17. Unreasonable rates, rules, and practices affecting interstate commerce. Whenever it shall come to the knowledge of the commission, either from its own investigation or by complaint made to it in any manner whatsoever, that the rates charged by any public utility including any common carrier on interstate business are unjust or unreasonable or that the rates, rules, or practices of such utility:

1. Discriminate unjustly against the citizens, industries, or interests of this state;
2. Place any of the citizens, industries, or interests of this state at an unreasonable disadvantage as compared with those of other states; or
3. Are levied, laid, or otherwise in violation of federal law, rulings, orders, or regulations,

the commission immediately shall call such facts to the attention of the officials of such public utility and urge upon them the propriety of changing such rates, rules, or practices.

49-02-18. Failure of utility to adjust rates - Action by public service commission. Whenever discriminatory, unreasonable, or unjust, rates, rules, or practices on interstate business are not changed or adjusted so as to remove or remedy the discrimination, unreasonableness, or unjustness, within a reasonable time, the commission shall take the action necessary in an appropriate proceeding to obtain relief from such rates, rules, or practices. If the commission deems it necessary, the attorney general, with such other assistance as may be provided by law, shall prosecute any charge growing out of any such discrimination.

49-02-19. Power to fix special rates - Public service commission. Repealed by omission from this code.

49-02-20. Notice to be given before special rate fixed. Repealed by S.L. 1963, ch. 322, § 2.

49-02-21. Power of commission to regulate raising and lowering of electric supply and communication lines. The public service commission shall have power:

1. To regulate the raising and lowering of electric supply and communication lines to permit the movement of buildings or other bulky objects; and to adopt and promulgate, after notice and hearing, reasonable rules and regulations pertaining thereto.

2. To require, after notice and hearing, increased clearances in specific locations where electric supply and communication lines cross public roads and streets, provided that the movement of buildings or other bulky objects thereon is sufficiently frequent to so warrant.

49-02-22. Charges for raising and lowering lines - Reimbursement for unreasonable delay. Any party requesting the raising or lowering of electric supply and communication lines shall be required to pay not more than the actual cost reasonably and necessarily incurred therefor. The commission shall, upon application, and after notice and hearing, review and determine the reasonableness of any charges assessed for the raising and lowering of electric supply and communication lines, and if said charges are found unreasonable, the commission shall fix a just and reasonable charge; provided, however, that any person, firm, corporation, or limited liability company in charge of electric supply or communication lines, who shall fail, except for good cause, to have said lines raised or lowered to permit the movement of buildings or other bulky objects at the time agreed upon, shall be liable for reasonable costs, damages and expenses occasioned by such unreasonable delay.

49-02-22. Consideration of environmental externality values prohibited. The commission may not use, require the use of, or allow electric utilities to use environmental externality values in the planning, selection, or acquisition of electric resources or the setting of rates for providing electric service. Environmental externality values are numerical costs or quantified values that are assigned to represent either:

1. Environmental costs that are not internalized in the cost of production or the market price of electricity from a particular electric resource; or
2. The alleged costs of complying with future environmental laws or regulations that have not yet been enacted.

CHAPTER 49-03

ELECTRIC UTILITY FRANCHISE

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49-03-01	Certificate of public convenience and necessity - Secured by electric public utility.
49-03-01.1	Limitation on electric transmission and distribution lines, extensions and service by electric public utilities.
49-03-01.2	Limitation on issuance of orders and certificates of public convenience and necessity to electric public utilities - Repealed.
49-03-01.3	Exclusions from limitations on electric distribution lines, extension and service and on issuance of certificates of public convenience and necessity.
49-03-01.4	Enforcement of act.
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49-03-02	Prerequisites to issuance of certificate of public convenience and necessity.
49-03-03	Franchise not to be exercised without certificate.
49-03-04	Replacement or renewal of franchise - Certificate of public convenience and necessity not necessary.
49-03-05	Complaint upon violation of chapter.

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.

49-03-01.1. Limitation on electric transmission and distribution lines, extensions and service by electric public utilities. No electric public utility henceforth shall begin in the construction or operation of a public utility plant or system or extension thereof without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction and operation, nor shall such public utility henceforth extend its electric transmission or distribution lines

beyond or outside of the corporate limits of any municipality, nor shall it serve any customer where the place to be served is not located within the corporate limits of a municipality, unless and until, after application, such electric public utility has obtained an order from the commission authorizing such extension and service and a certificate that public convenience and necessity require that permission be given to extend such lines and to serve such customer.

49-03-01.2. Limitation on issuance of orders and certificates of public convenience and necessity to electric public utilities. Repealed by S.L. 1979, ch. 187, § 108.

49-03-01.3. Exclusions from limitations on electric distribution lines, extension and service and on issuance of certificates of public convenience and necessity. Sections 49-03-01 through 49-03-01.5 shall not be construed to require any such electric public utility to secure such order or certificate for an extension of its electric distribution lines within the corporate limits of any municipality within which it has lawfully commenced operations; provided, however, that such extension or extensions shall not interfere with existing services provided by a rural electric cooperative or another electric public utility within such municipality; and provided duplication of services is not deemed unreasonable by the commission.

Sections 49-03-01 through 49-03-01.5 shall not be construed to require an electric public utility to discontinue service to customers thereof whose places receiving service are located outside the corporate limits of a municipality on July 1, 1965; provided, however, that within ninety days after July 1, 1965, any electric public utility furnishing service to customers whose places receiving service are located outside the corporate limits of a municipality shall file with the commission a complete map or maps of its electric distribution system showing all places in North Dakota which are located outside the corporate limits of a municipality and which are receiving its service as of July 1, 1965. After ninety days from July 1, 1965, unless a customer whose place being served is located outside the corporate limits of a municipality is shown on said map or maps, it shall be conclusively presumed that such customer was not being served on July 1, 1965, and cannot be served until after compliance with the provisions of section 49-03-01.1.

49-03-01.4. Enforcement of act. If any electric public utility violates or threatens to violate any of the provisions of sections 49-03-01 through 49-03-01.5 or interferes with or threatens to interfere with the service or system of any other electric public utility or rural electric cooperative, the commission, after complaint, notice, and hearing as provided in chapter 28-32, shall make its order restraining and enjoining said electric public utility from constructing or extending its interfering lines, plant or system. In addition to the restraint imposed, the commission shall prescribe such terms and conditions as it shall deem reasonable and proper.

Provided, further, that nothing herein contained shall be construed to prohibit or limit any person, who has been injured in his business or property by reason of a violation of sections 49-03-01 through 49-03-01.5 by any electric public utility or electric

cooperative corporation, from bringing an action for damages in any district court of this state to recover such damages.

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

1. "Electric public utility" shall mean a privately owned supplier of electricity offering to supply or supplying electricity to the general public.
2. "Person" shall include an individual, an electric public utility, a corporation, a limited liability company, an association, or a rural electric cooperative.
3. "Rural electric cooperative" shall include any electric cooperative organized under chapter 10-13. An electric cooperative, composed of members as prescribed by law, shall not be deemed to be an electric public utility.

49-03-02. Prerequisites to issuance of certificate of public convenience and necessity. Before any certificate may issue under this chapter, a certified copy of the articles of incorporation or charter of the utility, if the applicant is a corporation, or a certified copy of the articles of organization of the utility, if the applicant is a limited liability company, shall be filed with the commission. At the hearing of said application upon notice as provided in this title, the utility shall submit evidence showing that such 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:

1. Issue the certificate prayed for;
2. Refuse to issue such certificate;
3. Issue it for the construction or operation of a portion only of the contemplated facility, line, plant, system, or extension thereof; or
4. Issue it for the partial exercise of the right or privilege sought, conditioned upon the applicant's having secured or upon his 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, including any local electric cooperative, has requested a hearing on said application after receiving at least twenty days' notice of opportunity to request such hearing.

49-03-03. 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.

49-03-04. 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 an ordinance hereafter granted where it has not suspended operation of its plant and where such franchise merely replaces or renews an expiring or expired franchise.

49-03-05. 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 the provisions of this chapter, or whenever a public utility constructs or extends its line, plant, or system, or supplies, or offers to supply electric service in violation of this chapter, any interested municipality, public authority, utility, electric cooperative corporation, or person, may file a complaint with the commission. The commission thereupon, or upon its own motion without complaint, with or without notice, may make its order requiring the public utility complained of to cease and desist from such construction or operation or other prohibited activity until the further order of the commission. Upon hearing had after due notice given, the commission shall make such order with respect to such public utility and prescribe such terms and conditions as are just and reasonable.

CHAPTER 49-03.1

UTILITY FRANCHISE FOR OTHER THAN ELECTRIC UTILITIES AND CARRIERS FOR HIRE

Section

49-03.1-01	Certificates of public convenience and necessity - Who to Secure.
49-03.1-02	Definitions.
49-03.1-03	Certificate application.
49-03.1-04	Factors to be considered by commission in granting or denying a certificate.
49-03.1-05	Prerequisites to issuance of certificate of public convenience and necessity - Waiver of hearing.
49-03.1-06	Franchise not to be exercised without certificate.
49-03.1-07	Replacement or renewal of franchise - Certificate of public convenience and necessity not necessary.
49-03.1-08	Complaint upon violation of chapter.

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, limited liability company, or agency engaged or employed in this state to furnish its product or services to the public generally which is statutorily subject to the jurisdiction of the commission. The words "public utility" as used in this chapter shall not apply to electric public utilities or motor 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.

49-03.1-03. 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. The technical, financial, and managerial ability of the applicant to provide service.

49-03.1-04. 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, charter, or organization of the public utility, if the applicant is a corporation or a limited liability company, 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, limited liability company, 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.

CHAPTER 49-04 DUTIES OF PUBLIC UTILITIES

Section	
49-04-01	Public utility to provide adequate service.
49-04-02	Reasonable charges for services and commodities of public utility.
49-04-02.1	Customer deposits - Interest.
49-04-03	Violation of prescribed system of accounts unlawful.
49-04-04	Power of public utility to issue evidence of indebtedness.
49-04-05	Commission approval required to dispose of or encumber franchises, works, or systems - Exceptions.
49-04-06	Acquiring stock or business of another utility - Authorization by commission.
49-04-07	Unreasonable preferences or advantages prohibited.
49-04-08	Certain discriminations allowed.
49-04-09	Long and short hauls.
49-04-10	Freight pooling.
49-04-11	Free passes restricted - Repealed.
49-04-12	Free transportation authorized in certain cases - Repealed.
49-04-13	Definitions - Repealed.
49-04-14	Penalty for issuing free passes - Repealed.
49-05-15	Public utility tax report - Furnished to commission on request.
49-04-16	Orders from commission - Observance by public utility.
49-04-17	Reasonable rules and regulations by public utility.
49-04-18	Public utility reports furnished to commission.
49-04-19	Security interests against transmitting utilities - Filing instruments with secretary of state.

49-04-01. Public utility to provide adequate service. Every public utility shall furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and the public, and as shall be in all respects adequate, convenient, just, and reasonable, and without any unjust discrimination or preference.

49-04-02. Reasonable charges for services and commodities of public utility. All rates and charges made, demanded, or received by any public utility or by any two or more public utilities for any product or commodity furnished or to be furnished, or any service rendered or to be rendered, shall be just and reasonable. Every unjust and unreasonable rate or charge made, demanded, or received for such product, commodity, or service, is prohibited and unlawful.

49-04-02.1. Customer deposits - Interest. A public utility may require from a customer a deposit for service in accordance with commission rules. A public utility shall pay interest on all customer deposits for service held by such utility at a rate to be determined by the commission.

49-04-03. Violation of prescribed system of accounts unlawful. When the commission shall have prescribed the forms for accounts, records, or memoranda to be kept by any public utility for any of its business, it thereafter shall be unlawful for such public utility to keep any accounts, records, or memoranda of such business other than those prescribed by the commission and those prescribed by or under authority of any other state or of the United States, with the exception of such accounts, records, or memoranda as shall be explanatory of and supplemental to the accounts, records, or memoranda prescribed by the commission.

49-04-04. Power of public utility to issue evidence of indebtedness. The power of a public utility to issue stocks, bonds, notes, and other evidences of indebtedness or to create liens upon its property situated in this state, except such as are payable within one year from date of issue, is a special privilege and shall be exercised by such utility under the supervision, regulation, restriction, and control of the commission, subject to such rules and regulations as the commission may prescribe. This section does not apply to the issuance by public utilities of securities registered with the federal securities and exchange commission or to the issuance by public utilities of securities not involving any public offering.

49-04-05. Commission approval required to dispose of or encumber franchises, works, or systems - Exceptions. A public utility may not dispose of, encumber, merge, or consolidate its franchise, works, or system necessary or useful in the performance of its duties to the public without prior commission approval. This section does not apply to:

1. Disposal or encumbrance of tangible property valued at less than five hundred thousand dollars.
2. Sale of securities registered with the federal securities and exchange commission.

49-04-06. Acquiring stock or membership interest or business of another utility -Authorization by commission. No public utility, directly or indirectly, shall acquire the stock, membership interest, or business of any other corporation or limited liability company incorporated for or organized for or engaged in the same or a similar business or proposing to operate or operating under a franchise from the same or any other authority unless authorized to do so by the commission. No such transaction shall be binding upon the public without the approval of the commission.

49-04-07. Unreasonable preferences or advantages prohibited. No public utility shall make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, limited liability company, or locality, or to any particular character of traffic or service in any respect whatsoever, nor subject any particular person, firm, corporation, limited liability company, company, or locality, or any particular character of traffic or service to any undue or unreasonable prejudice or disadvantage in any respect. No public utility corporation, directly or indirectly, by any special rate, rebate, drawback, or other device or method, shall charge, demand,

collect, or receive from any person, firm, corporation, or limited liability company a greater or less compensation for any service rendered or to be rendered than it charges, demands, collects, or receives from any other person, firm, corporation, or limited liability company for doing a like and contemporaneous service under the same or substantially similar circumstances and conditions. Nothing in this chapter shall prohibit a public utility from entering into any reasonable agreement with its customers, consumers, or employees or from providing for a sliding scale of charges, unless the same is prohibited by the terms of the franchise or permit under which such public utility is operated. No such agreement or sliding scale shall be lawful unless and until the same shall be filed with and approved by the commission.

49-04-08. Certain discriminations allowed. Nothing contained in this chapter shall affect:

1. The carriage, storage, or handling of property free or at reduced rates for the United States, this state, municipal governments, for charitable purposes, or to and from fairs and expositions for exhibition, or for the employees of the common carrier and their families, or private property or goods for the family use of employees of the carrier.
2. The giving by a common carrier of a preference as to time of shipment of livestock, uncured meats, and other perishable property.
3. The prescribing of a less rate per one hundred pounds [45.36 kilograms] in a carload lot than is charged, collected, or received for the same kind of freight in less than a carload lot.

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.

49-04-10. Freight pooling. It shall be unlawful for any common carrier to enter into any contract, agreement, or combination with any other common carrier for the pooling of freight of different and competing common carriers, or to divide between them

the aggregate or net proceeds of the earnings of such carriers or any portion thereof. In any case of an agreement for the pooling of freights, each day of its continuance shall be deemed a separate offense.

49-04-11. Free passes restricted. Repealed by S.L. 1975, ch. 431, § 9.

49-04-12. Free transportation authorized in certain cases. Repealed by S.L. 1975, ch. 431, § 9.

49-04-13. Definitions. Repealed by S.L. 1975, ch. 431, § 9.

49-04-14. Penalty for issuing free passes. Repealed by S.L. 1975, ch. 431, § 9.

49-04-15. Public utility tax report - Furnished to commission on request. Upon request of the commission, a public utility shall furnish to the commission a verified copy of the public utility's tax reports filed by it with the state tax commissioner. Such tax reports shall be admissible in evidence before the commission in any matter or proceeding or in any action or proceeding in any of the courts of this state.

49-04-16. Orders from commission - Observance by public utility. Every public utility shall obey and comply with each requirement of every order, decision, direction, rule, or regulation made or prescribed by the commission in any matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper in order to secure compliance with and observation of every such order, decision, direction, rule, or regulation by all of its officers, agents and employees.

49-04-17. Reasonable rules and regulations by public utility. All rules and regulations made by any public utility affecting or pertaining to its rates or services to the public shall be just and reasonable.

49-04-18. Public utility reports furnished to commission. Every public utility shall furnish annually to the commission, at such time and in such form as the commission may require, a report in which the utility shall answer specifically all questions propounded by the commission upon or concerning which the commission may desire information to carry into effect the provisions of this title. The commission shall have the authority to require any public utility to file periodical or special reports concerning any matter about which the commission is authorized by this title to inquire or to keep itself informed, or which it is required to enforce. The reports shall be under oath when required by the commission.

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, limited liability companies, 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, 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.

CHAPTER 49-04.1
ACTIONS FOR BYPASSING, TAMPERING OR
UNAUTHORIZED METERING

Section

49-04.1-01	Definitions
49-04.1-02	Civil action allowed
49-04.1-03	Disputable presumptions of bypassing, tampering, or unauthorized metering
49-04.1-04	Reservation

49-04.1-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Bypassing" means the act of attaching, connecting, or in any manner affixing any wire, cord, socket, motor or other instrument, device, or contrivance to the utility supply system or any part thereof in a manner as to transmit, supply, or use any utility service without passing through an authorized meter for measuring or registering the amount of utility service.
2. "Customer" means the person responsible for payment for utility services for the premises, and includes employees and agents of the customer.
3. "Tampering" means damaging, altering, adjusting, or in any manner interfering with or obstructing the action or operation of any meter provided for measuring or registering the amount of utility service passing through the meter.
4. "Unauthorized metering" means removing, moving, installing, connecting, reconnecting, or disconnecting any meter or metering device for utility service by a person other than an authorized employee or agent of a utility.
5. "Utility" means any public utility, municipally owned utility, or cooperative utility which provides electricity, gas, or water, or any combination thereof, for sale to consumers.
6. "Utility service" means the provision of electricity, gas, water, or any other service or commodity furnished by the utility for compensation.
7. "Utility supply system" includes all wires, conduits, pipes, cords, sockets, motors, meters, instruments, and all other devices used by the utility for the purpose of providing utility service.

49-04.1-02. Civil action allowed.

1. A utility may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts any of the following acts which results in loss to the utility:
 - a. Bypassing.
 - b. Tampering.
 - c. Unauthorized metering.
2. A utility may bring a civil action for damages pursuant to this section against any person who knowingly receives utility service through means of bypassing, tampering, or unauthorized metering.
3. In any civil action brought pursuant to this section, the utility is entitled, upon proof of willful or intentional bypassing, tampering, or unauthorized metering, to recover one thousand dollars or three times the amount of the actual loss, whichever is greater, caused by the bypassing, tampering, or unauthorized metering, plus all reasonable expenses and costs incurred on account of the bypassing, tampering, or unauthorized metering. Reasonable expenses and costs include expenses and costs for investigation, disconnection, reconnection, service calls, employees and equipment, expert witnesses, costs of the suit, and reasonable attorneys' fees.

49-04.1-03. Disputable presumptions of bypassing, tampering, or unauthorized metering.

1. It is a disputable presumption that a tenant or occupant of premises where bypassing, tampering, or unauthorized metering occurred, caused or had knowledge of the bypassing, tampering, or unauthorized metering if the tenant or occupant had access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering occurred, and if the tenant or occupant was responsible or partially responsible for payment, either directly or indirectly, to the utility or to any other person for utility service to the premises.
2. It is a disputable presumption that a utility customer at premises where bypassing, tampering, or unauthorized metering occurred, caused or had knowledge of the bypassing, tampering, or unauthorized metering if the customer controlled access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering occurred.

49-04.1-04. Reservation. This chapter does not limit or control any other statutory rights or claims for relief which may be brought by a utility.

CHAPTER 49-05 PROCEDURE ON REGULATION OF PUBLIC UTILITIES

Section	
49-05-01	Who may make a complaint
49-05-02	Right to make certain complaints limited
49-05-03	Hearing on complaint
49-05-04	Application for increase of rates - Information required
49-05-04.1	Test year - Public utility rate filings
49-05-05	Changes in tariff rates - Notice to commission - Filing fee
49-05-06	Hearing by commission on proposed change of rates
49-05-07	Immunity from prosecution for self-incrimination
49-05-08	Orders and decisions of commission - Conclusive
49-05-09	Decisions of commission - Rescission or amendment
49-05-10	Improper action taken by utility - Damages - Who may sue - Recovery
49-05-11	Orders issued by commission - Period remaining in force
49-05-12	Appeal from decision of commission
49-05-13	Suspension of order on appeal only by order of court - Repealed
49-05-14	Stay on appeal - Suspending bond - Impounding excess charges
49-05-15	Appeals to supreme court

49-05-01. Who may make a complaint. Complaint may be made by the commission on its own motion, or by any person or association, by petition or complaint in writing, setting forth any fact or thing done or omitted to be done by any public utility, including any rule, regulation, or rate established or fixed by or for any public utility, in violation or claimed violation of any provision of law or any order or rule of the commission.

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 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 telecommunications service.

49-05-03. Hearing on complaint. The commission shall fix the time and place of hearing upon any complaint, and shall serve notice thereof upon the complainant and the utility affected thereby. Such notice shall be given and proceedings shall be conducted as provided by chapter 28-32.

49-05-04. Application for increase of rates - Information required. Any public utility requesting an increase in its rates above the maximum approved or prescribed by the commission, shall furnish the commission:

1. The original cost of all its property.
2. The date of the acquisition of said property.
3. The amount of money invested in said property.
4. The amount of stock outstanding.
5. The amount of bonds outstanding against said property.
6. All books, papers, and memoranda of the utility showing the financial condition thereof.
7. Its total monthly salaries and wage expense for such time as the commission may request.
8. An itemized statement of its expenditures.
9. The details of its profit and loss account.
10. All other books, papers, vouchers, and accounts which the said commission shall ask to have produced as evidence at the hearing.

49-05-04.1. Test year - Public utility rate filings.

1. A public utility, at its option, may use any one of the following twelve-month periods as its test year for rate filings with the commission:
 - a. A historical test year, which may be either the latest twelve-month period for which actual data is available at the time of filing new schedules or the latest calendar or fiscal year for which actual data is available at the time of filing new schedules.
 - b. A current test year, which is any consecutive twelve-month period ending not later than twelve months after the date new schedules are filed. A public utility selecting a current test year also shall file data for the twelve-month period immediately preceding the current test year selected and that period is the "historical period" for the public utility.
 - c. A future test year, which is any consecutive twelve-month period ending no later than twenty-four months after the date new schedules are filed. A public utility selecting a future test year must file data for the twelve consecutive months immediately preceding the future test year and that period is the "current period" for the public utility.

2. A public utility selecting a current or future test year shall present the following information:
 - a. A comparison of forecast data to historical period data to demonstrate the reliability and accuracy of the utility's forecast including a comparison of the prior years' forecast or budgeted data to actual data for those periods.
 - b. A statement that the public utility's forecast is reasonable, reliable, and was made in good faith and that all basic assumptions used in making or supporting the forecast are reasonable, evaluated, identified, and justified to allow the commission to test the appropriateness of the forecast.
 - c. A statement that the accounting treatment that has been applied to anticipated events and transactions in the forecast is the same as the accounting treatment to be applied in recording the events once they have occurred.
3. The public utility may update its filing for material changes as actual data becomes available up to thirty days before the hearing. Except for good cause shown, a public utility may not submit more than one updated filing before the hearing. In the absence of an updated filing by the public utility, the commission may require a public utility to update its filing when the commission staff introduces evidence that a material change has occurred.
4. A public utility may propose estimated or calculated adjustments to the selected historical or current test year for all known and measurable changes in operating results as measured in the test year. The adjustments must be made in the same context and format as the information was provided in the original filing. The adjustments may reflect material changes in plant investment, operating revenues, expenses, and capital structure if the changes occurred during the selected historical or current test year or are reasonably certain to occur subsequent to the selected test year within twelve months from the date of the rate filing.

49-05-05. Changes in tariff rates - Notice to commission - Filing fee. No change shall be made by any public utility in any tariffs, rates, joint rates, fares, tolls, schedules, classifications, or service which have been filed and published by any public utility, except after thirty days' notice to the commission. The notice shall state plainly the changes proposed and except for services must be accompanied by a fifty dollar filing fee. The commission for a good cause shown, may allow changes upon less than the notice herein specified, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

49-05-06. Hearing by commission on proposed change of rates. Whenever a notice or any schedule stating an individual or joint rate, classification, contract, practice, or rule, increasing or decreasing, or resulting in an increase or decrease in any rate, is filed with the commission, the commission may suspend by motion the rate, classification, contract, practice, or rule but the period of suspension may not extend more than seven months beyond the time when it otherwise would go into effect. Upon complaint or upon its own initiative without complaint the commission may order a hearing, upon due notice, concerning the propriety of the rate, classification, contract, practice, or rule. On such hearing, the commission shall establish the rates, classifications, contracts, practices, or rules proposed, in whole or in part, or others in lieu thereof, which it finds to be just and reasonable. At any such hearing, the burden to show that the increased rate or proposed change of rate, classification, rule, or practice is just and reasonable is upon the public utility applying for the increase. All such rates, classifications, contracts, practices, or rules, not suspended, on the expiration of thirty days from the time of filing with the commission, or of such lesser time as the commission may grant, become effective rates, classifications, contracts, practices, or rules, subject to the power of the commission, after a hearing had on its own motion or upon complaint, to alter or modify the same.

49-05-07. Immunity from prosecution for self-incrimination. No person subpoenaed or ordered shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in any investigation or inquiry by or hearing before the commission or any commissioner upon the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which he is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence. The provisions of this section shall not exempt any person from prosecution or punishment for perjury. Nothing herein contained shall be construed as in any manner giving to any public utility immunity of any kind.

49-05-08. Orders and decisions of commission - Conclusive. In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.

49-05-09. Decisions of commission - Rescission or amendment. The commission, at any time, upon due notice to the public utility affected and after opportunity to be heard as provided in the case of complaints, may rescind, alter, or amend any decision made by it. Any order rescinding, altering, or amending a prior order or decision, when served upon the public utility affected, shall have the same effect as an original order or decision.

49-05-10. Improper action taken by utility - Damages - Who may sue - Recovery. In case any public utility shall do, cause to be done, or permit to be done, any act, matter, or thing prohibited, forbidden, or declared to be unlawful, or shall omit to do any act, matter, or thing required to be done, either by the constitution, any law of

this state, or any order or decision of the commission, such public utility shall be liable to the persons, corporations, or limited liability companies affected thereby for all loss, damages, or injury caused thereby or resulting therefrom. If the court shall find that the act or omission was willful, the court, in addition to the actual damages, shall award damages for the sake of example and by way of punishment. An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation, limited liability company, or person. No recovery under this section in any manner shall affect a recovery by the state of the penalties provided in this title or the power to punish for contempt.

49-05-11. Orders issued by commission - Period remaining in force. Every order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in such order or until revoked or modified by the commission, unless the same is suspended, modified, or revoked by order or decree of a court of competent jurisdiction.

49-05-12. Appeal from decision of commission. Any party to any proceeding heard by the commission feeling aggrieved by the decision or by the entry of any final order of the commission therein may appeal therefrom to the district court in the manner prescribed in chapter 28-32.

49-05-13. Suspension of order on appeal only by order of court. Repealed by omission from this code.

49-05-14. Stay on appeal - Suspending bond - Impounding excess charges. In case the order or decision of the commission is stayed or suspended, the order of the court shall not become effective until a suspending bond first shall have been executed and filed with and approved by the district court, payable to the state of North Dakota, and sufficient in amount and security to ensure the prompt payment, by the party appealing, of all damages caused by the delay in the enforcement of the order or decision of the commission and of all the moneys which any person, corporation, or limited liability company may be compelled to pay, pending the appeal, for transportation, transmission, product, commodity, or service in excess of the charges fixed by the order or decision of the commission, in case said order or decision is sustained. The district court, in case it stays or suspends the order or decision of the commission in any matter affecting rates, also by order shall direct the public utility affected to pay into court, from time to time, there to be impounded until the final decision of the case, or into some bank or trust company paying interest on deposits, under such conditions as the court may prescribe, all sums of money which it may collect from any corporation, limited liability company, or person in excess of the sum which such corporation, limited liability company, or person would have been compelled to pay if the order or decision of the commission had not been stayed or suspended. Upon a final determination of an appeal, the court shall make an appropriate order disposing of the impounded funds in accordance with such determination. In the event the public utility shall fail to comply with the conditions of the stay bond, the commission may sue thereon for the use and benefit of the patrons or others who have suffered damage by reason of the stay.

49-05-15. Appeals to supreme court. The commission, the public utility, the complainant, or any other interested person, after the entry of judgment in the district court upon an appeal from the order of the commission, may prosecute an appeal to the supreme court of this state. Such appeal shall be taken as prescribed in chapter 28-32.

CHAPTER 49-06 VALUATION OF PUBLIC UTILITY PROPERTY

Section	
49-06-01	Valuation of property as basis for determining reasonableness of rates - Railroads and motor carriers may be excepted
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49-06-04	Fair market price to be allowed in fixing valuations
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49-06-11	Hearings as to valuations - Called by commission
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49-06-24	When electric rates not to be increased

49-06-01. Valuation of property as basis for determining reasonableness of rates. The commission, for the purpose of ascertaining just and reasonable rates and charges of public utilities, or for any other purpose authorized by law, shall investigate and determine the value of the property of every public utility, except railroads and motor carriers, used and useful for the service and convenience of the public, excluding therefrom the value of any franchise or right to own, operate, or enjoy the same in excess of the amount, exclusive of any tax or annual charge, actually paid to any political subdivision of the state as a consideration for the grant of the franchise or right, and exclusive of any value of the right by reason of a monopoly or merger. The

commission shall prescribe the details of the inventory of the property of each public utility to be valued.

49-06-02. Value of property for ratemaking purposes - Determination. The value of the property of a public utility, as determined by the commission for ratemaking purposes, is the money honestly and prudently invested therein by the utility including construction work in progress for new facilities that use lignite mined in this state to generate electricity, as well as additions or modifications to existing lignite facilities, less accrued depreciation. The commission shall allow a public utility for those new or existing facilities utilizing lignite mined in this state as its primary fuel:

1. To recover its research and development costs incurred to develop lignite more cleanly, efficiently, or economically, including a reasonable rate of return on capital expenditures;
2. To recover its incremental costs of complying with federal environmental laws, including a reasonable rate of return on capital expenditures. The commission may allow these costs to be recovered by an environmental surcharge that may be added to existing rates; and
3. To recover all costs resulting from a coal severance tax pursuant to chapter 57-61 and all costs resulting from a coal conversion tax pursuant to chapter 57-60. The commission shall allow the inclusion of these costs in the base rates and the inclusion in the automatic adjustment clause of any of these costs not in base rates.

49-06-03. Value of good will not to be considered in ratemaking. The value of public utility property for ratemaking purposes shall not include or be affected by good will value, going concern value, or franchise value in excess of payments made therefor.

49-06-04. Fair market price to be allowed in fixing valuations. The commission, in determining the rates to be charged by any utility under its jurisdiction, shall ascertain whether an advanced or fictitious cost price, or a price in excess of the fair market value of any commodity, machinery, equipment, material, or service has been paid or is being paid or charged, by said public utility. If it shall appear that any such fictitious or advanced price has been or is being paid or charged, the commission shall fix and allow as a part of the valuation or rate basis only the reasonable and fair market price of such items, at the time of the purchase, eliminating all such fictitious or excessive prices or values.

49-06-05. When valuation or revaluation required. The commission, upon its own motion, may, and, upon a petition for a valuation or revaluation of the property of a public utility, including necessary audits, for the purpose of determining the rate to be charged for the service rendered, signed by twenty-five percent of the patrons or customers of such public utility, shall, endeavor to arrive at a reasonable rate through negotiations with said public utility. If within thirty days after the filing of said petition, or within thirty days after the adoption of an order or resolution by the commission on its

own motion, they are unable to agree upon a new rate which shall be not less than fifteen percent less than the rate in force at the time of the filing of said petition, or the adoption of the order or resolution, the commission shall proceed with a valuation or revaluation of the properties of the public utility involved in the manner provided by this chapter. Each person, firm, corporation, or limited liability company receiving service is to be considered a patron or customer within the purview of this chapter, regardless of the number of meters owned, rented, or used by such person, firm, corporation, or limited liability company, but a firm shall be considered a separate entity from the individual members thereof.

49-06-06. Disagreement on new rate - Bond required. If no new rate shall have been agreed upon, as provided in section **49-06-05**, then pending the investigation and final order of the commission, if it is of the opinion that public interest so requires, the commission immediately shall make an order that the said utility shall file with the commission a bond of a corporate surety company, approved by the commission and authorized to do a surety business within this state. Such bond shall be payable to the commission for the use and benefit of the customers and patrons of the utility and shall be conditioned that if the rates fixed, determined, and prescribed by such final order are less than the rates charged, received, and collected by said public utility during the period of such investigation, such public utility as principal shall remit to the several customers, patrons, or users of its service during the period between the date of the order directing a valuation or revaluation and the date of the final order fixing, determining, and prescribing the rates to be charged, received, and collected by such utility company the amount payable under this section. If the utility does not remit to its customers and patrons the differences between the amount paid by them and the new rate prescribed by the final order, the commission may maintain an action on such bond for the benefit of such customers and patrons. The amount to be paid and remitted to each of the several customers, patrons or users shall be such sum as such customer, patron, or user has paid to said utility for said service over and above the amounts that such customer, patron, or user would have paid during said time had the rates fixed, determined, and prescribed in the final order been in effect during said period. Said bond or undertaking shall be filed with the commission within thirty days after the service of said order upon such public utility. Service of such order may be made by personal service upon such public utility or by registered or certified mail, and if by registered or certified mail, service shall be deemed completed when such registered or certified mail is delivered to said public utility, as evidenced by the return receipt for such mail.

49-06-07. Failure of utility to file bond - Temporary rates prescribed by commission. If, within thirty days after the service of the order, as set forth in section **49-06-06**, the public utility fails, neglects, and refuses to file a bond or undertaking with the commission, then the commission immediately shall fix, determine, and prescribe temporary rates to be charged by such public utility pending the final determination of said rate proceeding. The temporary rates, so fixed, determined, and prescribed shall be sufficient to provide a return of not less than five percent per annum upon the original cost less accrued depreciation of the physical property of said public utility used and useful in the public service. If the duly verified reports of said utility to the commission

do not show the original cost, less accrued depreciation, of said property, the commission may estimate said cost less depreciation and fix, determine, and prescribe rates as hereinbefore provided. In determining the original cost or in estimating the cost as herein provided, the commission may take into consideration any report, annual or otherwise, filed with it by any utility, together with any other fact or information which the commission may acquire or receive from an investigation of the books, records, or papers of such public utility and from an inspection of its property, or from the examination of any report, annual or otherwise, made by the public utility and filed with the state tax commissioner, or any report, annual or otherwise, made by the said public utility to the federal power commission, federal communications commission, or federal securities and exchange commission.

49-06-08. Determination of permanent rates. Temporary rates fixed, determined, and prescribed under this chapter shall be effective until the rates to be charged, received, and collected by the public utility company shall have been fixed, determined, and prescribed finally. The commission, in any proceeding in which temporary rates are fixed, determined, and prescribed, shall consider the effect of such rates in fixing, determining, and prescribing rates to be charged and collected thereafter upon the final determination of the rate proceeding.

49-06-09. Utility to remit to consumer if rate lower than temporary rate. If the final rates fixed, determined, and prescribed are less than the temporary rates fixed under the provisions of section **49-06-07**, the public utility shall pay or remit to each of the several customers, patrons, or users such sum as such customer, patron, or user has paid to the said utility for the said service over and above the amounts that would have been paid during such time had the rates fixed, determined, and prescribed in the final order been in effect during the period that the temporary rates were in effect.

49-06-10. Valuation - Notice - Finality - Prima facie evidence. The commission, whenever it shall have completed a valuation of the property of any public utility and before such valuation shall have become final, shall give notice by registered or certified mail to such public utility. If, within thirty days after such notice, no protest shall have been filed with the commission, then said valuation shall become final. If notice of protest shall have been filed by such public utility, the commission shall fix the time of hearing the same and shall consider at such hearing any matter material thereto presented by such public utility in support of its protest. If, after the hearing of any protest, the commission shall be of the opinion that its inventory is incomplete or incorrect or that its valuation is incorrect, it shall make such changes as may be necessary and shall issue an order making such corrected valuation final. The final valuation by the commission and all classifications made for the ascertainment of such valuations shall be public and shall be prima facie evidence relative to the value of the property.

49-06-11. Hearings as to valuations - Called by commission. For the purpose of ascertaining the reasonableness and justice of the rates and charges of public utilities, or for any other purpose authorized by law, the commission may cause a hearing to be held in the manner prescribed in chapter 28-32 to determine the value of

the property of any public utility actually used or useful for the convenience of the public, excluding therefrom the value of any franchise or right to own, operate, or enjoy the same in excess of the amount, exclusive of any tax or annual charge, actually paid to any political subdivision of the state as a consideration of such franchise or right, and exclusive of any value of the right by reason of a monopoly or merger.

49-06-12. Notice of hearing - Preliminary examination. Before any hearing is had, the commission shall give the public utility affected thereby at least twenty days' written notice, specifying the time and place of said hearing. This provision shall not prevent the commission from making any preliminary examination or investigation into the matters herein referred to or from inquiring into such matters in any other investigation or hearing.

49-06-13. Hearing - Right of public utility - Evidence - Findings - Review. Any public utility affected shall be entitled to be heard and to introduce evidence at such hearing. The commission is empowered to resort to any other source of information available. The evidence introduced at such hearing shall be reduced to writing and certified under the seal of the commission. The commission shall make and file its findings of fact in writing upon all matters concerning which evidence shall have been introduced before it which, in its judgment, have a bearing on the value of the property of the public utility.

49-06-14. Findings of commission - Admissible as evidence. The findings of the commission, as made and filed, when properly certified by the commission, shall be admissible as evidence in any proceeding or hearing before the commission or any court in which the commission, the state, or any officer, department, or institution thereof, or any county, city, municipality, or other body politic and the public utility affected thereby, may be interested, whether arising under the provisions of this chapter or otherwise. Such findings, when so introduced, shall be conclusive evidence of the facts therein stated as of the date therein stated under conditions then existing and such facts can be controverted only by showing a subsequent change in conditions bearing upon the facts therein determined.

49-06-15. Corrections and revaluation of public utility property. The commission, upon the making of a valuation, shall:

1. Keep itself informed through its experts and other assistants of all extensions and improvements or other changes in the conditions and value of the property of the public utility;
2. Ascertain the value of such extensions, improvements, and changes; and
3. Revise and correct, from time to time, its valuation of such property.

49-06-16. Additional hearings of commission. The commission from time to time, may cause any further hearing and investigation to be had for the purpose of making a revaluation or ascertaining the value of any betterments, improvements,

additions, or extensions made by a public utility subsequent to any hearing or investigation, and may examine into all matters which may change, modify, or affect any findings of fact previously made and at such time may make findings of fact supplementary to those theretofore made. Such a hearing shall be had upon the same notice and shall be conducted in the same manner as an original hearing. Any supplementary finding shall have the same force and effect as an original finding, and shall be considered in connection with the original findings and, so far as may be necessary, as a modification thereof.

49-06-17. Limitation on number of valuation or revaluation orders. No order for valuation or revaluation shall be made more than once in every three years after a determination of value has become final. This limitation, however, shall not apply to proceedings to determine past excess earnings for refunding purposes.

49-06-18. Employment of experts - Attorneys - Costs of hearing. Repealed by S.L. 1993, ch. 1, § 35.

49-06-19. Additional costs to be paid - Refund. Repealed by S.L. 1993, ch. 1, § 35.

49-06-20. Amount not paid to draw interest - Attorney general to collect. Repealed by S.L. 1993, ch. 1, § 35.

49-06-21. Writs of attachment and garnishment summons to be issued. Repealed by S.L. 1993, ch. 1, § 35.

49-06-22. Public utility valuation fund - Use. Repealed by S.L. 1993, ch. 1, § 35.

49-06-23. Expenses of valuation or revaluation paid into public utility valuation revolving fund. Repealed by S.L. 1993, ch. 1, § 35.

49-06-24. When electric rates not to be increased. The commission may not increase electric rates as a result of actions taken by other states requiring higher cost resources to be built, purchased, or otherwise acquired as a result of the application of quantified environmental externality values, as defined in section 49-02-23, as part of any resource selection process.

CHAPTER 49-07 PENAL PROVISIONS

Section	
49-07-01	Violation of commission order or rule - Penalty
49-07-01.1	Violation of statute, commission order, or commission regulation - Assessment of civil penalty
49-07-02	Each violation a separate offense - Repealed
49-07-03	Act of officer or agent that of principal
49-07-04	Personal liability of officer, agent, or employee - Penalty - Repealed
49-07-05	Liability of persons other than public utility - Penalty - Repealed
49-07-05.1	Violations of pipeline safety standards - Penalties
49-07-06	Cumulative penalties - Not a bar to contempt

49-07-01. Violation of commission order or rule - Penalty. Any person who violates or fails to comply with any provision of this title, or who fails, omits, or neglects to obey, observe, or comply with any order, decision, decree, rule, direction, demand, or requirement of the commission, or any part or provision thereof, in a case in which no other penalty has been provided, shall be guilty of a class A misdemeanor.

49-07-01.1. 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.

49-07-02. Each violation a separate offense. Repealed by S.L. 1975, ch. 106, § 673.

49-07-03. Act of officer or agent that of principal. In construing and enforcing the provisions of this title relating to penalties, the act, omission, or failure of any officer, agent, or employee of any public utility, acting within the scope of his official duties or employment, in every case shall be deemed to be the act, omission, or failure of such public utility.

49-07-04. Personal liability of officer, agent, or employee - Penalty. Repealed by S.L. 1975, ch. 106, § 673.

49-07-05. Liability of persons other than public utility - Penalty. Repealed by S.L. 1975, ch. 106, § 673.

49-07-05.1. Violations of pipeline safety standards - Penalties. Any person who violates any rule or order issued by the commission pursuant to section 49-02-01.2, is subject to a civil penalty to be imposed by the commission of not to exceed ten thousand dollars for each such violation for each day that such violation persists, except that the maximum penalty may not exceed five hundred thousand dollars for any related series of violations. Any such civil penalty may be compromised by the commission. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged, the nature, circumstances, and gravity of the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, the ability to pay the penalty, the good faith of the person charged in attempting to achieve compliance, after notification of a violation, and such other matters as justice may require, must be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the state of North Dakota to the person charged or may be recovered in a civil action in the district court of Burleigh County.

49-07-06. Cumulative penalties - Not a bar to contempt. All penalties accruing under this title shall be cumulative and a suit for the recovery of one penalty shall not:

1. Bar nor affect the recovery of any other penalty or forfeiture; nor
2. Bar any criminal prosecution against any public utility or any officer, manager, director, governor, agent, or employee thereof, or any other corporation, limited liability company, or person; nor
3. Bar the power to punish for contempt.

CHAPTER 49-19

COMMON PIPELINE CARRIERS

Section	
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49-19-23	Unlawful discrimination - Damages - Suit.
49-19-24	Individuals guilty of discrimination - Penalty - Repealed.
49-19-25	Fraudulent consumption of gas - Punishment - Repealed.

49-19-01. Definition of common pipeline carriers. Every person:

1. Owning, operating, or managing any pipeline or any part of any pipeline within this state for the transportation of crude petroleum, gas, coal, or carbon dioxide to or for the public for hire, or engaged in the business of transporting crude petroleum, gas, coal, or carbon dioxide by pipelines;

2. Owning, operating, managing, or participating in the ownership, operation, or management of, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipeline, or any part of any pipeline, for the transportation of crude petroleum, gas, or coal bought from others from any oil, gas, or coal field or place of production, to any distributing, refining, or marketing center or reshipping point;
3. Engaged in the business of producing, purchasing, transporting for hire or transporting for sale within this state of natural gas, which is transported through pipelines, or any part of a pipeline, the right of way for which is granted or secured under the provisions of this chapter or through the exercise of the right of eminent domain; or
4. Made a common carrier by or under the terms of a contract with or in pursuance of the laws of the United States,

is a common carrier and is subject to the provisions of this chapter as a common pipeline carrier.

49-19-02. Pipeline carriers - Special powers of commission. The commission shall take reports from and may investigate the books and records kept by any pipeline carrier in connection with its business, and may require such company to make monthly reports duly verified under oath showing the total quantity of crude petroleum owned by such carrier and of that held by it in storage for others, and its unfilled storage capacity. No publicity shall be given by the commission to the reports as to stock of crude petroleum of any particular pipeline, but it may make public the aggregate amounts held by all the pipelines making such reports, and their aggregate storage capacity.

49-19-03. Enforcement of orders by commission. The commission shall hear and determine complaints, require attendance of witnesses, and institute suits and sue out such writs and process as may be necessary for the enforcement of its orders.

49-19-04. Reservation in gas franchises. No city or other public corporation hereafter shall grant to any person a franchise to furnish natural gas to the public in this state without making a reservation therein that a percentage of native natural gas shall be used by such person if and when the same is produced in commercial quantities.

49-19-05. Percentage of native natural gas to be used. Whenever native natural gas is produced in this state in commercial quantities, any person having a franchise to furnish gas to the public, which franchise is dated after March 9, 1933, shall use fifty percent, or its equivalent, of native natural gas as developed if the source thereof is located not more than six miles [9.66 kilometers] from any established gas pipeline.

49-19-06. Gas in commercial quantities - What constitutes. Any gas well of two hundred fifty thousand cubic feet [7,079.21 cubic meters] volume and two hundred pounds [90.72 kilograms] of rock pressure shall constitute a well producing native natural gas in commercial quantities under the provisions of this chapter.

49-19-07. Pro rata distribution of gas. All wells having the production specified in section 49-19-06 shall be entitled to supply an equal pro rata share of products to be used by any person holding a franchise to furnish gas to the public.

49-19-08. Operation of pipelines. The operation of the pipelines to which this chapter applies, for the transportation of crude petroleum, coal, or gas in connection with the purchase or purchase and sale of such crude petroleum, coal, or gas, is a business in the conduct of which the public is interested, and as such is subject to regulation by law. The business of purchasing, or of purchasing and selling, crude petroleum, coal, or gas, which uses in connection with such business a pipeline of the class subject to this chapter to transport the crude petroleum, coal, or gas so bought or sold, shall not be conducted unless such pipeline so used in connection with such business is a common carrier within the purview of this chapter and subject to the jurisdiction herein conferred upon the commission. The attorney general shall enforce these provisions by injunction or other adequate remedy.

49-19-09. Permission to secure right of way - Condition. The right to lay, maintain, and operate pipelines, together with 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, corporation, or limited liability company may acquire the right to construct pipelines and such incidental 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.

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 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.

49-19-11. Pipeline carrier must agree to carry without discrimination. A common pipeline carrier, in the acceptance of the provisions of this chapter, shall agree expressly that it, without discrimination, will accept, carry, or purchase, the oil, coal, gas, or carbon dioxide of the state or of any person not the owner of any pipeline, operating a lease or purchasing oil, coal, gas, or carbon dioxide at prices and under regulations to be prescribed by the commission.

49-19-12. When pipeline carrier may exercise right of eminent domain. Every common pipeline carrier which shall have filed with the commission its acceptance of the provisions of this chapter shall have the right and power of eminent domain in the exercise of which it may enter upon and condemn the land, right of way, easements, and property of any person necessary for the construction, maintenance, or authorization of its pipeline. The manner and method of such condemnation, and the assessment and payment of the damages therefor shall be the same as is provided by law in the case of railroads. The right of eminent domain and the right to use public lands, highways, or roads for right of way for pipelines shall be acquired only by compliance with the provisions of this chapter.

49-19-13. Hearings on rates of pipeline carrier - Power of commission. The commission shall establish and enforce rates or charges and regulations for gathering, transporting, loading, and delivering crude petroleum, coal, or gas by common pipeline carriers in this state, and for the use of storage facilities necessarily incident to such transportation, and shall prescribe and enforce rules and regulations for the government and control of such common pipeline carriers in respect to their pipelines and receiving, transferring, and loading facilities. It shall exercise such power upon petition by any person showing substantial interest in the subject matter. No order establishing or prescribing rates, rules, and regulations shall be made except after hearing and notice to the common pipeline carrier affected.

49-19-14. Reimbursement of excessive rates to shipper. In the event that any rate shall be filed by any common pipeline carrier and complaint against the same or a petition to reduce the same shall be filed by any shipper, and such complaint shall be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipeline carrier shall have the right to reparation or reimbursement of all excess in transportation charges paid over and above the proper rate as finally determined on all shipments made after the date of the filing of such complaint.

49-19-15. Exchange of tonnage by common carrier - Facilities to be maintained for receipt and delivery. Every common pipeline carrier shall exchange crude petroleum tonnage, coal, or gas with each like common pipeline carrier. The commission shall have the power to require connections and facilities for the interchange of such tonnage, coal, or gas to be made at every locality reached by both pipelines whenever the necessity therefor exists and subject to such rates and regulations as may be made by the commission. Any such common pipeline carrier under like rules and regulations shall be required to install and maintain facilities for the receipt and delivery of crude petroleum, coal, or gas of patrons at all points on such pipeline. No carrier shall be required to receive or transport any crude petroleum, coal,

or gas except such as may be marketable under rules and regulations to be prescribed by the commission.

49-19-16. Commission to make rules on deductions - Orders prima facie evidence. The commission also shall make rules for the ascertainment of the amount of water and other foreign matter in oil or gas tendered for transportation, and for deduction therefor, and for the amount of deduction to be made for temperature, leakage, and evaporation. The recital herein of particular powers on the part of the commission shall not be construed to limit the general powers conferred by this chapter. Until set aside or vacated by some decree or order of a court of competent jurisdiction, all orders of the commission as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity.

49-19-17. Pipeline carriers to make and publish tariffs. Common pipeline carriers shall make and publish their tariffs under such rules and regulations as may be prescribed by the commission.

49-19-18. Joint action by commissions to regulate interstate commerce. Where pipelines within the scope of this chapter are engaged in interstate transportation of oil, coal, or gas, the commission shall act jointly and in conjunction with the supervisory body which exercises jurisdiction over and control of such pipelines within any other state for the purpose of control, supervision, making joint rates for interstate transportation of oil, coal, or gas, or any other matters within the scope of this chapter.

49-19-19. Discrimination between shippers in facilities furnished, service rendered, and rates prohibited. No common pipeline carrier may discriminate between or against shippers in regard to facilities furnished, services rendered, or rates charged under the same or similar circumstances in the transportation of crude petroleum, coal, gas, or carbon dioxide, nor may there be any discrimination in the transportation of crude petroleum, coal, gas, or carbon dioxide produced or purchased by itself directly or indirectly. In this connection the pipeline must be considered as a shipper of the crude petroleum, coal, gas, or carbon dioxide produced or purchased by itself directly or indirectly and handled through its facilities. No such carrier in such operation, directly or indirectly, may charge, demand, collect, or receive from anyone a greater or less compensation for any service rendered than from another for a like contemporaneous service. This does not limit the right of the commission to prescribe rates and regulations from or to some places different from other rates or regulations for transportation from or to other places as it may determine, nor is any carrier guilty of discrimination when obeying any order of the commission. Where there is offered for transportation more crude petroleum, coal, or carbon dioxide than can be transported immediately, the same must be apportioned equitably. Gas must be taken on a pro rata basis or on such basis as may be established by the industrial commission pursuant to section 38-08-06.

49-19-20. Duties of pipeline carriers. Subject to the provisions of this chapter and the rules and regulations which may be prescribed by the commission, every common pipeline carrier shall receive and transport crude petroleum, coal, or gas

delivered to it for transportation and shall receive and transport the same and perform its other duties with respect thereto without discrimination.

49-19-21. Oil and gas wastes - Dangerous field operations - Commission to regulate. Repealed by S.L. 1983, ch. 399, § 3.

49-19-22. Violation of law or rules by pipeline carriers - Penalty - Suit by attorney general. Repealed by S.L. 1975, ch. 106, § 673.

49-19-23. Unlawful discrimination - Damages - Suit. Actual damages also may be recovered by and for the use of any person against whom there shall have been an unlawful discrimination prohibited by this chapter. Such suit shall be brought in the name and for the use of the party aggrieved.

49-19-24. Individuals guilty of discrimination - Penalty. Repealed by S.L. 1975, ch. 106, § 673.

49-19-25. Fraudulent consumption of gas - Punishment. Repealed by S.L. 1975, ch. 106, § 673.

CHAPTER 49-20 ELECTRIC COMPANIES

Section

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49-20-14	Meter deposits to electric power companies - Repealed.
49-20-15	Liability of electric companies for inductive interference.

49-20-01. Definitions. As used in this chapter, unless the context otherwise clearly requires:

1. "Electrical supply lines" shall mean those electrical conductors and their necessary supporting and containing structures which are used for transmitting a supply of electrical energy.
2. "Operation" shall be construed and applied only in relation to the manner of operating the lines referred to so as to avoid or minimize the hazard of injury to persons or property and to avoid or mitigate interference with the service of signal lines.
3. "Signal lines" shall mean those lines for public or private signal or communication service and devoted exclusively to the transmission of signals or intelligence which operate at not more than four hundred volts to ground or seven hundred fifty volts between any two points of the circuit and the transmitted power of which does not exceed one hundred fifty watts.

49-20-02. Commission to regulate operation and maintenance of electrical lines. The commission shall regulate the construction, reconstruction, operation, and maintenance of all electrical supply lines and signal lines located in, under, or across the public highways or public places in this state, within and without the limits of

incorporated cities, to the extent necessary to avoid or mitigate interference from electrical supply lines and for the purpose of avoiding or minimizing the hazard of injury to persons or property by reason of the close association or proximity of electrical supply lines to or with signal lines.

49-20-03. Applications - Specifications - Drawings - Prerequisites to construction. Prior to commencing the construction or reconstruction of any electrical supply line intended to carry:

1. A constant potential alternating current of over five thousand volts;
2. A constant current circuit exceeding seven and one-half amperes; or
3. A grounded trolley direct current of over seven hundred fifty volts,

or prior to converting a line of another character to one of these, written application shall be made to the commission by the person desiring to construct or reconstruct, or convert said line. The application shall be accompanied by such drawings and specifications as shall show the route of the proposed line in detail and the method of construction and operation, and said application, drawings, or specifications also shall show the route and location relative to the proposed line of any other existing electrical supply or signal line over, across, or parallel with which the proposed line is to be constructed, together with the names of the owners thereof and such other preliminary information as the commission may require.

49-20-04. Hearing upon application - Time - Witnesses - Evidence. Upon receipt of the written application provided for in section 49-20-03, the commission shall set a date not later than thirty days from the date of the receipt of the application for a hearing upon the matter, and at least ten days before the date of said hearing shall notify in writing each of the parties affected or likely to be affected by the construction or reconstruction of said line. At such hearing, the commission shall swear witnesses, take evidence, and make such an investigation as shall determine all of the facts in the case. If the party desiring to build the line files its written consent to abide by the rules and regulations of the commission or the order issued in relation to the matter, then and in that case said party may proceed to construct such line.

49-20-05. Grant of application without hearing. Whenever the application provided for in section 49-20-03 is filed with the commission and it shall appear to its satisfaction that all of the interested parties have agreed in writing in regard to the methods of construction, reconstruction, operation, and maintenance of the proposed line, such application thereupon shall be granted without hearing.

49-20-06. Apportionment of costs. The commission shall apportion between the interested parties the costs or additional costs which may accrue from the adoption of plans, methods, or means in order to avoid, minimize, or mitigate interference or hazard.

49-20-07. Rules and regulations adopted by commission. Repealed by omission from this code.

49-20-08. Municipalities - Complaints - Hearings. Any municipality of the state shall have the right to file a complaint with the commission to enforce the provisions of this chapter. The commission shall hold a public hearing whenever any such municipality shall file written complaint and set forth facts which require action on the part of the commission in order to avoid or mitigate electrical interference from electrical supply lines or for the purpose of avoiding or minimizing the hazard of injury to persons or property by reason of the close association or proximity of signal lines with electrical supply lines.

49-20-09. Regulatory nature of measures - Penalty for violation. The provisions of sections 49-20-02 through 49-20-08 shall not be construed to affect, control, or change the franchise rights of persons, firms, corporations, or limited liability companies owning or operating electrical supply or signal lines in or upon the highways of this state and shall be construed only as regulatory measures intended to avoid or mitigate interference from electrical supply lines with signal lines and to avoid or minimize the hazard of injury to persons or property by reason of the close association or proximity of electrical supply lines to or with signal lines. Any person violating any of the provisions of said sections or any order made by the commission pursuant thereto shall be punished by a fine of not less than twenty-five dollars nor more than fifty dollars.

49-20-10. Commission may require extension of electric transmission lines. Whenever any city, or the inhabitants thereof within, or contiguous to, the territory served by an electric transmission line operated by a public utility subject to the jurisdiction of the commission shall desire to obtain the service furnished by such public utility, the proper authorities of such city, or fifteen percent of the inhabitants thereof, may petition the commission for the extension of such transmission line and service to, into, or through such municipality. The commission thereupon shall enter into an investigation concerning the practicability and reasonableness of such proposed extension and service and the public convenience and necessity to be subserved thereby, and if, after notice and hearing, the commission finds that such extension of line and service is practicable and can be made reasonably, taking into consideration the amount of revenue likely to be derived therefrom and the prospect for a reasonable return to the utility upon the value of such extension, and further finds that public convenience and necessity will be subserved thereby, and that the city or territory contiguous thereto is not already receiving electric service from another public utility or electric cooperative corporation, the commission, by its order, shall require the extension of such line and service by such public utility for the purpose of serving such municipality and the inhabitants thereof upon condition that a franchise for such operation be granted to such public utility by the proper authorities of such municipality, and upon such other terms and conditions as may be just and reasonable. A certified copy of such order, when filed with the auditor of such municipality, shall have the same force and effect as an application by the utility for a franchise. The commission shall fix

just and reasonable rates for such service and such reasonable rules and regulations as may be necessary pertaining thereto.

49-20-11. Appeals from orders of commission. Any municipality, public utility, or person affected by an order of the commission made under the provisions of this chapter may prosecute and conduct an appeal to the courts in the manner prescribed in chapter 28-32.

49-20-12. Injury to electric supply lines - Penalty. Repealed by S.L. 1975, ch. 106, § 673.

49-20-12.1. Notice of change in topography of lands under or adjacent to electric transmission or telecommunications lines. Before any change is made in the topography of lands under, or adjacent to, any electric transmission or 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 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.

49-20-13. Electric current - Fraudulent use - Misdemeanor. Repealed by S.L. 1975, ch. 106, § 673.

49-20-14. Meter deposits to electric power companies. Repealed by S.L. 1983, ch. 514, § 2.

49-20-15. Liability of electric companies for inductive interference. No person owning or operating electric light and power facilities shall be liable, in the absence of negligent construction or operation of such electric light and power facilities, for inductive interference caused in communication circuits, and shall not, in the absence of negligent construction or operation of such electric light and power facilities, be required to bear any portion of the cost of avoiding, minimizing or mitigating such inductive interference. The burden of proof of negligent construction or operation of such electric light and power facilities shall be upon the person complaining of the inductive interference.

CHAPTER 49-21 TELECOMMUNICATIONS COMPANIES

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

1. "Access" means telecommunications services to connect a telecommunications customer or end user with a telecommunications company that allows for the origination or the termination, or both, of WATS, 800, and message toll telecommunications services and private line transport services. "Switched access" includes:
 - a. Local exchange central office switching and signaling;
 - b. Operator and recording intercept of calls;
 - c. Termination of end user lines in the local exchange central office;
 - d. The carrier common line charge for the line between the end user's premises and the local exchange central office; and
 - e. Telecommunications service, including connections, provided to allow transmission service and termination between an interexchange company's premises and the local exchange central office switch for the origination or termination of the interexchange company's switched telecommunications services.
2. "Competitive local exchange company" means any telecommunications company providing local exchange service, other than an incumbent local exchange carrier, whether by its own facilities, interconnection, or resale.
3. "Eligible telecommunications carrier" means a telecommunications company designated under section 214(e) of the federal act as eligible to

receive universal service support in accordance with section 254 of the federal act.

4. "Essential telecommunications price factor" means:
 - a. In the case of group I telecommunications companies, a factor determined annually as the lower of:
 - (1) 41.6667 percent of the percentage change of the average annual gross national product price index; or
 - (2) The percentage change of the average annual gross national product price index minus 2.75 percentage points.
 - b. In the case of group II telecommunications companies, a factor determined annually as the lower of:
 - (1) 52.0834 percent of the percentage change of the average annual gross national product price index; or
 - (2) The percentage change of the average annual gross national product price index minus 2.0625 percentage points.
 - c. For purposes of the determination of essential telecommunications price factor, group I telecommunications companies are telecommunications companies with over fifty thousand subscribers and group II telecommunications companies are telecommunications companies with fifty thousand or fewer subscribers.
5. "Essential telecommunications service" means service that is necessary for switched access to interexchange telecommunications companies and necessary for two-way switched communications for both residential and business service within a local exchange area. A charge based on measured service may not be required for residential and business local exchange service. Essential telecommunications services are limited to:
 - a. Switched access;
 - b. Any new product or service offered in North Dakota after July 1, 1989, deemed essential by the commission after notice and hearing in accordance with chapter 28-32;
 - c. Billing and collection of the billing company's own essential telecommunications services and billing and collection recording for interexchange carriers to which the local exchange carrier provides feature group C access service;

- d. Primary directory listing, including nonlisted and nonpublished service, and access to directory assistance;
 - e. Emergency 911 services and emergency operator assistance in local exchange areas in which emergency 911 service is not available;
 - f. Except as provided in section 49-02-01.1, mandatory, flat-rate extended area service to designated nearby local exchange areas;
 - g. Installation of the service connection for essential services from the end user's premises to the local exchange network;
 - h. Transmission service necessary for the connection between the end user's premises and the local exchange central office switch including a trunk connection that has direct inward dialing and necessary signaling service such as touchtone used by end users for essential telecommunications services;
 - i. Single or multiparty flat-rate or measured residence and business service;
 - j. Single or multiparty flat-rate or measured combination business and residence service; and
 - k. The transmission service line for a coin or pay telephone.
6. "Federal act" means the federal Communications Act of 1934, as amended by the federal Telecommunications Act of 1996 [47 U.S.C. 151 et seq.].
 7. "Gross national product price index" means the fixed-weighted price index of prices of all the goods and services that make up gross national product, as published quarterly by the United States department of commerce, economics and statistics administration, bureau of economic analysis. "Average annual gross national product price index" means the mean of the gross national product price index published in the third calendar quarter of a year through the second calendar quarter of the following year.
 8. "Incumbent local exchange carrier" means a telecommunications company that meets the definition of section 251(h) of the federal act.
 9. "Interexchange telecommunications company" means a person providing telecommunications service to end users located in separate local exchange areas.

10. "Local exchange area" means a geographic territorial unit established by a telecommunications company for the administration of telecommunications services as approved and regulated in accordance with chapter 49-03.1.
11. "Management costs" means the reasonable direct actual costs a political subdivision incurs in exercising its police powers over the public rights of way.
12. "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.
13. "Nonessential telecommunications service" means any telecommunications service, other than those essential telecommunications services listed in subsection 3 that a customer has the option to purchase either in conjunction with or separate from any essential telecommunications service. Nonessential telecommunications services include, but are not limited to:
 - a. InterLATA and intraLATA message toll service;
 - b. Private line transport service;
 - c. Calling features and information or enhanced services such as call waiting, call forwarding, three-way calling, intracall, speed calling, call transfer, voice or data store and forward, message delivery, or caller identification;
 - d. Centrex services and features, not including transmission service described in subdivision h of subsection 3;
 - e. Installation of service connections in addition or supplementary to that described in subdivision g of subsection 3 which also provides transmission service between the end user's premises and the local exchange central office switch;
 - f. Mobile telecommunications services using radio spectrum or cellular technology; and
 - g. Packet-switched services.
14. "Price" means any charge set and published in accordance with chapter 49-21 and collected by a telecommunications company for any telecommunications service offered by it to the public or other telecommunications companies.

15. "Private line transport service" means a telecommunications service to a customer over a circuit dedicated to the customer's exclusive use, within a local exchange area, or between or among local exchanges. Private line transport service includes services to customers who are end users and services to telecommunications companies.
16. "Public right of way" means the area on, below, or above a public roadway, highway, street, bridge, cartway, bicycle lane, or public sidewalk in which a political subdivision has a legal interest, including other dedicated rights of way for travel purposes, utility easements, and all the area within seventy-five feet [22.86 meters] of the centerline of any county or township highway right of way over which a board of county commissioners or a board of township supervisors has control under section 24-01-42. The term does not include the airwaves above a public right of way with regard to cellular or other wireless telecommunications or broadcast service or utility poles owned by a political subdivision or a municipal utility or a telecommunications company, in whole or part.
17. "Rural telephone company" means a telecommunications company that meets the definition of section 153(37) of the federal act.
18. "Service element" means a telecommunications function or service component that is not useful to the user unless it is combined with one or more other telecommunications functions or service components.
19. "Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.
20. "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.

49-21-01.1. 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. Except as provided in section 49-21-01.5, home, business, and coinless or coin-operated public or semipublic telephone terminal equipment and the use of such equipment.
5. The lease of telecommunications equipment by a telecommunications company from a person whose business is the leasing or sale of such equipment.
6. Billing and collection services.
7. Inside wire and premise cable installation and maintenance.
8. Directory services which are not essential, such as "yellow pages" advertising and boldface or color listings in "white pages".
9. Private line transport service.
10. Services or facilities provided by a system or institution of higher education to:
 - a. Institution employees or students at institution facilities or housing owned or leased by the institution;
 - b. Affiliated organizations, including alumni operations and research foundations, formed for the purpose of supporting the institution or leased by the institution and offering products and services intended primarily for the benefit of institution employees, students, or guests;
 - c. Other persons or entities located on property owned or leased by the institution and offering products and services intended primarily for the benefit of institution employees, students, or guests;
 - d. Casual users using the institution's facilities for conferences, seminars and other similar special events, and broadcasters of athletic events;
 - e. Occupants of technology parks, or business incubators receiving secretarial or business startup support in facilities owned or leased by the institution during a business startup phase for a term not to exceed four years or until August 1, 2005, whichever is later; and
 - f. Education, governmental, and nonprofit users of systems or institution interactive video conferencing site facilities and associated network services.

Institutions may not unreasonably restrict access by a telecommunications company to institution facilities for the purpose of furnishing

telecommunications services to residents in institution housing or to other persons or entities leasing institution facilities, except institutions may limit access to residence halls. Institutions may require reasonable payment for and adopt reasonable restrictions on the use of institution telecommunications infrastructure to avoid service interruptions or increased maintenance or administrative burdens.

49-21-01.2. Exemption - Rate regulation. Except as provided for in this chapter and sections 49-02-01.1, 49-02-21, 49-02-22, and 49-04-02.1, telecommunications companies and all telecommunications services are exempt from the provisions of chapters 49-02, 49-04, 49-05, and 49-06. Telecommunications companies and services are not subject to rate or rate of return regulation. Any telecommunications company may elect not to be subject to the provisions of this section and section 49-21-01.3, and to be subject to rate and rate of return regulation, by filing an election with the commission in writing. For telecommunications companies with over fifty thousand subscribers, the election not to be exempt from rate and rate of return regulation is a one-time, irrevocable election. Notwithstanding an election filed under this section, a telecommunications company is not obligated to pay any fee for filing a price schedule or tariff.

49-21-01.3. Certain price increases prohibited - Essential telecommunications services. Changes in essential telecommunications services prices are prohibited except as specifically provided for in chapter 49-21 and section 49-02-01.1.

1. All increases or decreases in governmentally imposed surcharges and any financial impact on cost of essential telecommunications services caused by governmentally imposed changes in taxes, accounting practices, or separations procedures must be fully reflected in any price for those services within thirty days of the effective date of the surcharge or change.
2. The price of essential telecommunications services may be changed according to the essential telecommunications price factor. Increases may be reflected in prices after notice to the company's customers one billing period in advance. A decrease must be reflected in prices within thirty days of the effective date of the price factor. The commission shall publish the essential telecommunications price factor to be effective January 1, 1994, and annually thereafter, determined by reference to the average annual gross national product price index for the four calendar quarters ending with the second calendar quarter of the preceding calendar year. No price for a service may be changed more than once a year. Prices may be changed by service element, but the aggregate annual price change for a service may not exceed the essential telecommunications price factor. Complaints may be made pursuant to section 49-21-06 for any prices changed under this subsection. A discounted price for an essential telecommunications service is not the price of a service for purposes of this section. Discontinuing or altering

any discount price for an essential telecommunications service is not a price change as regulated by this subsection.

3. Nothing in this section prohibits the lowering of a price of an essential service based on reasonable business practices in a competitive environment provided that no price change may be anticompetitive or otherwise in violation of antitrust or unfair trade practice laws.
4. Whenever a price change provided for in this section is less than three percent of the existing price, notwithstanding any time limitations in this section, a telecommunications company may accumulate such changes in price subject to the following conditions:
 - a. Price increases may be accumulated up to a percentage total of five percent.
 - b. Price decreases may be accumulated only to the extent that there is an offsetting accumulated price increase of an equal or greater percentage. Accumulated price decreases may never exceed accumulated price increases.
 - c. Price decreases may be accumulated only for two years beginning January first of the year in which the change is allowed.
 - d. Accumulated price increases may be implemented at the discretion of the telecommunications company.
 - e. The effective date of implementation of an accumulated price change may be prospective only, and in accordance with the filing requirements of section 49-21-04.
5. The monthly price of residence service for group I telecommunications companies defined in subsection 2 of section 49-21-01 may be increased after July 31, 1999, up to fifteen dollars and fifty cents and may be increased after June 30, 2000, up to eighteen dollars. A telecommunications company increasing prices under this subsection must submit a report to the commission reasonably demonstrating that it reduced the prices of its intrastate intraLATA message toll service and intrastate switched access, as such prices existed on January 1, 1999, in aggregate by an annual amount not less than the annual revenue increase resulting from the service price increases under this subsection. Reductions in message toll and switched access prices attributable to the price increases under this section must be made by similar percentages as to be accomplished in a competitively neutral manner. The commission may review the report and may set aside pursuant to section 49-21-06 the prices of intraLATA message toll service and intrastate switched access if the reductions have not been made in a revenue

neutral manner and by similar percentages. Prices set aside pursuant to this section remain effective until the effective date of revised prices filed by the telecommunications company within forty-five days of the commission's order.

6. The commission may investigate an increased price allowed pursuant to subsection 5 and may set aside all or part of the increase if it finds the price is unfair or unreasonable, provided a price for residence service at or below the price in effect on January 1, 1999, may not be set aside under this subsection or section 49-21-06. The commission may not set aside all or part of an increased price as unfair or unreasonable if the commission determines after notice and opportunity for hearing the average cost of providing residence service, as calculated under either representative embedded or forward-looking economic cost methodologies, including shared and common costs, exceeds the price resulting from the increase.
7. Subject to the limitations of this section, nothing in this chapter prohibits an incumbent local exchange carrier from deaveraging local exchange service prices provided the incumbent local exchange carrier agrees to amend its commission approved interconnection agreements to allow for deaveraged interconnection prices effective concurrently with the deaveraged retail prices.

49-21-01.4. Purchase of essential telecommunications services. Customers of any telecommunications company must be permitted to purchase essential telecommunications services separate from all other telecommunications services. A telecommunications company may disconnect local exchange or essential telecommunications services only pursuant to rules adopted by the commission.

49-21-01.5. Access code number usage. A person who, in the ordinary course of operations, makes telephones available to the public or to transient users of that person's premises, for intrastate telephone calls using a provider of operator services shall ensure that each of its telephones presubscribed to a provider of operator services allows the consumer to use "toll free "8XX"", "950", or "101XXXX 0+" access code numbers to obtain access to the provider of operator services desired by the consumer. Each such person shall ensure that no charge to the consumer for using a "toll free "8XX"", "950", or "101XXXX 0+" access code number is greater than the amount charged for calls placed using the presubscribed provider of operator services.

49-21-01.6. Call identification services - Charges prohibited - Notice - Exceptions.

1. Any telephone call identification service offered in this state by a telecommunications company must allow a caller on a per-call and a per-line basis to withhold display of a caller's telephone number from the

telephone instrument of the individual receiving the telephone call placed by the caller.

2. A telecommunications company offering call identification services may not charge any person who requests that the call identification services be blocked on a per-call basis. Per-line blocking must be provided without charge for residential customers and business customers with special needs, such as law enforcement and domestic violence agencies.
3. A telecommunications company offering a call identification service shall notify its subscribers that their calls may be identified to a called party at least thirty days before the service is offered.
4. This section does not apply to:
 - a. An identification service that is used within the same limited system, including a Centrex, Centron, or private branch exchange (PBX) system, as the recipient telephone.
 - b. An identification service that is used on a public agency's emergency telephone line or on a line that receives the primary emergency telephone number (911).
 - c. An identification service provided in connection with legally sanctioned call tracing or tapping procedures.
 - d. An identification service provided in connection with any "700", "800", or "900" access code telecommunications service, or any voice or data store and forward service.
 - e. Any other service that, after investigation by the commission, the commission finds that a nondisclosure or similar agreement will protect the privacy interests of a calling party.

49-21-01.7. **Powers in general.** The commission has the power to:

1. Investigate all methods and practices of telecommunications companies.
2. Require telecommunications companies 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 as to rates, prices, and terms and conditions of service in effect and used by the company, and all other information deemed relevant and necessary by the commission in the exercise of its authority.

4. Compel obedience to its lawful orders by proceedings of mandamus or injunction or other 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, upon notice and subject to the provisions of chapter 28-32.
6. Employ and fix the compensation of experts, engineers, auditors, attorneys, and other such assistance for complaints, investigations, and other proceedings relating to telecommunications companies. The expense of any hearings, and the compensation and actual expenses of any employees of the commission while engaged upon any such hearings must, upon the order of the commission, be paid by the telecommunications company involved in such hearings. The commission shall ascertain the exact cost and expenditure. After giving the telecommunications company notice and opportunity to demand a hearing, and after a hearing, if any, is held, the commission may render a bill and make an order for payment. The bill and order must be delivered by certified mail or personal delivery to the managing officer of the telecommunications company. Upon receipt of the bill and order for payment, the telecommunications company has thirty days within which to pay the amount billed. All amounts not paid within thirty days after receipt of the bill and order for payment thereafter draw interest at the rate of six percent per annum. Amounts collected by the commission under this subsection relating to expenses of the regulatory reform review commission must be deposited in the general fund of the state treasury. All other amounts collected by the commission under this subsection must be deposited in a special account within the public service commission.
7. Act upon an application for a certificate of public convenience and necessity under chapter 49-03.1 consistent with section 253 of the federal act, provided a telecommunications company is not required to obtain a certificate of public convenience and necessity to resell telecommunications services.
8. Mediate or arbitrate agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.
9. Approve or reject agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.
10. Receive and approve or reject a statement of generally available terms under section 252(f) of the federal act.
11. Determine whether to terminate a rural telephone company's exemption under section 251(f) of the federal act.

12. Designate telecommunications companies as eligible telecommunications carriers to receive universal service support under sections 214 and 254 of the federal act.
13. Designate geographic service areas for the purpose of determining universal service obligations and support mechanisms under the federal act.
14. Adopt rules consistent with state law as are necessary to carry out the powers in subsections 7 through 13 provided the rules may not impose obligations on a telecommunications company that are different or greater than obligations imposed under the act.

49-21-01.8 Eligible telecommunications company requirements. A telecommunications company may not be an eligible telecommunications carrier unless the company offers all services supported by federal universal service mechanisms throughout the study area.

49-21-02 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.

49-21-02.1. Authority to exempt from regulation. Repealed by S.L. 1999, ch. 411, § 13.

49-21-02.2. Cross-subsidization prohibited. Revenues obtained from regulated telecommunications services, including essential and nonessential

telecommunications services, may not be used to subsidize or otherwise give advantage to a telecommunications company in its unregulated services, and revenues from essential telecommunications services may not be used to subsidize or otherwise give advantage to a telecommunications company in its nonessential telecommunications services. The commission may require a 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 other acts that will assist the commission in enforcing this section. The price charged for an unregulated telecommunications service or a nonessential telecommunications service must cover the cost of providing that service.

49-21-02.3. Directors, trustees, officers, and managers - Immunity from civil liability. Directors, trustees, and officers of mutual telephone companies, and the manager of a mutual telephone company who is the person most responsible for carrying out the policies and directives of the trustees, officers, or board of directors, are immune from civil liability for any act or omission relating to their service or function as a director, trustee, officer, or manager, unless the act or omission constitutes gross or willful negligence or gross or willful misconduct.

49-21-02.4. Unauthorized telecommunications service.

1. A telecommunications company shall comply with the provision of title 47, Code of Federal Regulations, part 64, subpart k, in effect on January 1, 2001, regarding changes in a subscriber's selection of a provider of telecommunications service. The commission shall enforce the provisions of title 47, Code of Federal Regulations, part 64, subpart k, in effect on January 1, 2001.
2. A telecommunications company may not initiate an intrastate telecommunications service to a subscriber without authorization. A subscriber for whom an intrastate telecommunications service is initiated without authorization is absolved from liability for charges imposed by the service provider if the subscriber notifies the service provider within thirty days after the first billing for the unauthorized service. Upon being informed by the subscriber that an unauthorized initiation of service has occurred, the telecommunications company providing the service shall cancel the service, inform the subscriber of the thirty-day absolution period, and refund any payments made by the subscriber for the service during the absolution period. The telecommunications company may rebill for the service provided before cancellation if the company determines the service initiation was authorized. The remedies provided in this section are in addition to any other remedies available at law.
3. If the commission finds an emergency exists that requires ex parte action, the commission may issue a cease and desist order without prior notice against a telecommunications company that the commission has reason to believe is in violation of this section or title 47, Code of Federal

Regulations, part 64, subpart k, in effect on January 1, 2001. The cease and desist order must be:

- a. Directed against the telecommunications company's marketing of telecommunications service, not the company's provision of service to current customers;
 - b. Accompanied by service on the telecommunications company of a commission order opening an investigation or a formal complaint regarding the company's compliance with this section; and
 - c. Accompanied by service on the telecommunications company of a notice of opportunity to be heard on the cease and desist order within fifteen days of issuance of the cease and desist order.
4. A telecommunications company that violates this section is deemed to have committed an unlawful practice in violation of section 51-15-02 and is subject to all the provisions, procedures, and penalties of chapter 51-15.

49-21-03. Articles of incorporation - Telephone - Telegraph. Repealed by S.L. 1985, ch. 515, § 26.

49-21-04 Price schedules filed with the commission. Each telecommunications company shall file with the commission in such form and detail as it may require, subject to considerations for maintaining trade secrets or commercial confidentiality:

1. Schedules showing all prices, including those prices set by contract and the individual unbundled or unpackaged price of any essential service, in effect at the time for any telecommunications service rendered to the public by such telecommunications company within this state;
2. All rules and regulations which in any manner affect the prices charged or to be charged for such service; and
3. All new prices and any price changes of essential services at least twenty days before the effective date of the new price or price change, unless the commission upon application and for good cause allows a lesser time, and except prices changed in accordance with subsection 1 of section **49-21-01.3**, which will be filed at least ten days before the expiration of the thirty-day period mandated in that section. No price or price change is effective until filed in accordance with this chapter.

49-21-04.1. Maximum and minimum rates - Changes. Notwithstanding the provisions of section 49-05-05 to the contrary, for a telecommunications company that elects to remain subject to the commission's rate and rate of return regulation, 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.

49-21-05. Schedule of prices to be on file for public inspection. The commission may require any telecommunications company to keep on file and accessible to the public, subject to considerations for maintaining trade secrets or commercial confidentiality, at any city in which the telecommunications company has a public office, a schedule of such prices for essential telecommunications services as the commission may deem necessary.

49-21-06. (Effective through July 31, 2001) Complaint against prices. There is a rebuttable presumption that prices for essential telecommunications services in effect on July 1, 1989, are fair and reasonable. Any person may complain to the commission, or the commission on its own motion may complain and begin investigation, of the reasonableness, fairness, or adequacy of any price for any essential or nonessential service. Any notice and hearing by the commission will be provided in accordance with chapter 28-32 and the commission can only set aside, after notice and hearing, any price for a service it investigates pursuant to this section which it determines to be unreasonable, unfair, or inadequate. This section must be construed to authorize the commission to set aside any unreasonable, unfair, or inadequate price set by a telecommunications company for the connection between facilities of two or more telecommunications companies and for the transfer of telecommunications. This section may not be construed to authorize the commission to set aside any price in effect on January 1, 1999, for intrastate switched access service provided by any rural telephone company, as defined under Public Law No. 104-104 [110 Stat. 56; 47 U.S.C. 153 (37)], upon complaint by an interexchange telecommunications company that the price is unreasonably high, except a price for intrastate switched access service in an exchange may be set aside to the extent it is unreasonably high as a consequence of recovery of costs of intrastate switched access service in that exchange from any explicit federal or state mechanisms to preserve and advance universal service; a sale, assignment, or other transfer of ownership or control of that exchange after January 1, 1999; or a reduction of prices after January 1, 1999, for any other services provided in that exchange.

(Effective after July 31, 2001) Complaint against prices. There is a rebuttable presumption that prices for essential telecommunications services in effect on July 1, 1989, are fair and reasonable. Any person may complain to the commission, or the commission on its own motion may complain and begin investigation, of the reasonableness, fairness, or adequacy of any price for any essential or nonessential service. Any notice and hearing by the commission will be provided in accordance with chapter 28-32 and the commission can only set aside, after notice and hearing, any price for a service it investigates pursuant to this section which it determines to be unreasonable, unfair, or inadequate. This section must be construed to authorize the commission to set aside any unreasonable, unfair, or inadequate price set by a telecommunications company for the connection between facilities of two or more telecommunications companies and for the transfer of telecommunications, provided

this section may not be construed to set aside any price set by contract between telecommunications companies and in effect on July 1, 1989, upon complaint by one of the parties to the contract that the price is unreasonably high.

49-21-07. Discrimination unlawful. It shall be unlawful for any telecommunications company to make any unjust or unreasonable discrimination in prices, practices, or service for or in connection with like telecommunications service, or give any undue or unreasonable preference or advantage to any person or telecommunications company or to subject any person or telecommunications company to any undue or unreasonable prejudice or disadvantage in the service rendered by it to the public or to a telecommunications company, or to charge or receive for any such service rendered, more or less than the prices provided for in the schedules then on file with the commission. A telecommunications company providing intrastate interexchange message toll services shall charge uniform prices on all routes where it offers such services. A telecommunications company providing local exchange service and message toll and private line services shall cover in its price for message toll and private line services, the price of providing access service in its own exchanges. Nothing in this chapter shall be construed to prevent any telecommunications company from offering or providing volume or other discounts based on reasonable business practices; from introducing promotional offerings, including special incentives, competitive discounts, and price waivers; from passing through any state, municipal or local taxes or fees to the specific geographic areas from which the taxes or fees originate; or from furnishing free telecommunications service or service at reduced prices to its officers, agents, servants, or employees.

49-21-08. Unnecessary duplication of exchanges prohibited. Whenever any 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 telecommunications company the right to compete with such 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 telecommunications company from extending its lines within the limits of any city in which it at the time is lawfully operating a local exchange.

49-21-08.1. Dialing parity - IntraLATA equal access. The provisioning of dialing parity on an intraLATA basis, otherwise known as 1 + intraLATA equal access, may not be required to be provided by any company providing local exchange service prior to January 1, 2000. Every local exchange carrier shall provide intraLATA dialing parity no later than January 1, 2000.

49-21-09. Telecommunications - Connections. Whenever a connection can be made reasonably between the facilities of two or more telecommunications companies for the transfer of telecommunications and public convenience and necessity will be subserved thereby, the commission may require that such connection be made

and may order that telecommunications be transmitted and transferred by the companies, as provided in this section. When, after notice and hearing in accordance with chapter 28-32, the commission finds that public convenience and necessity require the use by one telecommunications company of facilities or services of another telecommunications company, and that such use will not result in irreparable injury to the owner or other users of such facilities or services, nor any substantial detriment to the facilities or services, and that such telecommunications companies have failed to agree upon such use or the terms and conditions or compensation for the same, the commission, by order, may direct that such use be permitted, and may prescribe reasonable compensation, terms, and conditions. If such use is directed, the telecommunications company to which the use is permitted is liable to the owner or other users of such facilities or services for such damage as may result therefrom to the property of such owner or other users thereof.

49-21-10. Transmitting telecommunications from other telecommunications companies. Every telecommunications company operating in this state shall receive, transmit, and deliver, without discrimination or delay, the telecommunications of every other telecommunications company with which a connection has been made.

49-21-10.1. Excessive charges - Refunds. When complaint has been made to the commission or by the commission on its own motion concerning any price for a telecommunications service, and the commission has found, upon a hearing after notice given as required by law, that the telecommunications company has charged for such service a price in excess of the price permitted under section 49-21-01.3, has discriminated unreasonably, or has otherwise violated a statute, rule, or order, the commission may order that the telecommunications company make due refunds or reparations, with interest from the date of collection.

49-21-10.2. Quality of service - Procedure and remedies. Any customer, and the commission on its own motion, may complain concerning the quality of service provided by a telecommunications company providing telecommunications services in the state. Any person, and the commission on its own motion, may complain concerning any violation of law or rule or order of the commission. The commission, pursuant to chapter 28-32, will provide notice of the complaint and the time and place of hearing. Whenever the commission finds, after notice and hearing in accordance with chapter 28-32, that the services of a telecommunications company are inadequate, or the company is in violation of a law, rule, or order, the commission may, in addition to the penalties prescribed in chapter 49-07, direct the telecommunications company to take whatever remedial actions are reasonable and necessary to provide adequate service or to bring the company into compliance with the applicable law, rule, or order. The commission may not adopt any rule or order under this section applicable to retail services unless the standards of service required by the rule or order are applicable to all telecommunications companies providing similar service in the relevant market area.

49-21-11. Mutual telephone company - Company carrier. Repealed by S.L. 1985, ch. 515, § 26.

49-21-12. Assessments - Expenses - Sinking fund. Repealed by S.L. 1985, ch. 515, § 26.

49-21-13. Extension of line and system. Repealed by S.L. 1985, ch. 515, § 26.

49-21-13.1. Telephone cooperatives - Sale of physical plant - Approval. No mutual aid cooperative or cooperative association that is a telecommunications company as defined in section 49-21-01 may sell, transfer, or convey, within the period of any single calendar year, physical plant in excess of five percent in value of the cooperative, based upon the most recent audit of the books of the cooperative, unless consent has been obtained by vote of not less than two-thirds of the entire membership of the cooperative cast at any regular or special meeting called for that purpose, after notice in writing to all the membership of the cooperative not less than twenty nor more than thirty days prior to the date of such meeting. Nothing in this section prohibits the transfer of assets in exchange for physical plant of equal monetary value to any public or private person or organization.

49-21-14. Connections with other telephone systems permitted. Section 49-21-08 shall not be construed to prohibit any mutual telephone company, corporation, or limited liability company with lines in rural sections from making physical connections with the telephone systems of two or more cities through such lines, as the benefits to its members may merit.

49-21-15. Physical connections. Any telephone company operating within a city shall not deny physical connection to any mutual telephone company operating in the community adjoining said city, nor shall any contract between any such companies abridge in any way the rights of either company to extend its lines or to make physical connection with any other telephone company.

49-21-16. Forfeiture for failure to comply with order. Repealed by S.L. 1985, ch. 515, § 26.

49-21-17. Additional definitions. In section 49-21-18 unless the context or other subject matter otherwise requires:

1. "Party line" shall mean a subscribers' line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.
2. "Emergency" shall mean a situation in which property or human life are in jeopardy and the prompt summoning of aid is essential.

49-21-18. Party line - Refusal to surrender - Emergency. It shall be unlawful for any person willfully to refuse to yield or surrender the use of a party line to another person when such party line is needed by such other person requesting it for the purpose of permitting such other person to report a fire or summon police, medical or

other aid in case of emergency. It shall also be unlawful for any person willfully to ask for or request the use of a party line on the pretext that an emergency exists, knowing that no emergency in fact exists.

49-21-19. Distributors of telephone directories to print notice therein. Every telephone directory distributed to the members of the general public in this state or in any portion thereof which lists the calling numbers of telephones of any telephone exchange located in this state shall contain a notice which explains the offenses prohibited by section 49-21-18. Such notice shall be printed in type which is not smaller than any other type on the same page and be preceded by the word "warning" printed in type at least as large as the largest type on the same page. This section shall not apply to those directories distributed solely for business advertising purposes, commonly known as classified directories.

49-21-20. Penalty. Any person who shall violate any of the provisions of sections 49-21-18 and 49-21-19 shall be guilty of a class B misdemeanor.

49-21-21. Fraudulent telecommunications - Penalty. Repealed by S.L. 1975, ch. 106, § 673.

49-21-22. Regulatory reform review commission - Appointments - Compensation - Report to legislative council. Repealed by S.L. 1991, ch. 600, § 17.

49-21-22.1. Regulatory reform review commission - Appointments - Compensation - Report to legislative council. Expired under S.L. 1995, ch. 453, § 2.

49-21-22.2. Regulatory reform review commission - Appointments - Compensation - Report to legislative council. The regulatory reform review commission shall review the operation and effect of North Dakota telecommunications law on an ongoing basis during the interims between the 1999 and 2003 legislative sessions and shall submit a report regarding its operation and effect to the legislative council in 2000 and 2002. The regulatory reform review commission may review the effects of federal universal service support mechanisms on telecommunications companies and consumers in this state and may review the preservation and advancement of universal service in this state, consistent with the Communications Act of 1934 [47 U.S.C. 151 et seq.], as amended by the Telecommunications Act of 1996 [Pub. L. 104-104; 110 Stat. 56] during these interims and may include any findings and recommendations in its reports to the legislative council. The regulatory reform review commission consists of one member of the public service commission who has responsibility for telecommunications regulation, two members of the senate, appointed by the president of the senate, and two members of the house of representatives, appointed by the speaker. The chairman of the legislative council shall designate the chairman and vice chairman of the regulatory reform review commission from the legislative members of the commission. The public service commission shall provide technical assistance and the legislative council shall provide staff services to the

regulatory reform review commission. The legislative members of the regulatory reform review commission are entitled to the same compensation as provided for members of committees of the legislative council. The legislative council shall pay the compensation for the legislative members of the regulatory reform review commission. The public service commission shall pay the expenses of the member of the public service commission serving on the regulatory reform review commission and the public service commission staff providing technical assistance while carrying out their duties.

49-21-23. Construction of Facilities - Cost recovery.

1. A telecommunications company is not required to construct, modify, or extend telecommunications facilities at the request or for the use of another telecommunications company except as required by the federal act.
2. The commission must allow a telecommunications company to recover in advance from the benefited company or customer any nonrecurring costs incurred to comply with a commission order, including any order issued under section 49-21-10.2, for construction modification or extension of the company's network in excess of the normal course of business and primarily for the benefit of another telecommunications company or for a particular customer, and not due to any negligence or misconduct on the part of the company. This subsection does not apply to:
 - a. Costs incurred to extend or modify a network to provide for interconnection, collocation, network access, or the sale of unbundled network elements, unless those costs are identifiable and specific to a particular end-user customer, or wholesale services to another telecommunications company under the federal act;
 - b. Costs incurred to remedy discriminatory or unequal treatment that has been found to exist by the commission or an arbitrator; or
 - c. Costs for which some other recovery treatment is specifically provided in federal or state law.

49-21-24. Prohibited acts - Arbitration.

1. A telecommunications company may not:
 - a. Discriminate against another provider of telecommunications services by refusing or delaying access to the company's services;
 - b. Discriminate against another provider of telecommunications services by refusing or delaying access to essential facilities on terms and conditions no less favorable than those the telecommunications company provides to itself and its affiliates. A

local telecommunications facility, feature, function, or capability of the telecommunications company's network is an essential facility if all of the following apply:

- (1) Competitors cannot practically or economically duplicate the facility, feature, function, or capability or obtain the facility, feature, function, or capability from another source.
 - (2) The use of the facility, feature, function, or capability by potential competitors is technically and economically feasible.
 - (3) Denial of the use of the facility, feature, function, or capability by competitors is unreasonable.
 - (4) The facility, feature, function, or capability will enable competition; or
- c. Degrade the quality of access or service provided to another provider of telecommunications services.
2. A claim that a telecommunications company has violated this section may be resolved by arbitration or by a complaint filed with the commission. Arbitration of a claim must be conducted by a single arbitrator engaged in the practice of law under the rules of the American arbitration association. All expedited procedures prescribed by the American arbitration association rules apply. The arbitrator's award is final and binding and may be entered in any court having jurisdiction thereof. A complaint filed with the commission must be referred to the office of administrative hearings for hearing and issuance of recommended findings of fact, conclusions of law, and an order pursuant to chapter 28-32. Each party shall bear its own costs and attorney's fees and shall equally share in the fees and expenses of the arbitration or administrative hearing.

49-21-25. Competitive local exchange companies. All competitive local exchange companies are subject to the requirements of this chapter regarding purchase of essential telecommunications services, section 49-21-01.4; access code number usage, section 49-21-01.5; call identification services, section 49-21-01.6; cross subsidization, section 49-21-02.2; price schedules, sections 49-21-04 and 49-21-05; price complaints, section 49-21-06; discrimination, section 49-21-07; dialing parity, section 49-21-08.1; connections, sections 49-21-09 and 49-21-10; refunds, section 49-21-10.1; and quality of service, section 49-21-10.2.

49-21-26. Fees. Unless the governing body of a political subdivision has submitted to the qualified electors of that political subdivision the question of whether to impose a fee other than a fee for management costs and a majority of the voters approved the fee, a political subdivision may not impose after December 31, 1998, any

fee to recover from a telecommunications company for the use of its right of way, other than a fee for its management costs. If requested by a political subdivision, in order to accomplish a necessary public improvement on the right of way, a telecommunications company promptly shall remove its facilities from the public right of way or shall relocate or adjust its facilities within the public right of way at no cost to the political subdivision. Necessary public improvements are limited to construction and maintenance activities directly related to improved transportation and safety. A political subdivision may recover from a telecommunications company only those management costs caused by the telecommunications company activity in the public right of way. A fee or other obligation under this section must be imposed on a competitively neutral basis. When a political subdivision's management costs cannot be attributed to only one entity, those costs must be allocated among all users of the public rights of way, including the political subdivision itself. The allocation must reflect proportionately the costs incurred by the political subdivision as a result of the various types of uses of the public right of way. This section does not prohibit the collection of a franchise fee as permitted in section 49-21-29.

49-21-27. In-kind services. A political subdivision, in lieu of a fee imposed under section 49-21-26, may not require in-kind services by a telecommunications company right-of-way user or require in-kind services as a condition of the use of the political subdivision's public right of way.

49-21-28. Arbitration.

1. A telecommunications company that is denied the use of or access to a political subdivision right of way, that has its right-of-way permit revoked, or that believes that the fees imposed on that company by the political subdivision do not conform to the requirements of section 49-21-26 may request in writing that the denial, revocation, or fee imposition be reviewed by the governing body of the political subdivision. The governing body of the political subdivision shall act within thirty days of the request. A decision by the governing body affirming the denial, revocation, or fee imposition must be in writing and supported by written findings establishing the reasonableness of the decision.
2. Upon affirmation by the governing body of the denial, revocation, or fee imposition, the telecommunications company may do either of the following:
 - a. With the consent of the governing body, submit the matter to final, binding arbitration. Binding arbitration must be before an arbitrator selected by the political subdivision and the telecommunications company. If the parties are unable to agree on an arbitrator, the matter must be resolved by the three-person arbitration panel made up of one arbitrator selected by the political subdivision, one arbitrator selected by the telecommunications company, and one arbitrator selected by the other two arbitrators. The cost of a single

arbitrator must be paid equally by the political subdivision and the telecommunications company. If a three-person arbitration panel is selected, each party shall pay the cost of its own arbitrator, and the parties shall jointly pay the cost of the third arbitrator and of the arbitration. Each party to the arbitration shall pay its own costs, disbursements, and attorney fees.

- b. Bring an action in district court to review a decision of the governing body made under this section.

49-21-29. Franchise ordinance not superseded. Sections 49-21-26, 49-21-27, and 49-21-28 do not modify or supersede the rights and obligations of a political subdivision and the telecommunications company established by the terms of any existing franchise. A city that collects a city franchise fee under a franchise may not collect a fee from that entity under section 49-21-26. A political subdivision that collects a fee prohibited by section 49-21-26 on January 1, 1999, may continue to collect that fee.

49-21-30. Cost recovery. A telecommunications company that is assessed either management costs by a political subdivision pursuant to section 49-21-26 or a city franchise fee pursuant to section 49-21-29 is entitled to recover those costs. If the telecommunications company serves customers within the boundaries of the political subdivision imposing the management costs, the costs may be recovered only from those customers.

CHAPTER 49-21.1 ELECTRIC TRANSMISSION LINES

Section

49-21.1-01	Definitions.
49-21.1-02	Operations within ten feet prohibited.
49-21.1-03	Warning sign required on equipment.
49-21.1-03.1	Work near high voltage overhead lines - Safety requirements - Notice - Costs.
49-21.1-04	Penalty.
49-21.1-05	Exceptions.

49-21.1-01. Definitions. As used in this chapter:

1. "High voltage" means a voltage in excess of six hundred volts between conductors or between any single conductor and the ground.
2. "Overhead lines or overhead conductors" means electrical conductors installed above the ground, except conductors deenergized and grounded or enclosed in protective conduit or other metal covering.

49-21.1-01.1. Electricity transmission and distribution lines - Differentiation. Except for purposes of transmission facility siting under chapter 49-22 and regulatory accounting including the determination of the demarcation between federal and state jurisdiction over transmission in interstate commerce and local distribution, for purposes of this title and chapters 57-33 and 57-33.1, lines designed to operate at a voltage of 41.6 kilovolts or more are transmission lines, and lines designed to operate at a voltage less than 41.6 kilovolts are distribution lines.

49-21.1-02. 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 [3.05 meters] of any high voltage overhead conductor.

49-21.1-03. 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 [3.66 meters] which reads: "Unlawful to operate this equipment within ten feet [3.05 meters] of high voltage lines". Each day's failure to post or maintain such signs shall constitute a separate violation.

49-21.1-03.1. Work near high voltage overhead lines - Safety requirements - Notice - Costs. If any work is performed within six feet [1.83 meters] of any high

voltage overhead line, or if mechanical equipment or machinery used near high voltage overhead lines is capable of motion to within ten feet [3.05 meters] of any high voltage overhead line, the person responsible for the work shall notify the operator of the high voltage overhead line of the intent to work near the line. The work may be pursued only after the person and the operator of the line have provided protection for endangered persons by mechanical or insulated barriers, by deenergizing and grounding the line, or by temporary relocation of the line. The person working near the overhead line must pay the operator actual expenses necessary to meet the requirements of this chapter, except that the operator of the line is responsible for the cost if the line was installed closer to an existing fixture or structure than the minimum clearance required by the latest edition of the national electrical safety code, as adopted by the public service commission. The operator of the line need not take the precautions until the person working near the line pays the necessary expenses. Within five business days after payment of those expenses, or as otherwise agreed upon in writing by the person responsible for the work, the operator of the line shall complete the arrangements for protection of endangered persons.

49-21.1-04. Penalty. Any person who violates this chapter is subject to a civil penalty not to exceed one thousand dollars. The civil penalty may be recovered by action prosecuted by the state's attorney of the county where the violation occurred.

49-21.1-05. Exceptions. This chapter does 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 on telecommunications, coaxial, signaling, and other communication circuits or their supporting structures, or other circuits and their supporting structures which are not high voltage.
3. The operation or maintenance of railroad equipment or vehicles on fixed rails or railroad right of way.
4. Work by any employee of an industrial plant on the electrical system of the plant.
5. Work by any employee of an electrical or communications contractor performed under the employer's supervision.
6. The operation of highway vehicles, agricultural equipment, or agricultural aircraft which in normal use may incidentally pass within the ten-foot [3.05-meter] clearance limitation.
7. Governmental entities responding to an emergency situation.

8. Work by any employee of a surface coal mining company in the course of coal mining activities.
9. The state and its agencies.

CHAPTER 49-22

Energy Conversion and Transmission Facility Siting Act

Section	
49-22-01	Short title.
49-22-02	Statement of policy.
49-22-03	Definitions.
49-22-04	Ten-year plans - Contents.
49-22-05	Inventory of potential sites - Criteria - Public hearings. Repealed.
49-22-05.1	Inventory of exclusion and avoidance areas - Criteria.
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49-22-07	Certificate of site compatibility or route permit required.
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49-22-08	Application for a certificate - Notice of Filing - Amendment - Designation of a site or corridor.
49-22-08.1	Application for a permit - Notice of filing - Amendment - Designation of a route.
49-22-09	Factors to be considered in evaluating applications and designations of sites, corridors, and routes.
49-22-09.1	Approval of hydroelectric transmission facilities by legislative assembly required.
49-22-10	Designation of sites and corridors. Repealed.
49-22-11	Approval of a specific transmission facility route within a designated corridor. Repealed.
49-22-12	Emergency certification. Repealed.
49-22-12.1	Emergency certification. Repealed.
49-22-13	Public hearings - Notice.
49-22-14	Advisory committees - Appointment - Compensation.
49-22-14.1	Cooperation with state and federal agencies.
49-22-15	Public participation - Meetings - Records. Repealed.
49-22-16	Effect of issuance of certificate or permit - Local land use, zoning, or building rules, regulations, or ordinances - State agency rules.
49-22-16.1	Unfair tactics in acquiring land or easements for a facility - Court action - Cancellation of easement - Penalty.
49-22-16.2	Easements for a facility - Terms.

49-22-17	Improvement of sites or locations.
49-22-18	Rules and regulations.
49-22-19	Hearing - Judicial review.
49-22-20	Revocation or suspension of certificate or permit.
49-22-21	Penalties.
49-22-22	Application fees - Additional fees - Deposit in general fund.
49-22-23	Transfer. Repealed.

49-22-01. Short title. This chapter may be cited as the "North Dakota Energy Conversion and Transmission Facility Siting Act".

49-22-02. Statement of policy. The legislative assembly finds that the construction of energy conversion facilities and transmission facilities affects the environment and the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and upon the welfare of the citizens of this state by providing that no energy conversion facility or transmission facility shall be located, constructed, and operated within this state without a certificate of site compatibility or a route permit acquired pursuant to this chapter. The legislative assembly hereby declares it to be the policy of this state to site energy conversion facilities and to route transmission facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy, sites and routes shall be chosen which minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

49-22-03. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Certificate" means the certificate of site compatibility or the certificate of corridor compatibility issued under this chapter.
2. "Commission" means the North Dakota public service commission.
3. "Construction" includes any clearing of land, excavation, or other action that would affect the environment of the site after April 9, 1975, but does not include activities incident to preliminary engineering or environmental studies.
4. "Corridor" means the general location of a transmission facility.
5. "Energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:
 - a. Generation of fifty thousand kilowatts or more of electricity;

- b. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas per day, regardless of the end use of the gas;
 - c. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
 - d. Enrichment of uranium minerals.
- 6. "Facility" means an energy conversion facility, transmission facility, or both.
- 7. "Permit" means the permit for the construction of a transmission facility within a designated corridor issued under this chapter.
- 8. "Person" includes any individual, firm, association, partnership, cooperative, corporation, limited liability company, or any department, agency, or instrumentality of a state or of the federal government, or any subdivision thereof.
- 9. "Power emergency" means an electric transmission line and associated facilities that have been damaged or destroyed by natural or manmade causes resulting in a loss of power supply to consumers of the power.
- 10. "Route" means the specific location of a transmission facility within a designated corridor.
- 11. "Site" means the location of an energy conversion facility.
- 12. "Transmission facility" means any of the following:
 - a. An electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts. "Transmission facility" does not include a temporary transmission line loop that is:
 - (1) Connected and adjacent to an existing transmission facility that was sited under this chapter;
 - (2) Within the corridor of the sited facility and does not cross known exclusion or avoidance areas;
 - (3) Less than one mile [1.61 kilometers] long; and
 - (4) In place for less than one year.
 - b. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide. This subdivision does not apply to an oil or gas pipeline gathering system. For purposes of

this chapter, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport, or pipelines and associated facilities used to collect gas from the well to the gas processing facility.

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

13. "Utility" means any person engaged in and controlling the generation, manufacture, refinement, or transmission of electric energy, gas, liquid hydrocarbons, or liquid hydrocarbon products, including electric power generation or transmission, coal gasification, coal liquefaction, petroleum refinement, uranium enrichment, and the transmission of coal, gas, liquid hydrocarbons, or liquid hydrocarbon products, or the transmission of water from or to any energy conversion facility.

49-22-04. Ten-year plans - Contents. Every utility that owns or operates, or plans within the next ten years to own, operate, or start construction on any facility shall annually develop a ten-year plan as specified in this section. On or before July first of each year, the 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 must contain the following information:

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

5. A statement of the projected demand for the service rendered by the utility for the ensuing ten years and the underlying assumptions for the projection, with that information being as geographically specific as possible, and a description of the manner and extent to which the utility will meet the projected demands.

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

49-22-05. Inventory of potential sites - Criteria - Public hearings.
Repealed by S.L. 1977, ch. 447, § 16.

49-22-05.1. Exclusion and avoidance areas - Criteria. The commission shall develop criteria to be used in identifying exclusion and avoidance areas and to guide the site, corridor, and route suitability evaluation and designation process. Except for transmission lines in existence before July 1, 1983, areas within five hundred feet [152.4 meters] of an inhabited rural residence must be designated avoidance areas. This criterion does not apply to a water pipeline. The five hundred foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing. The criteria may also include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.

49-22-06. Facility development plans. Repealed by S.L. 1977, ch. 447, § 16.

49-22-07. Certificate of site compatibility or route permit required. A utility may not begin construction of an energy conversion facility or transmission facility in the state, or exercise the right of eminent domain in connection with that construction, without first having obtained a certificate of site compatibility or a route permit from the commission pursuant to this chapter. The facility must be constructed, operated, and maintained in conformity with the certificate or permit and any terms, conditions, or modifications of the certificate or permit. A certificate or permit may be transferred, subject to the approval of the commission, to any person who agrees to comply with its terms, conditions, and modifications. If a power emergency exists which necessitates the relocation of a portion of an electric transmission line and associated facilities from the designated route, the owner of the line shall give telephonic notice to the commission in advance of the relocation. The line may then be relocated to restore power as soon as practicable. After the line has been relocated, the owner shall file with the commission a request to approve the relocated route.

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.

49-22-07.2. Waiver of procedures and time schedules. Any utility which proposes to construct an energy conversion facility or a transmission facility within the state may make an application to the commission for a waiver of any of the procedures or time schedules set forth in this chapter or in the rules adopted pursuant to 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, or, after hearing and upon a finding that a demonstrable emergency exists which requires immediate construction and that adherence to the procedures and time schedules would jeopardize the utility's system, may issue an order waiving specified procedures and time schedules required by this chapter or by the rules adopted pursuant to this chapter, including, but not limited to, applications, notices, and hearings, and may forthwith issue a certificate of site compatibility, a certificate of corridor compatibility, or a route permit, with such conditions as the commission may require.

49-22-08. Application for a certificate - Notice of filing - Amendment – Designation of a site or corridor.

1. An application for a certificate shall be 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. A description of mitigative measures that will be taken to minimize all foreseen adverse impacts resulting from the location, construction, and operation of the proposed facility.
 - h. An evaluation of the proposed site or corridor with regard to the applicable considerations set out in section 49-22-09 and the criteria established pursuant to section 49-22-05.1.
 - i. Such other information as the applicant may consider relevant or the commission may require.

2. After determining that the application is complete, the commission shall serve a notice of filing of the application on such persons and agencies that the commission may deem appropriate and shall publish a notice of filing of the application in the official newspaper of each county in which any portion of the site or corridor is proposed to be located.
3. A copy of the application shall be furnished to any person or agency, upon request to the commission within thirty days of either service or publication of the notice of filing.
4. An application for an amendment of a certificate shall be in such form and contain such information as the commission shall prescribe.
5. The commission may designate a site or corridor for a proposed facility following the study and hearings provided for in this chapter. Any designation shall be made in accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to section 49-22-05.1, and the considerations set out in section 49-22-09 in a finding with reasons for the designation, and shall be made in a timely manner no later than six months after the filing of a completed application for a certificate of site compatibility or no later than three months after the filing of a completed application for a certificate of corridor compatibility. 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. The commission shall indicate the reasons for any refusal of designation. Upon designation of a site or corridor, the commission shall issue a certificate of site compatibility or a certificate of corridor compatibility with such terms, conditions, or modifications deemed necessary.

49-22-08.1. Application for a permit - Notice of filing - Amendment - Designation of a route.

1. An application for a route permit for a transmission facility within a designated corridor shall be filed no later than two years after the issuance of the certificate and shall be in such form as the commission may prescribe, containing the following information:
 - a. A description of the type, size, and design of the proposed facility.
 - b. A description of the location of the proposed facility.
 - c. An evaluation of the proposed route with regard to the applicable considerations set out in section 49-22-09 and the criteria established pursuant to section 49-22-05.1.

- d. A description of mitigative measures that will be taken to minimize all foreseen adverse impacts resulting from the location, construction, and operation of the proposed facility.
 - e. A description of the right-of-way preparation and construction and reclamation procedures.
 - f. A statement setting forth the manner in which: (1) The utility will inform affected landowners of easement acquisition, and necessary easement conditions and restrictions. (2) The utility will compensate landowners for easements, without reference to the actual consideration to be paid.
 - g. Such other information as the utility may consider relevant or the commission may require.
2. After determining that the application is complete, the commission shall serve a notice of filing of the application on such persons and agencies that the commission may deem appropriate and shall publish a notice of filing of the application in the official newspaper of each county in which any portion of the designated corridor is located.
 3. A copy of the application shall be furnished to any person or agency, upon request to the commission within thirty days of either service or publication of the notice of filing.
 4. An application for an amendment of a permit shall be in such form and contain such information as the commission shall prescribe.
 5. The commission shall designate a route for the construction of a transmission facility following the study and hearings provided for in this chapter. This designation shall be made in accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to section 49-22-05.1, and the considerations set out in section 49-22-09 in a finding with reasons for the designation, and shall be made in a timely manner no later than six months after the filing of a completed application. 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. Upon designation of a route the commission shall issue a permit to the applicant with such terms, conditions, or modifications deemed necessary.

49-22-09. Factors to be considered in evaluating applications and designation of sites, corridors, and routes. The commission shall be guided by, but

is not limited to, the following considerations, where applicable, to aid the evaluation and designation of sites, corridors, and routes:

1. Available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment.
2. The effects of new energy conversion and transmission technologies and systems designed to minimize adverse environmental effects.
3. The potential for beneficial uses of waste energy from a proposed energy conversion facility.
4. Adverse direct and indirect environmental effects which cannot be avoided should the proposed site or route be designated.
5. Alternatives to the proposed site, corridor, or route which are developed during the hearing process and which minimize adverse effects.
6. Irreversible and irretrievable commitments of natural resources should the proposed site, corridor, or route be designated.
7. The direct and indirect economic impacts of the proposed facility.
8. Existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route.
9. The effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites.
10. The effect of the proposed site or route on areas which are unique because of biological wealth or because they are habitats for rare and endangered species.
11. Problems raised by federal agencies, other state agencies, and local entities.

49-22-09.1. 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 July 1, 1985, or any extension thereof issued after July 1, 1985.

49-22-10. Designation of sites and corridors. Repealed by S.L. 1979, ch. 504, § 15.

49-22-11. Approval of a specific transmission facility route within a designated corridor. Repealed by S.L. 1979, ch. 504, § 15.

49-22-12. Emergency certification. Repealed by S.L. 1977, ch. 447, § 16.

49-22-12.1. Emergency certification. Repealed by S.L. 1979, ch. 504, § 15.

49-22-13. Public hearings - Notice.

1. The commission shall hold a public hearing in each county in which any portion of a site, corridor, or route is proposed to be located in an application for a certificate or a permit. At the public hearing, any person may present testimony or evidence relating to the information provided in the application, the criteria developed pursuant to section 49-22-05.1, and the factors to be considered pursuant to section 49-22-09. When more than one county is involved the commission may hold a consolidated hearing in one or more of the affected counties. A hearing for any county shall not be consolidated if five or more affected landowners in such county file a petition with the commission within ten days of the publication of the notice of hearing.
2. The commission shall not be required to hold a public hearing on an application for the transfer of a certificate or a permit, or an application for a waiver of procedures and time schedules, but shall publish a notice of opportunity for a public hearing in the official newspaper of each county in which any portion of the facility or the proposed site, corridor, or route is located. If requested by any interested person and good cause has been shown therefor, the commission shall hold a public hearing. Where more than one county is involved, the commission may hold a consolidated hearing in one or more of the affected counties.
3. One or more public hearings shall be held at a location or locations determined by the commission concerning the following matters:
 - a. A substantial or material change in the criteria established pursuant to section 49-22-05.1.
 - b. A substantial or material change in the rules adopted pursuant to section 49-22-18.
 - c. The revocation or suspension of a certificate or permit.

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

49-22-14. Advisory committees - Appointment - Compensation. The commission may appoint one or more advisory committees to assist it in carrying out its duties under this chapter. Committees appointed to evaluate sites or corridors considered for designation shall be composed of as many persons as may be appointed by the commission, but shall include a majority of public representatives; at least one representative from the state department of agriculture, a public or municipally owned utility, a private investor-owned utility, and a cooperatively owned utility; and one representative from each county and city in which an energy conversion facility or transmission facility is proposed to be located. Members of advisory committees shall be reimbursed, within the limits of legislative appropriations, for any necessary expenses in the amounts provided by law for state officials.

49-22-14.1. Cooperation with state and federal agencies. The commission may, and is encouraged to, cooperate with and receive and exchange technical information and assistance from and with any department, agency, or officer of any state or of the federal government to eliminate duplication of effort, to establish a common data base, or for any other purpose relating to the provisions of this chapter and in furtherance of the statement of policy contained herein.

49-22-15. Public participation - Meetings - Records. Repealed by S.L. 1979, ch. 504, § 15.

49-22-16. Effect of issuance of certificate or permit - Local land use, zoning, or building rules, regulations, or ordinances - State agency rules.

1. The issuance of a certificate of site compatibility or a route permit shall, subject to subsections 2 and 3, be the sole site or route approval required to be obtained by the utility.
2. A certificate of site compatibility for an energy conversion facility shall not supersede or preempt any local land use, zoning, or building rules, regulations, or ordinances and no site shall be designated which violates local land use, zoning, or building rules, regulations, or ordinances. A permit for the construction of a transmission facility within a designated corridor may supersede and preempt any local land use, zoning, or building rules, regulations, or ordinances upon a finding by the commission that such rules, regulations, or ordinances, as applied to the proposed route, are unreasonably restrictive in view of existing

technology, factors of cost or economics, or needs of consumers regardless of their location. Without such a finding by the commission, no route shall be designated which violates local land use, zoning, or building rules, regulations, or ordinances.

3. Utilities subject to this chapter shall obtain state permits that may be required to construct and operate energy conversion facilities and transmission facilities. A state agency in processing a utility's facility permit application shall be bound to the decisions of the commission with respect to the site designation for the energy conversion facility or the corridor or route designation for the transmission facility and with respect to other matters for which authority has been granted to the commission by this chapter.
4. No site or route shall be designated which violates the rules of any state agency. A state agency with jurisdiction over any aspect of a proposed facility shall present the position of the agency at the public hearing on an application for a certificate, a permit, or a waiver, which position shall clearly state whether the site, corridor, or route being considered for designation will be in compliance with such agency's rules. For purposes of this chapter it shall be presumed that a proposed facility will be in compliance with a state agency's rules if such agency fails to present its position on the proposed site, corridor, or route at the appropriate public hearing.

49-22-16.1. 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 this chapter 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's 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 commission.
5. Upon receiving a copy of a memorandum opinion or order issued by a district court pursuant to this section, the 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.

49-22-16.2. Easements for a facility - Terms. Any easement for an electric transmission facility as defined in this chapter acquired contractually by a utility after July 1, 1979, shall give the landowner the option of receiving a single sum payment for the easement or receiving payment in annual installments of equal amounts including interest on the outstanding balance to be paid by the utility at a rate equal to the average rate paid during that year by the Bank of North Dakota on a certificate of deposit in an amount equal to the outstanding balance. The first annual installments shall be prorated to July first and all following annual installments shall fall due on July first. The option provided herein shall not apply to any easement providing for compensation of less than five thousand dollars. In the event the landowner elects to receive the compensation in annual payments, the benefits unpaid at the time of sale of the real estate to which the easement attaches shall accrue to the purchaser of said real estate thereafter. The utility right-of-way agent shall inform the property owner of the owner's option to choose annual installments.

49-22-17. Improvement of sites or locations. Utilities which have acquired an energy conversion facility site or transmission line route in accordance with the provisions of this chapter may proceed to construct or improve such site or route for the intended purposes at any time, subject to subsections 2 and 3 of section 49-22-16; provided, that if such construction and improvement commences more than four years after a certificate or permit for the site or route has been issued, then the utility must certify to the commission that such site or route continues to meet the conditions upon which the certificate of site compatibility or transmission facility construction permit was issued.

49-22-18. Rules and regulations. The commission shall adopt rules and regulations in conformity with the provisions of this chapter and to prescribe methods and procedures required therewith.

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.

49-22-20. Revocation or suspension of certificate or permit. A certificate of site compatibility or permit for the construction of a transmission facility may be revoked or suspended for:

1. Any material false statement in the application or in accompanying statements or studies required of the applicant.
2. Failure to comply with the certificate or permit or any terms, conditions, or modifications contained therein.
3. Violation of the provisions of this chapter or rules or regulations issued pursuant to this chapter by the commission.
4. A determination by a district court pursuant to section 49-22-16.1.

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 willfully engages in any of the following conduct shall be subject to a civil penalty of 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.

- 4. Notwithstanding any other provision of this chapter, the commission may, by injunctive procedures, without bond or other undertaking, proceed against any person who willfully engages in any conduct described in subsection 3. No liability shall accrue to the commission or its authorized representative in proceeding against any person pursuant to this section.

49-22-22. Application fees - Additional fees - Deposit in general fund.

- 1. Every applicant for a certificate of site compatibility 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 facility as defined in the federal energy regulatory commission uniform system of accounts. Every applicant for a certificate of corridor compatibility 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 facility as defined in the federal energy regulatory commission uniform system of accounts. Every applicant for a waiver shall pay to the commission an application fee in the amount which would be required for an application for a certificate of site or corridor compatibility for the proposed facility. If a waiver is not granted for a proposed facility, such application fee paid shall be allowed as a credit against fees payable under this section in connection with an application under this chapter for a certificate or permit for the proposed facility. 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.

49-22-23. Transfer. Repealed by S.L. 1977, ch. 447, § 16.

CHAPTER 49-23

ONE-CALL EXCAVATION NOTICE SYSTEM

49-23-01	Definitions.
49-23-02	Notice to excavators and underground facility operators.
49-23-03	Notification center - Participation - Establishment.
49-23-04	Excavation.
49-23-05	Precautions to avoid damage.
49-23-06	Damage to facilities - Penalty.
49-23-07	Effect on local ordinances.

49-23-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Abandoned" means no longer in service and physically disconnected from a portion of the facility or from any other facility that is in use or still carries services.
2. "Board" means the board of directors of the nonprofit corporation governing the notification center under section 49-23-03.
3. "Careful and prudent manner" means excavating within twenty-four inches [60.96 centimeters] of the outer edges of an underground facility located manually and marked by the owner or operator by stakes, paint, or other customary manner, and supporting and protecting the uncovered facility.
4. "Damage" means:
 - a. Substantial weakening of structural or lateral support of an underground facility;
 - b. Penetration, impairment, or destruction of any underground protective coating, housing, or other protective device; or
 - c. Impact with or the partial or complete severance of an underground facility to the extent that the facility operator determines that repairs are required.
5. "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, and demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

6. "Emergency responder" means a fire department, a law enforcement officer, or other emergency rescue service.
7. "Excavation" means any operation in which earth, rock, or other materials in or below the ground is moved or otherwise displaced by means of hand or power tools, power equipment, or explosives and includes grading, trenching, digging, ditching, drilling, augering, tunneling, boring, scraping, and cable or pipe plowing and driving. The term does not include:
 - a. Opening a grave in a cemetery.
 - b. Plowing, cultivating, planting, harvesting, and similar operations in connection with agricultural activities, unless any of these activities disturbs the soil to a depth of eighteen inches [45.72 centimeters] or more.
 - c. Gardening and landscaping unless it disturbs the soil to a depth of twelve inches [30.48 centimeters] or more.
 - d. Normal maintenance of roads and streets if the maintenance does not change the original grade and does not involve the road ditch.
 - e. Normal repair and maintenance of track and track bed by a railroad on its own right of way.
8. "Excavator" means a person who conducts excavation.
9. "Holiday" means New Year's Day, Martin Luther King Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. When a holiday falls on a Saturday, it is observed on the preceding Friday as if the Friday were the holiday, and when a holiday falls on a Sunday, it is observed on the following Monday as if the Monday were the actual holiday.
10. "Local governmental unit" means a county, township, or city.
11. "Locate" means an operator's markings of an underground facility.
12. "Nonprofit corporation" means a corporation established under chapter 10-33.
13. "Notification center" means a center that receives notice from an excavator of planned excavation or any other request for location and transmits this notice to a participating operator.
14. "Operator" means a person who owns or operates an underground facility, including a master meter operator with underground facilities, or a state or

local governmental entity. The department of transportation is not considered an operator for the department's facilities buried on the department's rights of way. A person is not considered an operator solely because the person is an owner or tenant of real property where underground facilities are located if the underground facilities are used exclusively to furnish services or commodities on that property.

15. "Underground facility" means an underground line, facility, system, and its appurtenances used to produce, store, convey, transmit, or distribute communications, data, electricity, power, television signals, heat, gas, oil, petroleum products, water, steam, sewage, hazardous liquids, and other similar substances. Privately owned and operated underground facilities which do not extend beyond the boundary of the private property are excluded.
16. "Unexpected occurrence" includes a fire, flood, earthquake or other soil or geologic movement, riot, accident, damage to a subsurface installation requiring immediate repair, or sabotage.
17. "Water" includes potable water, wastewater, and storm water.

49-23-02. Notice to excavators and underground facility operators. A local governmental entity that issues permits for an activity involving excavation shall display an excavator's and operator's notice at the location where permits are obtained. An excavator's and operator's notice and a copy of this chapter must be furnished to each person obtaining a permit for excavation. The notification center shall prescribe an excavator's and operator's notice. The notice must inform excavators and operators of their obligation to comply with this chapter. The center shall furnish to local governmental units:

1. A copy of the notice and this chapter;
2. A copy of the display required under this section; and
3. The telephone number and mailing address of the notification center.

49-23-03. Notification center - Participation - Establishment.

1. An operator shall participate in and share in the costs of the statewide notification center operated by a vendor selected under this section.
2. An excavator licensed under this chapter shall participate in and share in the costs of a statewide notification center on a per call basis. An operator, installing the operator's own facilities, may not be charged as an excavator.
3. An operator shall participate in and share the costs of the one-call excavation notice system by:

- a. Submitting the information required by the notification center to allow the center to notify the operator of excavation activity;
 - b. Updating the information provided to the notification center on a timely basis;
 - c. Installing and paying for equipment reasonably requested by the notification center to facilitate receipt of notice of excavation from the center;
 - d. Paying the costs charged by the notification center on a timely basis; and
 - e. Receiving and responding to excavation notices, including emergency notices.
4. A nonprofit corporation shall govern the notification center. The initial incorporators of the corporation may solicit bids for any services provided for the operation of the center. The corporation shall provide advance notice of the first organizational meeting by publication in qualified legal newspapers and in appropriate trade journals and by written notice to all appropriate trade associations.
- a. The nonprofit corporation must be incorporated by seventeen initial incorporators, with one member representing the house of representatives and one member representing the senate appointed by the legislative council, one member representing telecommunications companies offering local exchange service to fewer than fifty thousand subscribers, one member representing telecommunications companies offering local exchange service to fifty thousand or more subscribers, one member representing rural water systems, one member representing rural electric cooperatives, one member representing investor-owned electric utilities, one member representing investor-owned natural gas utilities, one member representing cable television systems, one member representing cities with a population of fewer than five thousand, one member representing cities with a population of at least five thousand, one member representing counties, one member representing underground interstate carriers of gas, one member representing interstate carriers of petroleum, one member representing interstate carriers of telecommunications services, one member representing contractors who perform excavation services, and one member representing the production sector of the American petroleum institute. The initial incorporators must represent and be designated by operators, excavators, and other persons eligible to participate in the center. The legislative members are entitled to the same compensation and expenses as

provided for members of committees of the legislative council. The legislative council shall pay the compensation for the legislative members.

- b. The initial incorporators shall establish, before August 1, 1996, a board of directors of the nonprofit corporation which consists of eight members representing the participants in the center. The board shall establish a competitive bidding procedure to select a vendor to provide the notification service, establish a procedure by which members of the center share the costs of the center on a fair, reasonable, and nondiscriminatory basis, and do all other things necessary to implement the purpose of the center. Any agreement between the center and a vendor for the notification service may be modified from time to time by the board, and any agreement shall be reviewed by the board at least once every three years, with an opportunity to receive new bids, if desired, by the board. An operator may submit a bid and be selected to contract to provide the notification center service.
- c. Members of the board and any of its agents are immune from any liability of any kind based on any acts or omissions in the course of the performance of responsibilities in an official capacity except for bodily injury arising out of accidents caused by or contributed to by the negligence of the board member or agent.
- d. The board shall aid the state's attorneys of the various counties in the enforcement of this chapter and the prosecution of any violations. The board may institute a civil action for an injunction to enjoin violations of this chapter without proof that anyone suffered actual damages.
- e. The notification center must be in operation by March 1, 1998.

49-23-04. Excavation.

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

- a. The name, address, and telephone number of the person making the notification;
 - b. The name, address, and telephone number of the excavator;
 - c. The date and time when excavation is scheduled to begin;
 - d. The depth of planned excavation;
 - e. The type and extent of excavation being planned, including whether the excavation involves tunneling or horizontal boring;
 - f. Whether the use of explosives is anticipated and any other information as may be required by the notification center; and
 - g. The location of the excavation by any one or more of the following means:
 - (1) A specific street address;
 - (2) A reference to a platted lot number of record; or
 - (3) A specific quarter section by section number, range, township, and county. In this case, the location shall be further described by coordinates measured in feet from the nearest one-fourth corner or section corner.
2. The notification center shall:
- a. Provide a toll-free telephone number and assign an inquiry identification number to each excavation notice and retain a record of all excavation notices received for at least six years.
 - b. Immediately transmit the information contained in an excavation notice to every operator that has an underground facility in the area of the proposed excavation.
 - c. Inform the persons giving notice of an intent to engage in an excavation activity the names of participating operators of underground facilities to whom the notice will be given.
 - d. Establish procedures for assuring positive response from the affected operator in all emergency excavation notices.
3. a. An operator, within forty-eight hours, or any extension of that period, after receiving an excavation notice from the center, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator, shall locate and

mark or otherwise provide the approximate horizontal location of the underground facilities of the operator.

- b. For purposes of this section, the approximate horizontal location of the underground facilities is a strip of land two feet [60.96 centimeters] on either side of the underground facilities. This subdivision does not apply to an underground facility to convey water.
- c. When an operator cannot establish the exact location of the underground facility to convey water, the operator shall mark the location as accurately as possible and the excavator may proceed with caution. When excavation operations approach the estimated location of the underground facility to convey water, the exact location of the facility must be determined by safe and acceptable means. The uncovered facility must be supported and protected to prevent damage.
- d. Markers used to designate the approximate location of underground facilities must follow the current color code standard used by the American public works association.
- e. If the operator cannot complete marking of the excavation area before the excavation commencement time stated in the excavation notice, the operator shall promptly contact the excavator.
- f. After facilities are located by an operator, an excavator shall notify the notification center if:
 - (1) The excavator postpones the excavation commencement time stated in the excavation notice by more than forty-eight hours, or any extension of that period, or cancels the excavation;
 - (2) The markings have been obliterated or obscured;
 - (3) Weather conditions have impeded visibility of the markings;
 - (4) The site shows evidence of recent excavation; or
 - (5) The excavator has other reason to believe the markings are incorrect or missing.
- g. An excavator may not use a location more than ten days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected.

- h. If in the course of excavation the excavator is unable to locate the underground facility or discovers that the operator of the underground facility has incorrectly located the underground facility, the excavator shall promptly notify the operator or, if unknown, the one-call notification center.
 - i. A facility owner, excavator, or other person may not present or presume that an underground facility is abandoned, or treat an underground facility as abandoned, unless the facility has been verified as abandoned by reference to installation records or by testing. The notification center shall establish a method of providing personnel from a facility owner qualified to safely inspect and verify whether a facility is abandoned or inactive if necessary. An inactive facility must be considered active for purposes of this section.
- 4. If an excavation is being made in a time of emergency, all reasonable precautions must be taken to protect the underground facilities. In an emergency, the excavator shall give notification in compliance with this chapter, as soon as practical, that an emergency exists. As soon as practical, each operator shall provide all location information that is reasonably available to the excavator.

49-23-05. Precautions to avoid damage. To avoid damage to and minimize interference with underground facilities in and near the construction area, an excavator shall:

- 1. Maintain a clearance between an underground facility and the cutting edge or point of any mechanized equipment, considering the known limit of control of the cutting edge or point to avoid damage to the facility.
- 2. Provide support in a manner approved by the operator for underground facilities in and near the construction area, including backfill operations to protect the facilities. Backfill must be of a material equal to or better in both quality and quantity to the existing backfill.
- 3. Assume ownership of materials used to mark the facility and when possible remove all tangible marking materials used to mark the facility.
- 4. Assume the cost of excavation to expose the facility unless otherwise indicated by owner of facility.
- 5. Conduct the excavation in a careful and prudent manner.
- 6. Properly manage spoil material to prevent shifting or falling material that could damage belowground facilities.

49-23-06. Damage to facilities - Penalty.

1.
 - a. If any damage occurs to an underground facility or its protective covering, the excavator shall notify the operator as soon as reasonably possible. When the operator receives a damage notice, the operator shall dispatch, as soon as reasonably possible, personnel to the damage area to investigate. If the damage endangers life, health, or property, the excavator responsible for the work shall take immediate action to protect the public and property and to minimize the hazard until arrival of the operator's personnel or until emergency responders have arrived and taken charge of the damaged area.
 - b. An excavator shall delay backfilling in the immediate area of the damaged underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise. The repair of damage must be performed by the operator or by qualified personnel authorized by the operator.
 - c. An excavator who knowingly damages an underground facility and who does not notify the operator as soon as reasonably possible or who backfills in violation of subdivision b is guilty of a class A misdemeanor.
2.
 - a. If an excavator fails to comply with this chapter or damages an underground facility, the excavator is liable for all damages caused by the failure to comply with this chapter and for all damages to the facilities and must reimburse the operator for the cost of repair and restoration, loss of product, and interruption of service occurring because of the damage or injury to the facilities, together with reasonable costs and expenses of suit, including reasonable attorney's fees.
 - b. Reimbursement to the operator under this section is not required if the damage to the underground facility was caused by the sole negligence of the operator or the operator failed to comply with sections 49-23-03 and 49-23-04.

49-23-07. Effect on local ordinances. A person with a permit for excavation from the state or a local governmental unit is subject to this chapter. This chapter does not affect or impair local ordinances, charters, or other provisions of law requiring permits to be obtained before excavating.

CHAPTER 54-44.8 COMMUNICATIONS IMPAIRED TELECOMMUNICATIONS SERVICES

Section	
54-44.8-01	Definitions.
54-44.8-02	Responsibilities of the administrator.
54-44.8-03	Program established - Purpose.
54-44.8-04	Responsibilities of the department.
54-44.8-05	Telecommunications relay service - Requirements.
54-44 S-06	Gifts and grants.
54-44 8-07	Telecommunications services account for the communications impaired.
54-44.8-08	Telephone access line and radio communications access surcharge.
54-44.8-09	Records - Audit.

54-44.8-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Administrator" means the individual employed by the chief information officer of the state to oversee administration of the program.
2. "Commission" means the public service commission.
3. "Communications impaired" means the condition of an individual who is deaf, hearing impaired, speech impaired, or mobility impaired so as to be unable to use a telephone readily purchased from a retail store.
4. "Department" means the information technology department.
5. "Disadvantaged" means residing in a household that has a median income not more than the applicable median income in this state, except the term includes residing in a household that has a median income not more than one hundred fifty percent of the applicable median income in this state if the resident is deaf.
6. "Local exchange company" means a telecommunications company that provides telephone access lines to members of the general public who are its customers.
7. "Program" means the program established under section 54-44.8-03.
8. "Radio communications access" means the radio access between a customer of a radio communications service provider and the provider.
9. "Radio communications service provider" means a telecommunications company that provides radio communication service or cellular service to members of the general public who are its customers.
10. "Specialized telecommunications equipment" means a device that, when connected to a telephone, enables or assists a person who is communications

impaired to communicate with another person utilizing the telephone network. The term may include telecommunications devices for the deaf, amplifiers, and signaling devices.

11. "Telecommunications relay service" means a statewide service through which a communications-impaired individual, using specialized telecommunications equipment, may send and receive messages to and from a noncommunications-impaired individual whose telephone is not equipped with specialized telecommunications equipment and through which a noncommunications-impaired individual, by using voice communication, may send and receive messages to and from a communications-impaired individual.
12. "Telephone access line" means the facilities between a serving central office and the customer of a local exchange company which are required to provide access to the local and toll network.

54-44.8-02. Responsibilities of the administrator. The administrator shall oversee the department's administration of the program. The administrator shall:

1. Review and recommend policies and procedures governing administration of the program and ensure the program is in compliance with any applicable state or federal law or rule;
2. Prepare a budget for administration of services under the program; Page No. 280
3. Monitor the expenditures of funds for the program;
4. Monitor the quality of the program and the satisfaction of the users; and
5. Perform any other duties necessary to oversee administration of the program.

54-44.8-03. Program established - Purpose.

1. The department shall establish and administer a program to provide telecommunications relay service to persons who are communications impaired.
2. The program shall provide a telecommunications relay service to allow persons who are communications impaired to communicate via the telecommunications network with noncommunications-impaired persons.
3. The department of human services shall furnish specialized telecommunications equipment to meet the needs of individuals who are communications impaired and who might be otherwise disadvantaged in their ability to obtain such equipment. The department of human services shall determine eligibility and may provide the specialized telecommunications equipment to individuals determined eligible within the limits of funding made available to the department of human services through gifts and grants received under section 54-44.8-06 and from funding made available by the information technology department from the surcharge collected pursuant to section 54-44.8-08, which are appropriated.

54-44.8-04. Responsibilities of the department. The department shall:

1. Develop rules, policies, and procedures, as may be necessary, to govern administration of the program.
2. Implement the telecommunications relay service as described in subsection 2 of section 54-44.8-03 by July 26, 1993, to the extent funds generated by the surcharge described in section 54-44.8-10 are available.
3. Perform any other duties necessary to properly administer the program.

54-44.8-05. Telecommunications relay service - Requirements.

1. The department shall contract with a qualified provider to design and implement a telecommunications relay service that fulfills the requirement of subsection 2 of section 54-44.8-03. The department shall award the contract for this service to the offeror whose proposal is the most advantageous to the state; considering price, the interests of the communications-impaired community in having access to a high quality and technologically advanced telecommunications system, and all other factors listed in the request for proposals.
2. Except in cases of willful misconduct, gross negligence, or bad faith, neither the department nor the provider of the telecommunications relay service, nor the employees of the provider, are liable for any damages or claims for relief arising out of or resulting from the establishment of, participation in, or operation of the telecommunications relay service.
3. The department shall require, under the terms of the contract, that:
 - a. The service be available statewide for operation seven days a week, twenty-four hours per day, including holidays, for both interstate and intrastate calls.
 - b. The service relay all messages promptly and accurately.
 - c. The service maintain the privacy of persons using the system.
 - d. The provider preserve the confidentiality of all telephone communications.
 - e. The service conform to any standards established by applicable state or federal laws or rules.

54-44.8-06. Gifts and grants. The department of human services may accept contributions and gifts and may apply for and accept grants, in money or otherwise, to the program. Monetary contributions, gifts, and grants must be deposited in the state treasury to be credited to the department of human services operating account.

54-44.8-07. Telecommunications services account for the communications impaired. The telecommunications services account for the communications impaired consists of all surcharges billed and collected pursuant to section 54-44.8-08. Subject to legislative

appropriation, the department may expend moneys from the account for purposes of implementing this chapter.

54-44.8-08. Telephone access line and radio communications access surcharge.

1. Before May first of each year, the department shall report all cost data and other information to the commission. Each local exchange company and radio communications service provider shall report all information requested by the department in order to determine the number of telephone access lines and radio communications access service numbers. Before June first of each year, the commission shall determine the amount of a surcharge, not to exceed eleven cents per telephone access line per month, based upon available cost data and other information provided by the department necessary to cover the costs of providing intrastate telecommunications relay service as provided in section 401 of the federal Americans with Disabilities Act of 1990 [47 U.S.C. 225], including the cost of implementing and administering this chapter which includes the provision of specialized equipment to eligible persons, and taking into consideration any surplus in the telecommunications services account. The surcharge is imposed effective on its determination by the commission and must be billed and collected as provided in this chapter. The surcharge is subject to section 49-21-01.3. Funding for the interstate portion of the state telecommunications relay service must be provided in a manner consistent with rules and orders adopted by the federal communications commission in implementing the federal Americans with Disabilities Act. The department shall notify each local exchange company and radio communications service provider, in writing, of the amount of the monthly surcharge determined by the commission.
2. Each local exchange company and radio communications service provider shall include and identify the surcharge determined under subsection 1 in its monthly billing for service to a customer of the company or provider.
3. Each customer of a local exchange company or radio communications service provider is liable for payment to the local exchange company or radio communications service provider of any surcharge imposed pursuant to this chapter. The local exchange company or radio communications service provider is not liable for any uncollected surcharge, nor does the company have an obligation to take any legal action to enforce the collection of any surcharge that is unpaid by its customers.
4. No customer of a local exchange company may be required to pay the surcharge on more than one hundred telephone access lines per account and no customer of a radio communications service provider may be required to pay the surcharge on more than one hundred radio communications access service numbers per account in this state.
5. Except as provided in subsection 6, a local exchange company or radio communications service provider shall transmit all surcharges billed and collected to the department no later than the last day of the month following the

end of the calendar quarter in which the surcharge is collected. The administrator shall remit the surcharges received to the state treasurer. The state treasurer shall deposit all surcharges received in the state treasury to the credit of the telecommunications services account for the communications impaired.

6. Each local exchange company or radio communications service provider may deduct and retain five percent of the total surcharges billed and collected each month to cover its administrative expense in complying with the requirements of subsections 2, 3, 4, and 5.

54-44.8-09. Records - Audit. Each local exchange company or radio communications service provider shall maintain a record of the surcharges billed and collected pursuant to section 54-44.8-08 for a period of three years from the date of billing or collection, respectively. The commission may audit each local exchange company's or radio communications service provider's records to assure compliance with this chapter.

CHAPTER 57-40.6 EMERGENCY SERVICE COMMUNICATIONS SYSTEMS

Section	
57-40.6-01	Definitions.
57-40.6-02	Authority of counties or cities to impose excise tax on telephone access lines - Procedure.
57-40.6-03	Payment of tax by telephone company subscriber.
57-40.6-03.1	Enhanced 911 data base management charges.
57-40.6-04	Tax collection procedure.
57-40.6-05	Restriction on use of tax proceeds.
57-40.6-06	Data Base.
57-40.6-07	Use of the furnished information.
57-40.6-08	Emergency services communication system or emergency instructions - Liability.
57-40.6-09	Governor to appoint an emergency services communications system advisory committee – Standards and guidelines – Report. [Expired]

57-40.6-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Emergency services communication system" means a statewide, countywide, or citywide radio system, land lines communication network, or emergency 911 telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for law enforcement, fire, medical, or other emergency services.
2. "Telephone access line" means the principal access to the telephone company's switched network including an outward dialed trunk or access register.

57-40.6-02. Authority of counties or cities to impose excise tax on telephone access lines - Procedure. The governing body of a county or city may impose an excise tax on the use of telephone access lines in accordance with the following requirements:

1. The governing body shall adopt a resolution that proposes the adoption of the excise tax permitted under this section. The resolution must specify an effective date for the tax which is no more than two years before the expected implementation date of the emergency services communication system to be funded by the excise tax. The resolution must include a provision for submitting the proposed excise tax to the electors of the county or city before the imposition of the tax is effective. The resolution must specify a tax that does not exceed one dollar per month per telephone access line.
2. The question of the adoption of the excise tax must be submitted on a ballot on which the ballot title of the proposition includes the maximum monthly rate of the proposed tax authorized under subsection 1. The question of the adoption of the excise tax may be submitted to electors at a general, primary, or special election

or at a school district election if the boundaries of the school district are coterminous with the boundaries of the governing body adopting the resolution proposing the adoption of the excise tax. The tax is not effective unless it is approved by a majority of the electors voting on the proposition. The ballot must be worded so that a "yes" vote authorizes imposition of the tax for an initial six-year period.

3. Any political subdivision that desires to increase the tax, subject to the limitations in subsection 1, before the end of the six-year term, must use the same ballot procedure originally used to authorize the tax. The new ballot question may apply to only the proposed increase and not to the original amount or the original term. If the increase is approved, the new amount may be collected for the balance of the original six-year term. If the tax authorized by this section is approved by the electors, the tax may be reimposed for six additional years without resubmitting the question to the electors.
4. In any geographic area, only one political subdivision may impose the excise tax.
5. In the interest of public safety, where the customers exchange boundary and the boundary of the political subdivision imposing the tax do not coincide, and where all of the political subdivisions within the exchange boundary have not complied with subsection 1, and where a majority of the E911 subscribers within the exchange boundary have voted for the tax, an exchange customer residing outside the political subdivision may receive E911 services by signing a contract agreement with the political subdivision providing the emergency telecommunications system. The telephone company may collect an additional tax, equal in amount to the basic tax Page No. 328 on those subscribers within the exchange boundary. The additional tax amounts collected must be remitted as provided in this chapter.

57-40.6-03. Payment of tax by telephone company subscriber. The resolution imposing a tax under section 57-40.6-02 must include a requirement that the telephone company collect the tax from the subscriber. In its billing statement to the subscriber, the telephone company shall state the amount of the tax separately.

57-40.6-03.1. Enhanced 911 data base management charges. Any telephone company charges for enhanced 911 data base management must be on a per telephone access line basis.

57-40.6-04. Tax collection procedure. A resolution adopted under section 57-40.6-02 must include adequate procedures for the administration and collection of the tax, including a provision for reimbursement to the telephone company for the actual costs of administration in collection of the tax. The resolution must also include a provision that the tax be paid by the telephone company within thirty days after it is collected from the subscriber.

57-40.6-05. Restriction on use of tax proceeds. The county may not use the proceeds of the tax imposed under section 57-40.6-02 for any purpose other than establishing or operating the emergency services communication system.

57-40.6-06. Data base. In 911 systems that have been approved by the state emergency service communication system advisory committee, any telecommunications company providing emergency 911 service shall provide, on an annual basis, current customer names, addresses, and telephone numbers to each public service answering point within each 911 system and shall update the information according to a schedule prescribed by the state 911 advisory committee's standards and guidelines. Information provided under this section must be provided in accordance with the transactional record disclosure requirements of the federal Electronics Communications Privacy Act of 1986, 18 U.S.C. 2703 (C)(1)(B)(iii).

57-40.6-07. Use of the furnished information. Names, addresses, and telephone numbers provided to a 911 public service answering point under section 57-40.6-06 are private data and may be used only for verifying the location or identity, or both, for response purposes only, of a person calling a 911 answering point for emergency help. The information furnished may not be used or disclosed by the public service answering point or its agents or employees for any other purpose except under a court order.

57-40.6-08. Emergency services communication system or emergency instructions - Liability.

1. A public agency, public safety agency, or local exchange telecommunications company that provides access to an emergency system at or below cost, or any officer, agent, or employee of any public agency or local exchange telecommunications company, is not liable for any civil damages as a result of any act or omission except willful and wanton misconduct or gross negligence in connection with developing, adopting, operating, or implementing any plan or system as provided under this chapter.
2. A person who gives emergency instructions through a system as provided under this chapter, to persons rendering services in an emergency at another location, or any person following such instructions in rendering such services, is not liable for any civil damages as a result of issuing or following the instructions, unless issuing or following the instructions constitutes willful and wanton misconduct or gross negligence.
3. This section does not waive, limit, or modify any existing immunity or other defense of the state or any political subdivision, or any of its agencies, departments, Page No. 329 commissions, boards, officers, or employees, nor does it create any claim for relief against any of these entities.

57-40.6-09. Governor to appoint an emergency services communication system advisory committee - Standards and guidelines - Report. Expired (see note).

Note.

Section 3 of chapter 720, S.L. 1987, as amended by section 6 of chapter 686, S.L. 1991, and section 1 of chapter 570, S.L. 1993, provides; "This Act is effective through June 30, 1996, and after that date is ineffective."

RULES

ARTICLE 69-06

ENERGY CONVERSION AND TRANSMISSION FACILITY SITING

Chapter

69-06-01	General Provisions
69-06-02	Utility Reporting Requirements
69-06-03	Letter of Intent
69-06-04	Certificate of Site or Corridor Compatibility
69-06-05	Transmission Facility Permit
69-06-06	Waiver of Procedures and Time Schedules
69-06-07	Emergency Certificate or Permit. Repealed.
69-06-08	Criteria
69-06-09	Continuing Suitability of Certificate or Permit

CHAPTER 69-06-01 GENERAL PROVISIONS

Section

69-06-01-01	Definitions
69-06-01-02	Procedure for Public Hearings
69-06-01-03	Advisory Committees
69-06-01-04	Applications
69-06-01-05	Designated State Agencies and Officers

69-06-01-01. Definitions. The terms used throughout this article have the same meanings as in North Dakota Century Code chapter 49-22, and in addition:

1. "Act" means the North Dakota Energy Conversion and Transmission Facility Siting Act, North Dakota Century Code chapter 49-22.
2. "Avoidance criteria" means criteria that remove areas from consideration for energy conversion facility sites and transmission facility routes unless it is shown that under the circumstances there are no reasonable alternatives.
3. "Criteria" means policy statements that guide and govern the preparation of the inventory of exclusion and avoidance areas, and the energy conversion facility site and transmission facility corridor and route suitability evaluation process.
4. "Designated corridor" means a corridor for which a certificate has been issued by the commission.
5. "Designated route" means a route for which a permit has been issued by the commission.
6. "Designated site" means a site for which a certificate has been issued by the commission.
7. "Exclusion criteria" means criteria that remove areas from consideration for energy conversion facility sites and transmission facility routes.
8. "Historical resource" means a district, site, building, structure, or other object which possesses significance in history, archaeology, paleontology, or architecture, or has other cultural value to the state or local community.
9. "Party aggrieved" means a person who will be affected in a manner different from the effect on the general public.

10. "Policy criteria" means criteria that guide and govern the selection of energy conversion facility sites and transmission facility corridors and routes in order to maximize benefits during the construction and operation of a facility.
11. "Refinement" means the action or process of purifying.
12. "Selection criteria" means criteria that guide and govern the selection of energy conversion facility sites and transmission facility corridors and routes in order to minimize adverse human and environmental impact after the exclusion and avoidance criteria have been applied.
13. "Siting rules" means this article adopted by the commission pursuant to North Dakota Century Code chapter 49-22.
14. "Wetland" means an aquatic area important to the life stages of certain wildlife species as defined by the United States fish and wildlife service.

History: Amended effective August 1, 1979.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-01, 49-22-03, 49-22-05.1, 49-22-07, 49-22-08, 49-22-08.1, 49-22-19

69-06-01-02. Procedure for public hearings.

1. General hearings. A general hearing shall be held prior to the adoption of, or a substantial or material modification to, the criteria, a substantial or material modification or addition to these rules, and the revocation or suspension of a certificate or permit. Notice of a general hearing shall be given by the commission at least twenty days prior to the hearing by publication in the official newspaper of the county where the hearing will be held, in the official newspaper of all counties in which any part of an affected facility is located, and if it is a hearing on the adoption of, or a substantial or material modification or addition to, the criteria or these rules, in all of the state daily newspapers.
2. Application hearings. One or more public hearings shall be held on an application for a certificate or a permit in each county in which any part of the site, corridor, or route is proposed to be located; provided, that the commission by order may consolidate the county hearings. The notice of a hearing on an application for a certificate of corridor compatibility for a transmission facility shall include a map of the appropriate county depicting the proposed corridor and study area. The notice of a hearing on an application for a route permit shall include a map of the appropriate

county depicting the designated corridor and the location of the proposed route and any alternative routes. The maps shall be of a size, style, and legend as specified by the commission. Notice of each hearing shall be given by the commission at least twenty days prior to the hearing, as follows:

- a. By publication in the official newspaper of each county in which any part of the site, corridor, or route is proposed to be located, whether the hearings are consolidated or not, and in such other newspapers that the commission may determine to be appropriate.
 - b. By mail to the following persons in each county in which any part of the site, corridor, or route is proposed to be located:
 - (1) The chairman of the board of county commissioners.
 - (2) The county auditor.
 - (3) The chief executive officer of each city in the county on an application for a certificate for an energy conversion facility.
 - (4) The chief executive officer of each city within a corridor on an application for a certificate or permit for a transmission facility.
 - c. By mail to any state or federal agency authorized to issue a permit required for the construction or operation of the facility.
 - d. By mail to all parties.
 - e. By mail to the state senators and representatives of each legislative district in which any part of the site, corridor, or route is proposed to be located.
 - f. By publication as provided in subdivision a on each city in the county outside of the proposed corridor.
3. Transfer and waiver hearings. The commission, upon determination that an application for the transfer of a certificate or permit or an application for a waiver of procedures and time schedules is complete, shall publish a notice of opportunity for a public hearing, or upon its own motion shall publish a notice of hearing, in the official newspaper of each county in which any part of the site, corridor, or route is located or proposed to be located. A public hearing shall be held on an application if, either within twenty days following the publication of a notice of opportunity any interested person requests and demonstrates good cause for a public

hearing, or the commission determines upon its own motion that there is good cause for a public hearing. Notice of a public hearing shall be given by the commission at least twenty days prior to the hearing by publication in the official newspaper of each county in which the site, corridor, or route is located or proposed to be located.

History: Amended effective August 1, 1979; January 1, 1982.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-13

69-06-01-03. Advisory committees.

1. Public representatives. Persons appointed to an advisory committee to advise and assist the commission in the evaluation of a site or corridor who are to serve as representatives of a city or a county shall be deemed to be the public representatives on that committee.
2. Meetings. Committee meetings shall be scheduled at the discretion of the commission. All meetings of an advisory committee shall be open to the public, and public notice shall be given of the time and place of each meeting. All committee meetings shall be conducted in an informal manner by the commission or its representative, and members of the public and the applicant shall be afforded a reasonable opportunity to participate in the proceedings.
3. Term. All members of an advisory committee shall serve at the pleasure of the commission.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-14

69-06-01-04. Applications.

1. Time. The time in which the commission is required to act in response to an application shall not commence until the commission notifies the applicant in writing that the application is complete.
2. Complete application. An application for a certificate or permit shall be deemed complete when the application contains sufficient information and supporting documentation to enable the commission to process the application.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08, 49-22-08.1

69-06-01-05. Designated state agencies and officers. The following are the designated state agencies and officers entitled to notice when so referred to in this article:

1. Aeronautics commission.
2. Attorney general.
3. Department of agriculture.
4. Department of health.
5. Department of human services.
6. Department of labor.
7. Department of vocational education.
8. Economic development commission.
9. Energy development impact office.
10. Game and fish department.
11. Geological survey.
12. Governor.
13. Highway department.
14. State Historical Society of North Dakota.
15. Indian affairs commission.
16. Job service North Dakota.
17. Land department.
18. Parks and recreation department.
19. State planning division - office of intergovernmental assistance - office of management and budget.
20. Soil conservation committee.

21. State water commission.

History: Effective August 1, 1979.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08, 49-22-08.1

CHAPTER 69-06-02 UTILITY REPORTING REQUIREMENTS

Section

69-06-02-01	Ten-year Plan
69-06-02-02	Filing

69-06-02-01. Ten-year plan. A ten-year plan shall contain the information specified by the commission.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-04

69-06-02-02. Filing.

1. Ten copies of each report shall be filed with the commission, and one copy of each report shall be filed with the county auditor of each county in which any part of a site or corridor is proposed to be located.
2. Notice of the filing of each report shall be given by the utility to each state agency and officer entitled to notice as designated in section 69-06-01-05.

History: Amended effective August 1, 1979.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-04

CHAPTER 69-06-03 LETTER OF INTENT

Section

69-06-03-01

[Filing](#)

69-06-03-02

[Contents](#)

69-06-03-01. Filing. Any utility planning to construct an energy conversion or transmission facility shall file a letter of intent with the commission at least one year prior to the filing of an application for a certificate unless a shorter period is approved by the commission. A letter of intent may be filed for the sole purpose of seeking a determination of whether the commission has jurisdiction over a proposed facility.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-07.1

69-06-03-02. Contents. All letters of intent shall contain the following:

1. A description of the size and type of facility, and the area to be served.
2. A map of the study area for the proposed site or corridor.
3. The anticipated construction and operation schedule.
4. An estimate of the total cost of construction.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-07.1

CHAPTER 69-06-04
CERTIFICATE OF SITE OR CORRIDOR COMPATIBILITY

Section

69-06-04-01

[Application](#)

69-06-04-02

[Designation of Sites and Corridors](#)

69-06-04-01. Application.

1. Form. All applications shall be in such form as the commission may prescribe.
2. Filing. The applicant shall file an original and ten copies of an application with the commission.
3. Notice of filing. The commission shall serve a notice of filing of a complete application on the following:
 - a. The chairman of the board of county commissioners and the auditor of each county in which any part of the site or corridor is proposed to be located.
 - b. The chief executive officer of each city in a county in which any part of an energy conversion facility is proposed to be located.
 - c. The chief executive officer of each city within a proposed corridor for a transmission facility.
 - d. The state agencies and officers entitled to notice as designated in section 69-06-01-05.
 - e. The state senators and representatives of each legislative district in which any part of the site or corridor is proposed to be located.
4. Amendment of application. The commission may allow an applicant to amend its application at any time during the tendency of an application. A rehearing may be required if the commission determines that a proposed amendment, which is received after the hearing process has been completed, materially changes the authority sought.
5. Reapplication. When a certificate is denied and the commission specifies a modification that would make it acceptable, the applicant may reapply. In a reapplication:

- a. The reapplication shall be heard in the same manner as an original application.
- b. The utility shall indicate its acceptance or rejection of the suggested modification.
- c. If a suggested modification is rejected by the applicant, it shall propose an alternative modification.
- d. No initial fee shall be required.
- e. Further additional fees may be required.
- f. Reapplication must be made within six months of the order denying an application.

History: Amended effective August 1, 1979.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08, 49-22-08.1

69-06-04-02. Designation of sites and corridors.

- 1. Requirements of order.
 - a. An order approving the issuance of a certificate shall contain findings that the application, with modifications, if any, meets the site or corridor evaluation process requirements of the Act, and any special conditions the commission may require.
 - (1) Any modifications or special conditions required by the commission shall be deemed to be accepted unless the applicant petitions for a rehearing.
 - (2) If the applicant rejects any modifications or special conditions and proposes alternatives which it would accept, such a proposal shall be treated by the commission as an amendment to the application.
 - (3) If the applicant rejects any modifications or special conditions without either requesting a rehearing or proposing alternatives, the commission shall rescind its order and deny the application.

- b. The width of a corridor must be at least ten percent of its length, but not less than one mile [1.61 kilometers] or greater than six miles [9.66 kilometers] unless approved by the commission.
 - c. An order denying the issuance of a certificate shall contain findings that state:
 - (1) The reason for such denial.
 - (2) What modification in the application would make it acceptable or that there is no modification that would be acceptable based upon the record before the commission.
- 2. Issuance of a certificate. When a site or corridor is approved, the commission shall issue a certificate in accordance with the order which shall:
 - a. Describe the authority granted.
 - b. Contain any special conditions that the commission may require.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08

CHAPTER 69-06-05 TRANSMISSION FACILITY PERMIT

Section

69-06-05-01

[Application](#)

69-06-05-02

[Designation of Route](#)

69-06-05-01. Application.

1. Form. All applications shall be in such form as the commission may prescribe.
2. Filing. The applicant shall file an original and ten copies of an application with the commission.
3. Service. The applicant shall serve one copy of a complete application on the county auditor in each county in which any part of the designated corridor is located.
4. Notice of filing. The commission shall serve a notice of the filing of a complete application on the following:
 - a. The chief executive officer of each city within the designated corridor.
 - b. The state agencies and officers entitled to notice as designated in section 69-06-01-05.
 - c. The chairman of the board of county commissioners of each county in which any part of the designated corridor is located.
 - d. The state senators and representatives of each legislative district in which any part of the designated corridor is located.

History: Amended effective August 1, 1979.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08.1

69-06-05-02. Designation of route.

1. Issuance of a permit. An order approving the issuance of a permit shall:
 - a. Describe the authority granted.

- b. Contain any special conditions that the commission may require.
 - c. Specify any required modifications in the type, design, routing, right-of-way preparation, or construction of the facility.
- 2. Deviations. A deviation from the designated route may be permitted if the deviation does not violate any of the exclusion and avoidance area criteria of this article.
- 3. Variance from permit conditions. The commission may allow a variance from any special condition upon a request which demonstrates the existence of good cause.

History: Amended effective August 1, 1979.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08.1

CHAPTER 69-06-06 WAIVER OF PROCEDURES AND TIME SCHEDULES

Section

69-06-06-01

[Application](#)

69-06-06-02

[Order](#)

69-06-06-01. Application.

1. Form. All applications shall be in such form as the commission may prescribe.
2. Filing. The applicant shall file an original and ten copies of an application with the commission.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-07.2

69-06-06-02. Order.

1. Requirements of order. An order approving or denying all or part of a request shall contain findings in support of such approval or denial and shall describe the procedures and time schedules that are waived.
2. Time requirement. The commission shall issue its order in response to an application containing a request for waiver within three months of the filing of a complete application.
3. Extension of time. Upon a showing of just cause or upon its own motion, the commission may extend the time within which it is required to act in response to an application containing a request for waiver.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-07.2

CHAPTER 69-06-07
EMERGENCY CERTIFICATE OR PERMIT

[Repealed effective August 1, 1979]

CHAPTER 69-06-08 CRITERIA

Section

69-06-08-01

Energy Conversion Facility Siting Criteria

69-06-08-02

Transmission Facility Corridor and Route Criteria

69-06-08-01. Energy conversion facility siting criteria. The following criteria shall guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process.

1. Exclusion areas. The following geographical areas shall be excluded in the consideration of a site for an energy conversion facility, and shall include a buffer zone of a reasonable width to protect the integrity of the area. Natural screening may be considered in determining the width of the buffer zone.
 - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; historic districts; monuments; wilderness areas; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
 - b. Designated or registered state: parks; forests; forest management lands; historic sites; monuments; historical markers; archaeological sites; grasslands; wild, scenic, or recreational rivers; game refuges; game management areas; management areas; and nature preserves.
 - c. County parks and recreational areas; municipal parks; parks owned or administered by other governmental subdivisions; hardwood draws; and enrolled woodlands.
 - d. Prime farmland and unique farmland, as defined by the land inventory and monitoring division of the soil conservation service, United States department of agriculture, in 7 C.F.R. part 657; provided, however, that if the commission finds that the prime farmland and unique farmland that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural productions, such exclusion shall not apply.
 - e. Irrigated land.
 - f. Areas critical to the lifestages of threatened or endangered animal or plant species.

- g. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
- 2. Avoidance areas. The following geographical areas shall not be approved as a site for an energy conversion facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative sites. Economic considerations alone shall not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area shall be included. Natural screening may be considered in determining the width of the buffer zone.
 - a. Historical resources which are not designated as exclusion areas.
 - b. Areas within the city limits of a city or the boundaries of a military installation.
 - c. Areas within known floodplains as defined by the geographical boundaries of the hundred-year flood.
 - d. Areas that are geologically unstable.
 - e. Woodlands and wetlands.
 - f. Areas of recreational significance which are not designated as exclusion areas.
- 3. Selection criteria. A site shall be approved in an area only when it is demonstrated to the commission by the applicant that any significant adverse effects resulting from the location, construction, and operation of the facility in that area as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum.
 - a. The impact upon agriculture:
 - (1) Agricultural production.
 - (2) Family farms and ranches.

- (3) Land which the owner demonstrates has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.
 - (4) Surface drainage patterns and ground water flow patterns.
 - (5) The agricultural quality of the cropland.
- b. The impact upon the availability and adequacy of:
 - (1) Law enforcement.
 - (2) School systems and education programs.
 - (3) Governmental services and facilities.
 - (4) General and mental health care facilities.
 - (5) Recreational programs and facilities.
 - (6) Transportation facilities and networks.
 - (7) Retail service facilities.
 - (8) Utility services.
- c. The impact upon:
 - (1) Local institutions.
 - (2) Noise sensitive land uses.
 - (3) Rural residences and businesses.
 - (4) Aquifers.
 - (5) Human health and safety.
 - (6) Animal health and safety.
 - (7) Plant life.
 - (8) Temporary and permanent housing.
 - (9) Temporary and permanent skilled and unskilled labor.

- d. The cumulative effects of the location of the facility in relation to existing and planned facilities and other industrial development.
- 4. Policy criteria. The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices.
 - a. Recycling of the conversion byproducts and effluents.
 - b. Energy conservation through location, process, and design.
 - c. Training and utilization of available labor in this state for the general and specialized skills required.
 - d. Use of a primary energy source or raw material located within the state.
 - e. Nonrelocation of residents.
 - f. The dedication of an area adjacent to the facility to land uses such as recreation, agriculture, or wildlife management.
 - g. Economies of construction and operation.
 - h. Secondary uses of appropriate associated facilities for recreation and the enhancement of wildlife.
 - i. Use of citizen coordinating committees.
 - j. A commitment of a portion of the energy produced for use in this state.
 - k. Labor relations.
 - l. The coordination of facilities.
 - m. Monitoring of impacts.

History: Amended effective August 1, 1979.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1

69-06-08-02. Transmission facility corridor and route criteria. The following criteria shall guide and govern the preparation of the inventory of exclusion

and avoidance areas, and the corridor and route suitability evaluation process. Exclusion and avoidance areas may be located within a corridor, but at no given point shall such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

1. Exclusion areas. The following geographical areas shall be excluded in the consideration of a route for a transmission facility. A buffer zone of a reasonable width to protect the integrity of the area shall be included. Natural screening may be considered in determining the width of the buffer zone.
 - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; monuments; and wilderness areas.
 - b. Designated or registered state: parks; historic sites; monuments; historical markers; archaeological sites; and nature preserves.
 - c. County parks and recreational areas; municipal parks; and parks owned or administered by other governmental subdivisions.
 - d. Areas critical to the lifestages of threatened or endangered animal or plant species.
 - e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
2. Avoidance areas. The following geographical areas shall not be considered in the routing of a transmission facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility, the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative routes. Economic considerations alone shall not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area shall be included unless a distance is specified in the criteria. Natural screening may be considered in determining the width of the buffer zone.
 - a. Designated or registered national: historic districts; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
 - b. Designated or registered state: wild, scenic, or recreational rivers; game refuges; game management areas; management areas; forests; forest management lands; and grasslands.

- c. Historical resources which are not specifically designated as exclusion or avoidance areas.
 - d. Areas which are geological unstable.
 - e. Within five hundred feet [152.4 meters] of a residence, school, or place of business. This criterion shall not apply to a water pipeline transmission facility.
 - f. Reservoirs and municipal water supplies.
 - g. Water sources for organized rural water districts.
 - h. Irrigated land. This criterion shall not apply to an underground transmission facility.
 - i. Areas of recreational significance which are not designated as exclusion areas.
3. Selection criteria. A corridor or route shall be designated only when it is demonstrated to the commission by the applicant that any significant adverse effects which will result from the location, construction, and maintenance of the facility as they relate to the following, will be at an acceptable minimum that those effects will be managed and maintained at an acceptable minimum.
- a. The impact upon agriculture:
 - (1) Agricultural production.
 - (2) Family farms and ranches.
 - (3) Land which the owner can demonstrate has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.
 - (4) Surface drainage patterns and ground water flow patterns.
 - b. The impact upon:
 - (1) Noise sensitive land uses.
 - (2) The visual effect on the adjacent area.
 - (3) Extractive and storage resources.

- (4) Wetlands, woodlands, and wooded areas.
 - (5) Radio and television reception, and other communication or electronic control facilities.
 - (6) Human health and safety.
 - (7) Animal health and safety.
 - (8) Plant life.
- 4. Policy criteria. The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices.
 - a. Location and design.
 - b. Training and utilization of available labor in this state for the general and specialized skills required.
 - c. Economies of construction and operation.
 - d. Use of citizen coordinating committees.
 - e. A commitment of a portion of the transmitted product for use in this state.
 - f. Labor relations.
 - g. The coordination of facilities.
 - h. Monitoring of impacts.
 - i. Utilization of existing and proposed rights of way and corridors.
 - j. Other existing or proposed transmission facilities.

History: Amended effective August 1, 1979; January 1, 1982; February 1, 1995.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1

CHAPTER 69-06-09
CONTINUING SUITABILITY OF CERTIFICATE OR PERMIT

Section

69-06-09-01

[Certification](#)

69-06-09-02

[Determination and Order](#)

69-06-09-01. Certification. A certification of continuing suitability shall contain the following:

1. The proposed date for the commencement of construction or improvement.
2. The information relied upon in making the certification.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-17

69-06-09-02. Determination and order.

1. If the commission determines that the site or route continues to meet the evaluation requirements of the Act and this article, it shall issue an order authorizing the beginning of construction or improvement, which order shall specify the time within which the utility shall begin construction or improvement.
2. If the commission determines that the site or route does not continue to meet the evaluation requirements of the Act and this article it shall do one of the following:
 - a. Cancel the certificate or permit.
 - b. Make such modifications to the certificate or permit as it may require.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-17

RULES

ARTICLE 69-09

PUBLIC UTILITY DIVISION

Chapter

69-09-01	Standards of Service - Gas
69-09-02	Standards of Service - Electric
69-09-03	Gas Pipeline Safety (not included in this book)
69-09-04	Uniform Sign Standards - Railroad (not included in this book)
69-09-05	Standards of Service - Telephone
69-09-05.1	Accounting Practices
69-09-06	Prohibition on Sale and Direct Industrial Use of Natural Gas for Outdoor Lighting [Repealed]
69-09-07	Small Power Production and Cogeneration

CHAPTER 69-09-01 STANDARDS OF SERVICE - GAS

Section

69-09-01-01	Definitions
69-09-01-02	Heating Value
69-09-01-03	Calorimeter Equipment
69-09-01-04	Purity of Gas
69-09-01-05	Pressure of Gas
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69-09-01-17	Deposits and Guarantees
69-09-01-18	Discontinuance of Service [Superseded]
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69-09-01-21	Billing Basis
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69-09-01-23	Adjustment of Bills for Meter Error
69-09-01-24	Refunds
69-09-01-25	Resale
69-09-01-26	Filing of Rates
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69-09-01-28	Filing of Additional Rules
69-09-01-29	Advertising by Gas Utilities
69-09-01-30	Automatic Adjustment Clauses

69-09-01-01. Definitions. As used in this article:

1. "Commission" means the public service commission of the state of North Dakota.
2. "Customer" means any person, firm, corporation, municipality, or other political subdivision of North Dakota supplied by any such utility.

3. "Utility" means public utility.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-02. Heating value.

1. Artificial gas. Each utility furnishing manufactured gas shall supply gas which shall have an average heating value of five hundred twenty-five British thermal units per cubic foot [28.32 liters]; and at no time shall the heating value of the gas at such point be less than five hundred or more than five hundred fifty British thermal units per cubic foot [28.32 liters]; provided, that before the gas utility may lower its present standard, the commission may make an investigation of the operating condition of the plant to determine whether the rates may not be reduced at the same time. The present standards of the gas utility shall not be changed until specifically relieved by the commission. Tests shall be made at least twice a day, Sundays and holidays excepted.

On or before the tenth day of each month, the above daily heating value averages for the preceding calendar month shall be reported to the commission, together with full explanations of any abnormal operations.

2. Natural gas. Each utility furnishing natural gas shall determine the heating value of the gas at regular intervals of not less than thirty days and shall file with the commission, monthly, a report of these tests.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-03. Calorimeter equipment. Each utility shall equip itself with a complete standard calorimeter outfit. This equipment shall be used to test the heating value of gas supplied. The accuracy of all calorimeters, as well as the method of making heating value tests, shall be subject to the approval of the commission.

The heating value tests should be distributed with relation to the time of day in such a manner that the number of tests made will be proportional to the average rate of "sendout" at that time. At least two tests shall be made each day.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-04. Purity of gas.

1. Total sulfur. Manufactured gas distributed in this state shall in no case contain more than thirty grains [1.94 grams] of total sulfur per one hundred cubic feet [2.83 cubic meters] unless specific relief is granted by the commission.
2. Hydrogen sulfide. In no case shall the manufactured or diluted natural gas sold for lighting or heating contain an amount of hydrogen sulfide (sulfurated hydrogen) detectable by the following test:

The gas shall be considered to contain no more than a trace of hydrogen sulfide if a strip of white filter paper freshly moistened with a solution containing five percent by weight of lead acetate is not distinctly darker than a second paper freshly moistened with the same solution after the first paper has been exposed to the gas one minute in an apparatus through which the gas is flowing at the rate of approximately five cubic feet [141.58 liters] per hour, the gas not impinging directly from a jet upon the test paper.

3. Each utility furnishing manufactured gas service shall daily test the gas supplied by it for the presence of hydrogen sulfide and shall mark and preserve the test papers for at least ten days.
4. Each utility furnishing undiluted natural gas shall file with the commission a statement showing an analysis of the gas being furnished.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-05. Pressure of gas.

1. Maximum and minimum limits. The pressure of gas supplied by any utility, as measured at the outlet of the service pipe to any customer, or in the case of high pressure systems at the outlet of the house governor, should be maintained as uniform as practicable. For artificial gas service the pressure should never be less than three inches or more than twelve inches of water pressure. For natural gas service the pressure should never be less than three ounces or more than twelve ounces. Customers desiring service at greater than the maximum allowable should request in writing that a higher service be maintained and shall also pay any additional expense incurred, over and above the regular cost of service at the standard pressure, in providing and maintaining a special service.

2. Artificial gas. At any one outlet between the hours of six a.m. and seven p.m. of any one day, the variation of pressure shall not be greater than the following:

Minimum Pressure Maintained	Greatest Variation Permissible
3 inches	2 inches
3-4 inches	2 1/2 inches
4-5 inches	3 inches
5-6 inches	3 1/2 inches
6-8 inches	4 inches

3. Natural gas. At any one outlet the variation of pressure shall not be greater than the following:

Established Pressure	Minimum Pressure Allowable	Maximum Pressure Allowable
4 ounces	3 ounces	6 ounces
6 ounces	3 ounces	9 ounces
8 ounces	4 ounces	12 ounces

4. Variations. A utility shall not be deemed to have violated this section if it can be shown that the variations occurring in gas pressure were caused by unforeseen demand, temporary conditions beyond the control of the utility, individual customer owned service lines, or pipelines of such size as to render the maintenance of standard pressure variations impracticable.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-06. Pressure recording equipment and records.

1. Each utility shall be equipped with a sufficient number of portable recording pressure gauges and shall make frequent measurements of the gas pressure variation throughout each separate distribution system. A record shall be kept of the pressure at some point on each system at all times.
2. All pressure charts which have been made shall be filed by the utility for at least two years and shall be sufficiently complete and so arranged that compliance with the individual requirements of section 69-09-01-05 can be determined easily.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-07. Definition of a cubic foot of gas. For the purpose of testing the gas under this chapter, a cubic foot of gas shall be taken to be that amount of gas which occupies the volume of one cubic foot [28.3168 liters] when saturated with water vapor at sixty degrees Fahrenheit [15.56 degrees Celsius] and under a pressure equal to that of thirty inches [7.62 centimeters] of mercury at a temperature of thirty-two degrees Fahrenheit [0 degrees Celsius]. For the purpose of measurement of gas to a customer, a cubic foot of gas shall be taken to be that amount of gas which occupies a volume of one cubic foot [28.32 liters] under the conditions existing in such customer's meter as and where installed; provided, however, that when gas is metered at a pressure more than twelve inches [30.48 centimeters] of water column in excess of the prevailing barometric pressure (by agreement with the customer or with the written approval of the commission), the volume of gas metered shall be computed on the basis of the mean pressure in the utility's low-pressure system, or other basis ordered by the commission.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-08. Testing facilities.

1. Each utility shall, unless specifically excused by the commission, provide such laboratory meter testing equipment and other equipment and facilities as may be necessary to make the tests required of it by this chapter or other orders of the commission. The apparatus and equipment so provided shall be subject to the approval of the commission, and it shall be available at all times for the inspection or use of any member or authorized representative of the commission.
2. Each utility shall make such tests as are prescribed under this chapter with such frequency and in such manner and at such places as are herein provided or as may be approved or ordered by the commission. Unless otherwise directed by the commission, the methods and apparatus recommended by the national bureau of standards in the latest edition of its Circular C48, "Standard Method of Gas Testing", may be used.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-09. Meter prover. Each utility furnishing metered gas service shall maintain the equipment and facilities necessary for accurately testing all types and sizes of meters employed for the measurement of gas to its customers unless arrangements approved by the commission shall have been made to have such testing done elsewhere. In general, each utility will be required, as a minimum, to provide and maintain a meter prover of approved type and of a capacity of not less than five cubic feet [141.58 liters] for the testing of the most numerous class of customers' meters. Each meter prover shall be supplied with all accessories needed for accurate meter testing and shall be located in a room suitable for the work to be done, protected from drafts and excessive changes of temperature. The utility shall maintain this equipment in good condition and correct adjustment so that it shall be capable of determining accuracy of any service meter to within one-half of one percent.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-10. Location of meters. No meter shall be installed in any location where it may be unnecessarily exposed to heat, cold, dampness, or other cause of damage or in any unduly dirty or inaccessible location. Where these conditions cannot be avoided, a location must be chosen that will least affect the meter's accuracy and condition.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-11. Service meters required.

1. All gas sold by a utility shall be charged for by meter measurements, except that which may be otherwise authorized by the commission.
2. Unless otherwise authorized by the commission, each utility shall provide and install at its own expense and shall continue to own, maintain, and operate all equipment necessary for the regulation and measurement of gas to its customers. Where additional meters are furnished by the utility to be used as submeters, or for the convenience of the customer, a charge for such meters may be made in accordance with a schedule approved by the commission.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-12. Prepayment meters. No utility shall use prepayment meters except in special cases or for clearly defined special classes of service authorized by the commission.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-13. Gas meter accuracy requirement.

1. Installation test. Every gas service meter, whether new or repaired, or that has been removed from the service for any cause, shall be in good order and shall be correct to within two percent before being installed for the use of any customer. However, a utility which has less than one thousand customers and which has no facilities for opening meter cases and adjusting the mechanism may put a meter back into service, unless it is found to be in error by more than two percent or appears otherwise to be in poor condition.
2. Method of testing. For the purpose of determining compliance with this section, the registration of a displacement meter shall be determined by one test at a rate of flow of approximately one-fifth of the rated capacity of that meter and one test at a rate of flow of approximately the rated capacity of the meter. The tests at the two rates shall agree within two percent. The accuracy of the meter at the lower rate of flow shall be considered as its accuracy in determining compliance with subsection 1 and for the purpose of computing refunds. All tests to determine the accuracy of any gas service meter shall be made with a meter prover, unless, because of the unusual capacity or construction of the meter, such method of test shall be considered impracticable and another method of test shall have been approved by the commission.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-14. Periodic tests. All service meters shall be tested and adjusted at least once in every eight years, or in accordance with a plan approved by the commission.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-15. Requests and referee tests.

1. A gas service utility shall test the accuracy of any meter upon request of the customer, shall provide the customer with a report of the test results, and shall keep the complete original test record and a copy of the report on file in the utility's office.
2. A customer may request in writing to the commission that the utility's test be supervised by a commission representative.
3. The customer shall not be charged for the test provided the customer requests no more than one test each twelve-month period, otherwise the utility may charge a tariffed rate. The charge must be waived if the meter error is more than plus or minus two percent

History: Amended effective July 1, 1997.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-16. Meter test records.

1. Each utility shall keep a record of meter tests for at least two years. The record shall show the identification of the meter, reading of the meter before the test, the results of the test, and accuracy after adjustment, if adjustment is made.
2. Each utility shall annually file with the commission a summary report of meter tests made during the year. This report shall show the number of meters tested, the number of meters found to be accurate within the allowable limits, the number of meters found to be fast, and the number of meters found to be slow.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-17. Deposits and guarantees.

1. Each gas utility may require each applicant for service to make a deposit not to exceed one and one-half times the estimated amount of one month's average bill. A receipt showing the amount of the deposit, the date the deposit was made, and the depositor's name shall be issued to each depositor. Each utility shall keep a deposit record showing the same information as shown on the depositor's receipt and shall provide a method of repayment in case the depositor's receipt has become lost or destroyed.

2. The utility shall pay interest on such deposit at the rate paid by the Bank of North Dakota on a six-month certificate of deposit. Such rate will be determined as of the first business day of each year, on a six-month certificate of deposit with the smallest deposit required. The interest may be paid to the depositor, or may be deducted from the depositor's indebtedness to the utility for gas service. The payment or deduction for interest must be made during each calendar year or whenever a deposit is refunded or service discontinued.
3. The utility may accept in lieu of a cash deposit a contract signed by a guarantor, satisfactory to the utility, whereby the payment of a specified sum not to exceed the required cash deposit is guaranteed. The term of such contract shall be indeterminate, but it shall automatically terminate when the customer gives notice of service discontinuance to the utility or a change in location covered by the guarantee agreement or thirty days after written request for termination is made to the utility by the guarantor. However, no agreement shall be terminated without the customer having made satisfactory settlement for any balance which the customer owes the utility. Upon termination of a guarantee contract a new contract or a cash deposit may be required by the utility.

History: Amended effective April 1, 1985.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-18. Discontinuance of service. Superseded by section 69-09-01-18.1.

69-09-01-18.1. Discontinuance of gas service.

1. A utility may disconnect service if the customer is delinquent in payment for services rendered. However, no utility shall discontinue service to a customer for failure to pay for such service until the utility shall first have given the customer notice of its intention to discontinue such service on account of delinquency. The notice shall:
 - a. Be sent by first-class mail addressed to the customer at the place where service is rendered, except that in the case of residential customers sixty-five years of age or older, or for handicapped customers, personal notice by delivery is required. A copy of each notice must also be mailed to the nearest social service office and to any other appropriate financial assistance agency, providing that

prior approval has been given by the customer pursuant to subsection 2.

- b. Show the amount of the delinquency.
- c. Include the telephone number of the public service commission.
- d. Advise the customer of the customer's rights and remedies, including the right of the customer to stay termination for up to thirty days if the customer advises the utility within the ten-day notice period that dangerous health conditions exist or that the customer is sixty-five years of age or older or that the customer is handicapped. In addition, the notice shall advise the customer of the customer's right to work out a satisfactory deferred installment agreement for delinquent accounts and of the opportunity to enter into equal monthly payment plans for future service.
- e. Inform the customer that service will be discontinued if the delinquent account is not paid within ten calendar days from the date of mailing or personal delivery of the notice, or if a satisfactory installment agreement is not made with the utility for payment of the delinquent bill.

If the customer elects to enter into a deferred installment agreement for delinquent accounts, service may not be terminated; however, the utility may discontinue service without further notice if the customer fails to pay the delinquent account on or before the date specified in the notice, or in accordance with the deferred installment agreement. The customer shall have the privilege of paying the delinquent account at any time prior to the actual disconnection of service, and the person directed by the utility to make the disconnection shall be deemed authorized and shall accept payment of the delinquent account if tendered to the person by the customer before actual disconnection of service is made.

- 2. It shall be the responsibility of all residential customers sixty-five years of age or older, handicapped, or having an emergency medical problem in the household, including life-sustaining appliances, such as kidney dialysis, to notify the utility of such status. To assist in such notification, all utilities shall annually include a preaddressed postage-paid post card in the monthly billing mailed to all residential customers during the billing period ending October first. Such notice shall also be provided to all new customers in that service area when they are first provided service by the utility.

The post card shall include the following questions:

YES NO

1. Is any member of your household 65 years of age or older, or handicapped? _____
2. Do you have any emergency medical problem in your household? _____
3. Do you desire that the area social service office or other appropriate financial assistance agency be notified in the event of a proposed disconnect? _____
4. Do you desire that some other third party be contacted in the event of a disconnect? _____

If so, name and address of person _____

5. If you are having difficulty paying your utility bill, please contact our local service representative or business office so that we can work with you on your problem.

Utility Telephone Number _____
Office Address _____

Date _____ Name _____
Address _____
Signature _____

3. Service shall not be disconnected under this section on weekends, Fridays, state holidays, the day before a state holiday, or after twelve noon on any day. A report describing the total number of actual disconnects, date and time, type of customer, and amount of delinquency for each disconnected customer shall be filed monthly with the commission within ten days after the last day of each month.
4. Whenever service has been disconnected for nonpayment of a bill, before reconnection is made the customer shall pay the reconnection fee established in the utility's rate schedules; make a deposit pursuant to section 69-09-02-04 if all or a part of the previous deposit was used in settlement of the delinquent bill; and make a satisfactory settlement for the delinquent bill and for service rendered between the last meter reading date and the date service was disconnected.
5. In the event the customer disputes the amount of a bill for service, the customer may, to prevent disconnection for nonpayment, pay the disputed bill under protest to the utility. Alternatively, the customer may request a formal hearing pursuant to section 69-02-02-02 in which case the utility shall not disconnect service for nonpayment of the disputed bill until a final

decision has been issued by the commission. The utility shall immediately give the commission notice of the dispute and the commission may investigate the dispute. The utility shall refund to the customer any part of such payment made under protest found by the commission to be excessive.

6. A utility may not disconnect service to a customer for failure of the customer to pay for merchandise purchased from the utility; to pay for a different class of service furnished by the utility; to pay for service rendered to a previous occupant of the premises; or to pay the bill of another customer as guarantor thereof.
7. A utility may discontinue service to a customer for failure to comply with regulations of the utility on file with the commission pertaining to installation and operation of utilization equipment, or for use of equipment which interferes with, or adversely affects, the service to other customers, provided the customer has first been notified and afforded reasonable opportunity to change or disconnect such equipment.
8. A utility may discontinue service to a customer upon ten days' written notice if the meter or other equipment installed by the utility has been tampered with, or if there has been a diversion of service, or if the customer is utilizing gas before the energy has passed through a meter installed by the utility.
9. When a customer who has tenants is including the cost of utility services in the rent charged and the utility bill becomes delinquent, the utility before disconnecting service must also notify the tenants in writing at least ten days prior to the proposed termination date. The utility must allow each tenant to apply to become the customer of the utility in the tenant's own name, to have the service to the rental facility continued or resumed, and to pay the pro rata share of future bills. Such tenant-customer shall be subject to all the provisions of this chapter.
10. A utility may not discontinue service to a customer for nonpayment of a deposit.

History: Effective October 1, 1980; amended effective May 1, 1996; July 1, 1997, April 1, 2001; January 1, 2002.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-19. Extensions of service.

1. The utility shall make all extensions to its mains and services where the investment is justified by the anticipated revenue to be received.

2. In the event the utility does not believe that the extension is justified, the commission shall, when so requested by one or more prospective customers desiring such extension and upon proper hearing, determine whether or not such extension should be made, and shall determine the respective amounts that the prospective customer or customers and the utility shall pay.
3. When so requested by a prospective customer engaged in the operation of a licensed trailer court for month-to-month parking of mobile homes, the utility shall make extension to its mains and services, subject to the provisions of subsections 1 and 2, to provide natural gas service through a master meter installed in a location within the confines of the mobile trailer court. The trailer court operator shall have service facilities to individual trailer parking locations which the operator shall own and maintain constructed by competent and qualified persons, and shall arrange for inspection by and approval from a responsible inspector to assure that the service facilities from the meter location to the mobile home locations and gas service facilities and appliances to and within mobile homes to be served comply with piping and appliance ordinances or requirements of applicable rules and regulations of any authority vested with jurisdiction of the subject matter.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-20. Information to customers. A utility shall:

1. Keep copies of its rate schedules, rules, and regulations on file in every office where payments are received.
2. Send a statement to each customer containing a clear and concise explanation of the existing rate schedule, and any rate schedule applied for, that is applicable to that customer.
 - a. The statement shall be sent:
 - (1) Not later than sixty days after the date of commencement of service to the customer;
 - (2) Not later than thirty days after filing an increase in a rate schedule applicable to such customer. This statement must include for each of the major classes of customers for which there is a separate rate, a summary analysis which shows the economic impact of the proposed rate change and rate design changes, if any, for an average customer within the class based upon an average annual consumption and a

statement that the rates are proposed only and, if the rates are suspended by the commission, the new rates will not be effective until commission action has been taken; and

(3) As required by the commission under 69-02-04-01.

- b. The statement must include notice to customers regarding the availability and location of the information required in subsection 1.
3. Include with each customer bill, at least once each year:
 - a. A clear and concise summary of the existing rate schedules applicable to each of the major classes of customers for which there is a separate rate;
 - b. An identification of any classes whose rates are not summarized; and
 - c. A notice calling the attention of the customer to the availability of alternative rate schedules for the customer's particular class of service and that, upon request the utility will assist the customer in determining the billing for load conditions specified by the customer under various rate schedules. The customer, after selecting a particular rate schedule, shall take service under the rate schedule for a period of not less than twelve months, unless the rates are changed or there is a material change in the customer's load.
4. Send each customer upon request, without charge, a clear and concise statement of the actual consumption and cost of energy by the customer for each billing period during the prior year, unless the consumption and cost data is not reasonably ascertainable by the utility.
5. Provide, upon request, information and assistance to the extent reasonably possible so that customers may secure safe and efficient service. A utility must inform each customer of any change made or proposed to be made in any condition of service that would affect the efficiency of the service or the operation of appliances which may be in use by the customer.
6. File with the commission a sample copy of the statement format required by subsections 2 and 4 and a copy of the summary and notice required by subsection 3. Any format changes in statements or notices under this section must be filed immediately with the commission.

History: Amended effective April 1, 2001.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-21. Billing basis.

1. Bills for service will be rendered monthly unless service rendered covers a period less than a calendar month, or the customer requests and the utility consents to a more frequent billing. The term "month" for billing purposes will mean the period between any two consecutive readings of the meter by the utility, such readings to be taken as nearly as practicable every thirty days. No customer will be billed more than twelve times a year unless the rate applicable to the particular case specifically provides for exceptions to the monthly basis, or unless a more frequent billing has been agreed upon as specified in this subsection. This will not prohibit the utility from accepting periodic payments during the month.
2. The difference between the gross and net bills constitutes a discount for prompt payment. All customers will be billed each month at gross rates except where schedules provide otherwise. Discounts will be applicable in accordance with the terms of the rate schedule.
3. When one or more consecutive meter readings are missed, the utility may bill the customer on an estimated consumption and the difference adjusted when the meter is again read. The basis for this estimate shall be the normal consumption for corresponding periods in the preceding year or normal consumptions of preceding months. At the first reading subsequent to the nonreading the bill will be computed by multiplying blocks of the rate by the number of months for which the meter reading covers, then compute the bill in accordance with the applicable rate adjusted in accordance with the foregoing provisions. Any minimum bills paid in the period for which the meter reading covers shall be credited to the total amount of the bill.
4. When a meter is overread by an amount that exceeds the following month's consumption, the correct consumption shall be ascertained for the two months, and the bill computed according to the provisions of subsection 3.
5. The utility shall provide each customer with proper metering equipment to indicate the correct reading to constitute a basis for monthly charges for service in accordance with the applicable rate schedule.
6. A customer may not have the customer's meter readings of more than one meter cumulative except where the utility has for its own convenience installed more than one meter for one class of service, and in such case the meter readings will be cumulated when billed.

7. Each customer will be billed separately on the customer's individual meter reading at the rate applicable to the particular class of service.
8. A customer is defined to include any person, firm, or corporation receiving service of one or more classes, and metered by one or more meters.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-22. Meter readings on bills. Bills rendered periodically to consumers for metered service shall show the readings of the meter at the beginning and end of the period for which the bills are rendered and the dates of the meter readings. On all bills which are computed on any other basis than a definite charge per unit of service, the other factors used in computing the bill shall be clearly stated so that the amount may be readily computed from the information appearing on the bill.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-23. Adjustment of bills for meter error. If on testing of any service meter, either by the utility or by the commission, such meter shall be found to have a percentage of error greater than that allowed by the commission, the following provisions for the adjustment of bills shall be observed:

1. Fast meters. When a meter is found to be fast in excess of two percent in tests made at the request of the consumer, the utility shall refund to the customer an amount equal to the excess charged for the gas incorrectly metered. The period over which the correction is to be made shall be one-half of the time elapsed since the last previous test. The period shall not exceed six months. No part of a minimum service charge shall be refunded.
2. Slow meters. When a meter is found to be slow in excess of two percent in tests made at the request of the consumer, the utility may make a charge to the consumer for the gas incorrectly metered. The period over which the correction is to be made shall be one-half of the time lapsed since the last previous test. The period shall not exceed six months. If a meter is found not to register for any period, the utility shall estimate the charge for the gas under similar conditions, preceding or subsequent thereto, or overused by averaging the amounts registered over similar and corresponding periods in previous years. Such action shall be taken only in cases of substantial importance where the utility is not at fault allowing the incorrect meter to be in service.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-24. Refunds. No application for refunds of any payments to a utility claimed to be in excess of the rules, regulations, schedules, rates, or tariffs shall be made to the commission after the expiration of six years from the date of payment.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-25. Resale. Gas service furnished on standard rates or contracts furnished by a public utility shall not be resold or caused to be resold by any customer unless the customer is engaged in the business of distributing gas and has a contract to this effect approved by the commission, and has a certificate of public convenience and necessity granted by the commission.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-26. Filing of rates.

1. Each utility shall file with the commission its scheduled rates, rules, regulations, and practices in accordance with the statutory requirements.
2. Each rate filing shall stipulate the classification of service and application thereto, date effective, and the particular rate to be superseded. The filing shall be accompanied by a statement showing the reasons for making the filing and the estimated amount of annual revenue affected, based upon the previous year's business.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-03

69-09-01-27. Rate applications. Where more than one schedule of rates has been approved by the commission for the same class of service, it shall be the duty of the utility to advise the customer at the beginning of service of the rates and schedules which are available and typical bills for representative consumptions. Upon application by the customer, the utility shall make comparisons on the basis of past billings of the two rates to show which rate is the most advantageous to the customer. The customer upon selecting a rate after a trial period shall be required to remain on the selected rate for a period of not less than twelve months or unless that rate is sooner superseded.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-03

69-09-01-28. Filing of additional rules. Each utility shall have the right to file additional rules and regulations or terms and conditions of service applicable to the service given by the utility. The additional rules and regulations or terms and conditions are to be subject to approval by the commission in the manner provided by law.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-03

69-09-01-29. Advertising by gas utilities.

1. Definitions. For purposes of this section:
 - a. "Advertising" means the commercial use, by a gas utility, of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to the utility's gas customers.
 - b. "Institutional advertising" means advertising which has as its primary objective the enhancement or preservation of the corporate image of the utility and to present it in a favorable light to the general public and investors.
 - c. "Political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.
 - d. "Promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of a gas utility or the selection or installation of any appliance or equipment designed to use the utility's service.
 - e. "Institutional advertising", "political advertising", and "promotional advertising" do not include:
 - (1) Advertising which informs gas customers how they can conserve energy or can reduce peak demand for gas energy.
 - (2) Advertising required by law or regulations.
 - (3) Advertising relating to service interruptions, safety measures, or emergency conditions.

- (4) Advertising concerning employment opportunities with a gas utility.
 - (5) Advertising which promotes the conservation of limited resources, the use of more plentiful resources, or the use of energy efficient appliances, equipment, or services.
 - (6) Any explanation or justification of existing or proposed rate schedules, or notifications of hearings thereon.
 - (7) Advertising determined by the commission to benefit customers and serve the public interest.
- 2. Any expenditure by the utility for institutional, promotional, or political advertising shall be excluded from operating expenses in the cost of service determination for ratemaking purposes.
 - 3. Advertising expenditures which are reasonable in amount and which are not excluded by the provisions of this section may be included as operating expenses in the cost of service determination for ratemaking purposes.

History: Effective October 1, 1980.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-01-30. Automatic adjustment clauses.

- 1. As used in this section, the term "automatic adjustment clause" means a tariff provision that provides for increases or decreases, or both, without prior hearing, in rates reflecting increases or decreases, or both, in gas supply costs incurred by a natural gas utility.
- 2. An automatic adjustment clause that does not conform to principles set out in this section may not be in the public interest. This section contemplates that the filing of a proposed tariff which includes a nonconforming automatic adjustment clause may result in suspension of all or part of the tariff.
- 3. The automatic adjustment clause must be in a form that provides for periodic adjustments per unit of sales equal to the difference between gas supply costs per unit of sales included in base rate schedules and gas supply unit of sales projected for the adjustment period.

4. Gas supply costs included under the adjustment clause must be set forth tariff approved by the commission.
5. The utility shall maintain a balancing account in which the difference between the actual gas supply cost and the amount collected through the adjustment clause is recorded. The balancing account must accrue interest monthly at a rate equal to the three-month treasury bill rate as published monthly by the federal reserve board.
6. An automatic adjustment clause must include a balancing surcharge, which must be recalculated at least annually. The amount of the surcharge must equal the amount in the balancing account at the time of the proposed change that results from the recalculation divided by projected weather normalized sales volumes for the following twelve months.
7. Notice of change in the adjustment must be filed with the commission prior to billing. The notice must include:
 - a. Workpapers calculating the adjustment;
 - b. Copies of applicable pipeline tariffs and an explanation of regulatory approval status;
 - c. A history of the balancing account since the last surcharge update; and
 - d. To the extent possible, an explanation of market and other factors causing the change.
8. If a current price is in litigation or otherwise being collected subject to refund the utility shall so advise the commission, inform the commission of the final outcome, and record the outcome in the balancing account.
9. If a particular circumstance prevents the use of a standard provided in this section, or its use would result in an undue burden, the commission may permit deviation from the standard.
10. The commission may review an automatic adjustment clause at any time to ensure the maximum economies in those operations and purchases which affect the rates to which the clause applies. The commission's review may include an evidentiary hearing. In making its review, the commission may examine and, if appropriate, cause to be audited, the practices of a utility relating to costs subject to an automatic adjustment clause, and may require any filings and reports that may be necessary to

carry out the review, including volumes, prices, and contracts for each supply source and a disclosure of any affiliation between the utility and the seller of natural gas or other items to the utility.

11. Each utility shall cause an independent audit of its automatic adjustment clause to be performed annually. A copy of the auditor's report must be filed annually with the commission.

History: Effective February 1, 1995; amended effective July 1, 1997.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

CHAPTER 69-09-02

STANDARDS OF SERVICE - ELECTRIC

Section

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69-09-02-01. Rates and regulations to be filed.

1. Schedules of rates and charges for the furnishing of electric service, and rules and regulations pertaining thereto, shall be filed with the commission by each utility. The provisions thereof shall be definite and so stated as to minimize ambiguity or the possibility of misinterpretation. The rate schedules, or the rules and regulations, shall include, together with such other information as may be deemed pertinent, the following:
 - a. The class of customers to which each rate applies. There shall also be shown any limitation on loads and type of equipment which may be connected, the price per unit of service, and the number of units per billing period to which the prices apply, the period of billing, the minimum bill, the method of measuring demands including method of calculating or estimating loads or minimums, definition of service classification and other terms used in the schedule, and any special terms and conditions applicable. The discount for prompt payment or penalty for late payment, if any, the period, if any, during which the net amount must be paid, and the date when bills become delinquent, shall be specified.
 - b. The nominal voltage at which service will be supplied and the type of service available (direct current, single or polyphase alternating current).
 - c. A list of cities and unincorporated communities where rates are applicable. If the utility has various rural rates, the areas where the rural rates are available shall be indicated.
 - d. A specification of such portion of service connection facilities as the utility furnishes, owns, and maintains, such as service drop, metering equipment, utilization control equipment, etc.
 - e. A statement of the type of special construction commonly requested by customers which the utility allows to be connected, e.g., underground service, and the terms and conditions upon which such construction will be permitted.
 - f. The regulations with which prospective customers must comply as a condition of receiving service, and the terms of any agreements required.

- g. The regulations governing the establishment of credit, and the making of deposits, by customers to ensure payment for electric service.
 - h. The notice to the utility by a customer required to have service discontinued.
 - i. The regulations covering the furnishing of temporary, emergency, auxiliary, and standby service.
 - j. The regulations covering requirements for the installation of special facilities, such as demand-limiting devices or power factor corrective equipment.
 - k. The regulations governing the location of metering equipment, or other company equipment, and the connection of utilization equipment requiring special controls.
2. Any proposed change in rates or charges for the furnishing of electric service, or rules and regulations pertaining thereto, shall be filed with the commission not less than thirty days prior to the effective date thereof. The filing shall include a statement indicating the reason for the proposed change, the number of customers affected, the estimated increase or decrease in annual revenue and the basis for the estimate, and the existing rate schedules or rules and regulations, if any, to be superseded.
 3. Special contracts for the sale of electric energy to customers shall be filed with the commission showing the name and address of the customer, the point where energy is delivered, the rate to be charged, term of contract, load conditions, voltage of delivery, and other provisions of the contract.
 4. Standard contract forms for the sale of electric energy for street lighting, municipal water pumping, or other services, shall be filed with the commission showing availability, rates, and all other terms and conditions thereof.

General Authority: NDCC 28-32-02, 49-02-11

Law Implemented: NDCC 49-02-03, 49-02-11

69-09-02-02. **Information available to customers.** Superseded by section 69-09-02-02.1.

69-09-02-02.1. **Information to customers.** A utility shall:

1. Keep copies of its rate schedules, rules and regulations on file in every office where payments are received.

2. Send a statement to each customer containing a clear and concise explanation of the existing rate schedule, and any rate schedule applied for, that is applicable to that customer.
 - a. The statement shall be sent:
 - (1) Not later than sixty days after the date of commencement of service to the customer; and
 - (2) Not later than thirty days after filing an increase in a rate schedule applicable to such customer. The statement must include for each of the major classes of customers for which there is a separate rate, a summary analysis which shows the economic impact of the proposed rate change and rate design changes, if any, for an average customer within a class based upon an average annual consumption and a statement that the rates applied for are proposed only and that, if the rates are suspended by the commission, the new rates will not be effective until commission action has been taken; and
 - (3) As required by the commission under 69-02-04-01.
 - b. The statement must include notice to customers regarding the availability and location of the information required in subsection 1.
3. Include with each customer bill, at least once each year:
 - a. A clear and concise summary of the existing rate schedules applicable to each of the major classes of customers for which there is a separate rate;
 - b. An identification of any classes whose rates are not summarized; and
 - c. A notice calling the attention of the customer to the availability of alternative rate schedules for the customer's particular class of service and that, upon request, the utility will assist the customer in determining the billing for load conditions specified by the customer under various rate schedules. The customer, after selecting a particular rate schedule, shall take service under the rate schedule for a period of not less than twelve months, unless the rates are changed or there is a material change in the customer's load.
4. Send each customer upon request, without charge, a clear and concise statement of the actual consumption and cost of energy by the customer for each billing period during the prior year, unless the consumption and cost data is not reasonably ascertainable by the utility.

5. Provide, upon request, information and assistance to the extent reasonably possible so that customers may secure safe and efficient service. A utility must inform each customer of any change made or proposed to be made in any condition of service that would affect the efficiency of the service or the operation of appliances which may be in use by the customer.
6. File with the commission a sample copy of the statement format required by subsections 2 and 4 and a copy of the summary and notice required by subsection 3. Any format changes in statements or notices under this section must be filed immediately with the commission.

History: Effective October 1, 1980; amended effective April 1, 2001.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-03. Service connections.

1. A utility shall not connect a customer for electric service until the customer has obtained all necessary permits from the proper authorities. Service may be denied to any customer for failure to comply with the applicable requirements of this chapter or with the service regulations of the utility on file with the commission.
2. A utility may require a customer to sign an application for electric service, and to make a deposit to ensure payment therefore, before making a service connection.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-04. Deposits and guarantees.

1. An electric utility may require an applicant for service to make a deposit sufficient to cover the estimated charge for furnishing service to the customer for a sixty-day period. A receipt showing the amount of the deposit, the date the deposit was made, and the depositor's name shall be issued to the depositor. Each utility shall keep a deposit record showing the same information as shown on the depositor's receipt, and shall provide a method of repayment in case the depositor's receipt has become lost or destroyed.
2. The utility shall each year pay interest on such deposit at the rate paid by the Bank of North Dakota on a six-month certificate of deposit. Such rate will be determined as of the first business day of each year, on a six-month certificate of deposit with the smallest deposit required. The

interest may be paid to the depositor, or may be deducted from the depositor's indebtedness to the utility for electric service. The payment or deduction for interest must be made during each calendar year, or whenever a deposit is refunded or service discontinued.

3. The utility may accept in lieu of a cash deposit a contract signed by a guarantor, satisfactory to the utility, whereby the payment of a specified sum not to exceed the required cash deposit is guaranteed. The term of such contract must be indeterminate, but it must automatically terminate when the customer gives notice of service discontinuance to the utility or a change in location covered by the guarantee agreement or thirty days after written request for termination is made to the utility by the guarantor. However, no agreement may be terminated without the customer having made satisfactory settlement for any balance which the customer owes the utility. Upon termination of a guarantee contract a new contract or a cash deposit may be required by the utility.

History: Amended effective April 1, 1985.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-05. Discontinuance of service. Superseded by section 69-09-02-05.1.

69-09-02-05.1. Discontinuance of electric service.

1. A utility may disconnect service if the customer is delinquent in payment for services rendered. However, no utility shall discontinue service to a customer for failure to pay for such service until the utility shall first have given the customer notice of its intention to discontinue such service on account of delinquency. The notice shall:
 - a. Be sent by first-class mail addressed to the customer at the place where service is rendered, except that in the case of residential customers sixty-five years of age or older, or for handicapped customers, personal notice by delivery is required. A copy of each notice must also be mailed to the nearest social service office and to any other appropriate financial assistance agency, providing that prior approval has been given by the customer pursuant to subsection 2.
 - b. Show the amount of the delinquency.
 - c. Include the telephone number of the public service commission.

- d. Advise the customer of the customer's rights and remedies, including, but not limited to, the right of the customer to stay termination for up to thirty days if the customer advises the utility within the ten-day notice period that dangerous health conditions exist or that the customer is sixty-five years of age or older or that the customer is handicapped. In addition, the notice shall advise the customer of the customer's right to work out a satisfactory deferred installment agreement for delinquent accounts and of the opportunity to enter into equal monthly payment plans for future service.
- e. Inform the customer that service will be discontinued if the delinquent account is not paid within ten calendar days from the date of mailing or personal delivery of the notice, or if a satisfactory installment agreement is not made with the utility for payment of the delinquent bill.

If the customer elects to enter into a deferred installment agreement for delinquent accounts, service may not be terminated; however, the utility may discontinue service without further notice if the customer fails to pay the delinquent account on or before the date specified in the notice, or in accordance with the deferred installment agreement. The customer shall have the privilege of paying the delinquent account at any time prior to the actual disconnection of service, and the person directed by the utility to make the disconnection shall be deemed authorized and shall accept payment of the delinquent account if tendered to the person by the customer before actual disconnection of service is made.

2. It shall be the responsibility of all residential customers sixty-five years of age or older, handicapped, or having an emergency medical problem in the household, including life-sustaining appliances, such as kidney dialysis, to notify the utility of such status. To assist in such notification, all utilities shall annually include a preaddressed postage-paid post card in the monthly billing mailed to all residential customers during the billing period ending October first. Such notice shall also be provided to all new customers in that service area when they are first provided service by the utility.

The post card shall include the following questions:

	YES	NO
1. Is any member of your household 65 years of age or older, or handicapped?	_____	_____
2. Do you have any emergency medical problem in your household?	_____	_____

3. Do you desire that the area social service office or other appropriate financial assistance agency be notified in the event of a proposed disconnect? _____

4. Do you desire that some other third party be contacted in the event of a disconnect? _____

If so, name and address of person _____

5. If you are having difficulty paying your utility bill, please contact our local service representative or business office so that we can work with you on your problem.

Utility Telephone Number _____
Office Address _____

Date _____ Name _____
Address _____
Signature _____

3. Service shall not be disconnected under this section on weekends, Fridays, state holidays, the day before a state holiday, or after twelve noon on any day. A report describing the total number of actual disconnects, date and time, type of customer, and amount of delinquency for each disconnected customer shall be filed monthly with the commission within ten days after the last day of each month.
4. Whenever service has been disconnected for nonpayment of a bill, before reconnection is made the customer shall pay the reconnection fee established in the utility's rate schedules; make a deposit pursuant to section 69-09-02-04 if all or a part of the previous deposit was used in settlement of the delinquent bill; and make a satisfactory settlement for the delinquent bill and for service rendered between the last meter reading date and the date service was disconnected.
5. In the event the customer disputes the amount of a bill for service, the customer may, to prevent disconnection for nonpayment, pay the disputed bill under protest to the utility. Alternatively, the customer may request a formal hearing pursuant to section 69-02-02-02 in which case the utility shall not disconnect service for nonpayment of the disputed bill until a final decision has been issued by the commission. The utility shall immediately give the commission notice of the dispute, and the commission may investigate the dispute. The utility shall refund to the customer any part of such payment made under protest found by the commission to be excessive.

6. A utility may not disconnect service to a customer for failure of the customer to pay for merchandise purchased from the utility; to pay for a different class of service furnished by the utility; to pay for service rendered to a previous occupant of the premises; or to pay the bill of another customer as guarantor thereof.
7. A utility may discontinue service to a customer for failure to comply with regulations of the utility on file with the commission pertaining to installation and operation of utilization equipment, or for use of equipment which interferes with, or adversely affects, the service to other customers, provided the customer has first been notified and afforded reasonable opportunity to change or disconnect such equipment.
8. A utility may discontinue service to a customer upon ten days' written notice if the meter or other equipment installed by the utility has been tampered with, or if there has been a diversion of service, or if the customer is utilizing electricity before the energy has passed through a meter installed by the utility.
9. When a customer who has tenants is including the cost of utility services in the rent charged and the utility bill becomes delinquent, the utility before disconnecting service must also notify the tenants in writing at least ten days prior to the proposed termination date. The utility must allow each tenant to apply to become the customer of the utility in the tenant's own name, to have the service to the rental facility continued or resumed, and to pay the pro rata share of future bills. Such tenant-customer shall be subject to all the provisions of this chapter.
10. A utility may not discontinue service to a customer for nonpayment of a deposit.

History: Effective October 1, 1980; amended effective May 1, 1996; July 1, 1997, April 1, 2001; January 1, 2002.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-06. Continuity of service.

1. Each utility shall make every reasonable effort to prevent interruptions of service, and when such interruptions occur shall endeavor to reestablish service within the shortest possible time. Whenever the service is necessarily interrupted or curtailed for the purpose of working on equipment, it shall be done at a time which, if at all practicable, will cause the least inconvenience to customers, except in cases of emergency.

2. Each utility shall keep a record of all interruptions to service affecting the entire distribution system of any single community or an important division of a community, and include in the record the date and time of interruption, the date and time service was restored, and, if known, the cause of each interruption. Service interruption records shall be kept for a period of six years.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-07. Extension of service.

1. It shall be the obligation of each utility to make reasonable extensions of its lines and services to new customers within any area in which it is authorized to serve.
2. Each utility shall file with the commission its rules for extending service to new customers, and shall file any changes in the rules which may be made from time to time.
3. If the utility does not consider that an extension within its service area is justified, the commission, upon request of one or more prospective customers to be served by the extension, may set the matter for public hearing to determine if the extension should be made, and the terms and conditions thereof.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-08. Temporary service.

1. Temporary service is defined as service to circuses, carnivals, traveling shows, construction projects, and all other purposes which from their very nature evidently will be of short duration.
2. A customer taking temporary service shall pay the regular rates applicable to the class or classes of service rendered for all energy used, and, in addition, shall pay the installation and removal cost, less salvage value, of facilities installed by the utility to furnish temporary service to the customer.
3. The utility may require the customer to make an advance deposit sufficient to cover the estimated cost of furnishing temporary service.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-09. Customer complaints. Each utility shall promptly investigate and keep a record of written complaints received from its customers in regard to safety, service, or operation of its system. The record shall show the name and address of the complainant, the date and nature of the complaint, and its disposition and the date thereof. The complaint records shall be kept for a period of three years.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-10. Meter readings.

1. Readings of all meters used for determining charges to customers shall be made each month. The term "month" means the period between any two consecutive regular meter reading dates, which shall be as nearly as practicable at thirty-day intervals. The meter reading date may be advanced or postponed not more than five days without adjustment of the billing for the period.
2. The utility may read meters used for determining charges to customers less frequently than once each month provided authorization thereof is obtained from the commission.
3. The utility may obtain the meter readings on a form supplied to the customer provided a utility representative reads the meter at least once each three months, and when there is a change of occupancy of the premises, unless otherwise authorized by the commission.
4. Records of all meter readings shall be maintained for a period of six years.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-11. Billing.

1. Bills for electric service shall be rendered monthly, unless otherwise authorized by the commission, or unless service is rendered for a period of less than a month. The term "month" as used for billing purposes means the period between any two consecutive regular meter reading dates, which shall be as nearly as practicable at thirty-day intervals. Bills shall be prorated for periods of less than one month when service is begun or terminated between regular meter reading dates. Bills shall be prorated for a fraction of a month on a daily basis, unless a different basis

for proration of bills for fractions of a month is provided in the utility's service regulations on file with the commission.

2. Each bill shall show the present meter reading; the date of the present meter reading; the number of kilowatt hours consumed; the demand, if used for billing purposes; the date or time when the bill is due; the gross and net amounts of the bill and the date or time after which the gross amount must be paid, or the net amount of the bill and the date or time after which the penalty applies and the amount thereof; and identity of the class of service or rate schedule under which the bill is computed. Estimated bills and prorated bills shall be distinctly marked as such.
3. The utility may, if it is unable to obtain a meter reading, bill the customer on an estimated consumption. The basis for the estimate shall be the normal consumption for a corresponding period during the preceding year, or average consumption during the three preceding months.
4. If the period between meter readings is more than one month, the bill for the entire period may be computed on the assumption of uniform monthly use of service during the entire period. However, if estimated monthly bills have been rendered during the period and the customer does not object thereto, bills for the interim period between meter readings need not be recomputed. If the customer objects to an estimated bill, or to a bill based on uniform monthly use, and presents reasonable evidence of zero consumption, or of material variation in consumption, during one or more months of the interim billing period, the bill shall be recomputed on the basis of actual use during each month.
5. Bills for service shall be rendered within thirty days from the present meter reading date. A record of all bills for electric service rendered to customers shall be maintained for a period of six years.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-12. Adjustment of bill for meter errors.

1. Whenever a watt-hour meter is found upon a test made at the request of the customer to have an average error of more than two percent, or a demand meter is found to have an error of more than the allowable limits specified in these rules, an adjustment of bills for service shall be made. The amount of the adjustment shall be calculated on the basis that the metering equipment should be one hundred percent accurate. The utility shall refund to the customer any excess charges for incorrectly metered electric service for a period equal to one-half the time elapsed since the last previous meter test, but not to exceed six months. The utility may

charge the customer for any deficiency in billing for incorrectly metered electric service for a period equal to one-half the time elapsed since the last previous meter test, but not to exceed six months. Adjustments shall be based on actual monthly consumptions.

Errors in meter registrations due to "creep" shall be calculated by timing the rate of "creeping" and assuming that the "creeping" affected the meter registration for one-half the time elapsed since the last previous meter test, but not to exceed six months.

2. When the average meter error cannot be determined by test because of failure of part or all of the metering equipment, it shall be permissible to use the registration of check metering installations, if any, or to estimate the quantity of energy used on all available data. The customer shall be advised of the metering equipment failure, and of the basis for the estimated bill. Any adjustment because of failure of metering equipment shall be from the date of the metering equipment failure, if known; or if not known, for a period equal to one-half the time elapsed since the last previous meter test, but not to exceed six months.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-13. Refunds and deficiency billings. Application for refund of any payment to a utility claimed to be in excess of established rates schedules, or rules and regulations pertaining thereto, shall be made within six years from the date of payment. A utility may not retroactively bill a customer a deficiency charge for service rendered more than six years prior to the date of the bill.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-14. Classification of service.

1. Residential service is defined as service for general household purposes in space occupied as living quarters, such as single private residences, single apartments, fraternity houses and sorority houses, and for garages, or other auxiliary buildings on the same premises used by the residential customer.
2. Commercial service is defined as service to a business enterprise in space occupied and operated for commercial purposes, such as stores, offices, shops, hotels, garages, wholesale houses, filling stations, barber shops, beauty shops, and any other space occupied for commercial purposes.

A business enterprise operated by an individual, a partnership, or a corporation, may include more than one type of business activity at the same location.

A landlord renting space to separate business enterprises in the same building may take electric service through a single meter on the commercial service rate provided electric service is furnished for occupants of the building as part of the rent, subject, however, to the provisions restricting master meters contained in section 69-09-02-37.

If a single business enterprise occupies more than one unit of space in the conduct of the same business, each separate unit will be metered individually and considered a separate service unless the customer makes provision for the necessary circuits to connect the separate units to permit the use of a single meter.

3. A customer occupying a building for residential and commercial purposes jointly may combine the customer's residential and commercial use on the applicable commercial service rate.
4. Other classes of electric service furnished by the utility shall be defined in applicable rate schedules, or in rules and regulations pertaining thereto. Service to customers for which no specific rate schedule is applicable shall be billed on the commercial or general service rate.

History: Amended effective October 1, 1980.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-15. Resale and submetering. Electric service furnished by a public utility under established rate schedules shall not be resold or submetered by a customer unless the rate schedule under which the customer receives service specifically so provides.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-16. Measuring customer service.

1. All electrical energy sold to customers shall be measured by commercially acceptable measuring devices owned and maintained by the utility, except where it is impracticable to meter loads, such as multiple street lighting, or temporary or special installations, in which case the consumption may be estimated. Every reasonable effort shall be made to measure at one point all electrical quantities necessary for billing a customer under a given rate.

2. All electric service to the same class of customers rendered under the same rate schedule shall be metered with instruments having generally similar characteristics.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-17. Standard frequency.

1. Each utility furnishing alternating current service shall adopt a standard service frequency for its system.
2. Under normal operating conditions the utility shall maintain a frequency of not more than plus or minus three percent of standard frequency.
3. Variations in frequency in excess of those specified herein caused by service interruptions, the action of the elements, temporary separation of parts of the system, or other causes beyond the control of the utility shall not be considered violations of this section.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-18. Standard voltage and allowable variation.

1. Each utility furnishing electric service shall adopt a standard nominal voltage, or voltages, as may be required by the design of its distribution system for its entire constant voltage service area or for each of the several districts into which the distribution system, or systems, may be divided. The voltage maintained at the utility's service terminals as installed for each customer shall be reasonably constant with a variation in voltage at any time of not more than seven percent above or below nominal voltage. A utility may furnish electric service to a particular customer, or to a group of customers at a specific location, on its system under conditions of voltage variation greater than seven percent if approval thereof is obtained from the commission.
2. Variations in voltage in excess of those specified herein caused by service interruptions, the action of the elements, temporary separation of parts of the utility's system, infrequent and unavoidable fluctuations of short duration, or other causes beyond the control of the utility shall not be considered a violation of this section.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-19. Voltage measurement and voltage records.

1. Each utility shall employ at least one portable indicating voltmeter, and at least one device capable of producing recorded voltage measurements in continuous service at the plant, office, or on a customer's premises. Each utility shall make a sufficient number of voltage measurements to indicate the character of the service furnished to its customers and to satisfy the commission, upon request, of its compliance with established voltage requirements. All voltage measurement records shall be available for inspection by the commission for a period of one year.
2. Each recording voltmeter shall be checked with an indicating voltmeter when it is placed in operation and when it is removed, or periodically if the instrument is in a permanent location.

History: Amended effective January 1, 2002

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-20. Accuracy of portable indicating instruments. All portable indicating electrical instruments used for determining quality of service to customers or for billing purposes, such as voltmeters, ammeters, and wattmeters, shall be checked against suitable secondary reference standards at least once in each twelve months. If the portable indicating instrument is found appreciably in error at zero, or in error by more than two percent of indication at full scale deflection, it shall be adjusted to indicate correctly.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-21. Accuracy of watt-hour meters. Watt-hour meters used for measuring electrical energy furnished to customers shall:

1. Be of proper design for the circuit on which they are used, be in good mechanical condition, and shall register correctly.
2. Not creep at "no load". A meter shall be considered to creep when the load wires are disconnected, and potential is impressed, if the disk makes more than one full revolution in five minutes or less.
3. Be accurate, when used on alternating current circuits, to within plus or minus two percent, at unity power factor, on light load (ten percent of meter reading) and on full load (one hundred percent of meter rating); and to within plus or minus three percent, at fifty percent lagging power factor, on full load (one hundred percent of meter rating).

4. Be accurate, when used on direct current circuits, to within plus or minus two percent on light load (ten percent of meter rating) and on full load (one hundred percent of meter reading).
5. If polyphase meters, have their elements in balance within two percent of full load (one hundred percent of meter rating) at unity power factor, and at fifty percent lagging power factor.
6. If used in conjunction with instrument transformers, for which laboratory test records are available, be adjusted so that the overall accuracy of the metering installation will meet the requirements of this section.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-22. Accuracy of demand meters. Demand meters, demand registers, or demand attachments used to measure electric service to customers shall be in good mechanical and electrical condition; have proper constants, indicating scale, contact device, and resetting device; not register at no load; and be accurate within the following limits:

1. Curve-drawing meters which record quantity-time curves, and integrated-demand meters, shall be accurate to within plus or minus two percent of full scale deflection throughout their working range. Timing elements measuring specific demand intervals shall be accurate to within plus or minus two percent, and the timing element which serves to provide a record of the time of day when the demand occurs shall be accurate to within plus or minus four minutes in twenty-four hours.
2. Lagging-demand meters shall be accurate to within plus or minus four percent of full scale deflection.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-23. Multipliers and test constants.

1. Meters which are not direct reading, and meters operating from instrument transformers, shall have the multiplier plainly marked on the dial of the instrument or other suitable location, and all charts taken from recording meters shall be marked with the date of the record, the meter number, the customer, and the chart multiplier.
2. The register ratio shall be marked on all meter registers. The watt-hour constant for the meter itself shall be shown on all watt-hour meters.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-24. Instrument transformers.

1. Instrument transformers used in conjunction with metering equipment to measure electric energy furnished to customers shall be in proper mechanical condition and shall have electrical insulation satisfactory for the service on which used.
2. The accuracy of current transformers shall comply with the requirements of American standards association accuracy class 1.2.
3. The accuracy of potential transformers shall comply with the requirements of American standards association accuracy class 0.6.
4. Instrument transformers for special installations may be tested in a laboratory before installation provided the last records are kept to aid in adjusting the meter used in conjunction with the transformer.
5. Current transformers shall be tested for short-circuited primary or secondary turns, high resistance connections, and proper wire connections whenever the metering installation is tested for accuracy.
6. The nameplate voltage ratio of potential transformers shall be checked whenever the metering installation is tested for accuracy.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-25. Meter testing equipment.

1. Each utility shall maintain sufficient laboratories, meter testing shops, secondary standards, instruments, and facilities to determine the accuracy of all types of meters and measuring devices used by the utility.
2. Each utility maintaining primary standards such as precision wattmeters, volt boxes, resistances, and timing devices shall have such standards certified at the time of purchase as to accuracy by a recognized laboratory other than that of the manufacturer of the standard.
3. Utilities not maintaining standardization laboratories may obtain authorization from the commission to have their standards certified for them by an approved laboratory.

4. Secondary watt-hour meter standards shall not be in error by more than plus or minus three-tenths of one percent at loads and voltages at which they are to be used, and shall not be used to check or calibrate working standards unless the secondary standard has been checked and adjusted, if necessary, within the preceding twelve months. A history and calibration record shall be kept for each secondary standard watt-hour meter.
5. Any two or more of at least three watt-hour meters may be used as a secondary standard to check portable rotating standards provided there is no discrepancy in accuracy between any two of the watt-hour meters used by more than two-tenths of one percent at standard test loads. Calibration and history records shall be maintained for each of the meters used as secondary standards.
6. Secondary standard indicating instruments shall not be in error by more than plus or minus one-half of one percent of indication at commonly used scale deflections, and shall not be used to check or calibrate portable indicating instruments unless the secondary standard has been checked and adjusted, if necessary, within the preceding twelve months. A calibration record shall be maintained for each standard.
7. All working rotating standards, when regularly used, shall be compared with a secondary standard at least once a month if they are of the commutator type, and at least once in every six months if of the induction type. Working rotating standards infrequently used shall be compared with a secondary standard before they are used.
8. Working rotating standards shall be adjusted, if necessary, so that their accuracy will be within plus or minus three-tenths of one percent at unity power factor, and within plus or minus one-half of one percent at fifty percent lagging power factor at all voltages and loads at which the standard may be used. A history and calibration record shall be kept for each working rotating standard.
9. The meter accuracies herein required for all primary, secondary, and portable standards shall be referred to one hundred percent. Service measuring equipment shall be adjusted to within the accuracies required assuming the portable test equipment to be one hundred percent accurate; provided, that a utility may use calibration records to compensate for known errors of secondary standards and working standards in adjusting service measuring equipment.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-26. Meter testing.

1. The testing of any unit of metering equipment shall consist of a comparison of its accuracy with a standard of known accuracy. Meters shall be adjusted as closely as practicable to the condition of zero error, and may be checked for accuracy at the point where they are installed, or at a central testing laboratory, or in a mobile testing laboratory.
2. All meters shall be tested for accuracy before initially placed in service. Metering equipment associated with instrument transformers shall be tested for accuracy on the customer's premises within sixty days after installation and whenever the instrument transformers are changed.
3. Meters shall be tested for accuracy at unity power factor, provided that polyphase meters shall also be checked for accuracy at fifty percent power factor whenever tested.
4. Watt-hour meters, and associated equipment such as demand measuring devices, shall be periodically tested for accuracy in accordance with a plan approved by the commission or the following schedule:

PERIODIC TEST SCHEDULE

Meter Description	To Be Tested At Least Once in Every
Alternating current meters:	
Up to and including twelve kilovolt-amperes	120 months
Over twelve kilovolt-amperes up to and including one hundred kilovolt-amperes	36 months
Over one hundred kilovolt-amperes	12 months
Direct current meters:	
Up to and including six kilowatts.....	42 months
Over six kilowatts up to and including one hundred kilowatts	18 months
Over one hundred kilowatts	12 months

The kilovolt-ampere rating of an alternating current, single-element meter, or the kilowatt rating of a direct current meter, is the product of the rated voltage and the rated current. In the case of polyphase or multielement meters, the rating is the product of the rated voltage and the rated current multiplied by the number of meter elements. When meters are connected to and tested in conjunction with instrument transformers, the nominal rating of the transformer shall be used in the determination of the kilovolt-ampere rating of the metering equipment.

5. An electric service utility shall test the accuracy of any meter upon request of the customer, shall provide the customer with a report of the test

results, and shall keep the complete original test record and a copy of the report on file in the utility's office.

6. A customer may request in writing to the commission that the utility's test be supervised by a commission representative.
7. The customer may not be charged for the test provided the customer requests no more than one test each twelve-month period, otherwise the utility may charge a tariffed rate. The charge must be waived if the meter error is more than plus or minus two percent.

History: Amended effective July 1, 1997.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-27. Determination of average meter error. Whenever a metering installation is found upon any test to be in error by more than two percent at any test load, the average error shall be determined as follows:

1. If the metering installation is used to measure a load which has practically constant characteristics, such as a street lighting load, the meter shall be tested under similar conditions of load and the accuracy of the meter "as found" shall be considered as the average error.
2. If a single-phase, or direct current, metering installation is used on a varying load, the average error shall be the weighted algebraic average of the error at light load, with a weighting of one, and the error at heavy load, with a weighting of four.
3. If a polyphase metering installation is used on a varying load, the average error shall be the weighted algebraic average of the error at light load (unity power factor) with a weighting of one, the error at heavy load (unity power factor) with a weighting of four, and the error at heavy load (fifty percent lagging power factor) with a weighting of two.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-28. Meter records.

1. Each utility shall keep a history record of each unit of metering equipment used for measuring service to customers showing date of purchase; utility's identification number; essential nameplate data; associated equipment, if any; dates of tests; results of all "as found" and "as left" tests; and locations where installed together with dates of installation and removal. A utility may keep separate records at different locations on its

system for each unit of metering equipment in lieu of a history record provided that said records include all data required on a history record and that the two most recent tests records are retained. Only the most recent test record need be kept if a complete history record is maintained.

2. A test record shall be made whenever a unit of metering equipment is tested. The test record shall show the utility's identification number; nameplate data; location of the unit; equipment with which the device is associated; date of test; reason for test; register readings before and after the test; a statement as to whether the meter "creeps", and in case of creeping, the rate; a statement of "as found" and "as left" accuracies sufficiently complete to permit checking of the calculations; an indication that all required checks have been made; a statement of repairs made, if any; identification of test standard used; and name of person making the test.
3. Each utility shall file with the commission annually a summary report of all meter tests made during the year on forms to be supplied by the commission.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-29. Location of meters.

1. Meters on customers premises shall be installed in locations free of conditions detrimental to the metering equipment, and where the metering equipment will not create a hazard, or be inconvenient for servicing or reading. Meters shall be located so that there is not less than three feet [.91 meters] of unobstructed space in front of the meter, and so that the top of the meter is not less than four feet [1.22 meters], nor more than seven feet [2.13 meters], above the floor, ground, or permanent platform.
2. Outdoor meters shall be mounted securely on rigid structures such as yard poles, houses, garages, or other buildings. Outdoor meters shall be located so that they will not be subject to damage by passing objects.
3. Indoor metering equipment shall be located as near as practicable to the point where service enters the building, and shall be mounted securely on a permanent structure in a location free from excessive moisture, high temperature, and vibration. Meters shall not be placed in attics, living rooms, bathrooms, toilets, bedrooms, over doors or windows, or in any location where annoyance or inconvenience might be caused by servicing or reading the meter. When two or more meters are installed in an office, apartment, or other building, the meters shall be placed side by side on the same meter board with a distance between centers of not less than

seven and one-half inches [19.05 centimeters] for alternating current meters and fifteen inches [38.1 centimeters] for direct current meters.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-30. Public interest. The public has a paramount right to:

1. All forms of public service efficiently rendered at a reasonable cost.
2. Require that public service facilities shall be so constructed and maintained as not to constitute a hazard to life and property.
3. Establish regulations which will permit the full economic use of public rights of way for the distribution of all classes of utility service.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-02-04, 49-20-02

69-09-02-31. Cooperation. A utility contemplating new construction, or changes in construction or operating conditions of its facilities, should make every reasonable effort to avoid conflicts or interference with other public service facilities in situations or proximity. It shall be the duty of utilities concerned to cooperate, and to adopt, after full consideration of all factors, the best engineering solution to problems of conflict and interference due to unavoidable proximity of facilities.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-02-04, 49-20-02

69-09-02-32. Advance notice. It shall be the duty of a utility to give advance notice (at least sixty days where practicable, but not less than twenty days) to other utilities serving in the same general territory of contemplated new construction, or of changes in construction or operating conditions of its facilities in situations of existing or anticipated proximity.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-02-04, 49-20-02

69-09-02-33. Principle of least cost. It shall be the duty of utilities, when coordination of facilities is necessary to avoid or mitigate conflicts or interference, to adopt, after a full consideration of all factors, the most practicable method which provides the greatest present and future economy and convenience in rendering the services involved irrespective of whether the selected method applies to electric supply or signal systems or both.

General Authority: NDCC 49-02-04
Law Implemented: NDCC 49-02-04, 49-20-02

69-09-02-34. Location of lines. In situations where communication lines and electric supply lines on the same right of way are not to occupy joint poles or where either kind of line is alone on a right of way, all communication lines should be placed on one side of the right of way and all electric supply lines should be placed on the other side.

In the construction or reconstruction of electric supply and communication lines, unnecessary crossings of the right of way from side to side should be avoided.

Overbuilding of one line by another line should be avoided where practicable. Where necessary for different types of lines to occupy the same side of a right of way, joint use is generally preferable to overbuilding.

General Authority: NDCC 49-02-04
Law Implemented: NDCC 49-02-04, 49-20-02

69-09-02-35. Installation and maintenance - Conformance to National Electrical Safety Code. The installation and maintenance of electric supply and communication lines shall conform to rules and regulations established in the 1997 edition of the National Electrical Safety Code, issued August 1, 1996, which is adopted by reference. Copies of these regulations may be obtained from the public service commission, state capitol, Bismarck, North Dakota 58505-0480.

History: Amended effective September 1, 1984; January 1, 1988; December 1, 1990, August 1, 1993; July 1, 1997.

General Authority: NDCC 49-02-04
Law Implemented: NDCC 49-02-04, 49-20-02

69-09-02-36. Raising and lowering electric supply and communication lines.

1. If the circumstances necessitate the raising or lowering of electric supply or communication lines to permit the movement of buildings or other bulky objects, the person in charge of such movement shall give the official in charge of the lines preliminary advance notice thereof not less than ninety-six hours prior to the time of crossing, unless a shorter notice is mutually agreed upon. The preliminary advance notice shall include the following information:
 - a. The name and address of the owner, and mover, of the building or other object to be transported.

- b. The location of the proposed crossings.
- c. The height, when mounted, of the building or other object aboveground.

The person in charge of the movement of a building or other bulky object shall give the official in charge of electric supply or communication lines final advance notice not less than twenty-four hours prior to the time of crossing, and shall then specify the day and hour of arrival at the proposed crossings.

If, in the opinion of the official in charge of electric supply or communication lines, the proposed crossings will necessarily cause a serious interruption of services provided by the line, then the raising or lowering of the line shall be made at such time as to cause least inconvenience to the users thereof. The time of crossing, in that case, shall be fixed by the official in charge of the line after due consideration of all factors involved, including any requirements imposed by law upon the mover; but, except by mutual agreement, the time shall not be later than twenty-four hours after the time of crossing specified in the final advance notice. However, if, in the opinion of the official, any interruption of service provided by the line will materially affect public health, safety, or welfare, then the official in charge of the line may petition the commission for authority to refuse the request for crossing. The official in charge of electric supply or communication lines may require that all requests for crossing of lines under the official's supervision be in writing.

- 2. The person in charge of the movement of a building or other bulky object which will necessitate the raising or lowering of electric supply or communication lines shall ascertain, in advance, the ownership of all lines along the proposed route of travel, and shall give the official in charge of each line due notice of proposed crossings as provided for in this section.
- 3. The official in charge of electric supply or communication lines may require that any person requesting the raising or lowering thereof to permit the movement of a building or other bulky object shall deposit, in advance, the estimated cost of raising or lowering and restoring the lines. The official shall promptly notify the person requesting the raising or lowering of lines that a deposit will be required. The deposit shall be made not less than twenty-four hours prior to the time of the proposed crossing, unless a lesser time is agreed upon. Any amount of the deposit in excess of the cost of raising or lowering and restoring the lines shall be refunded to the depositor. If the cost thereof exceeds the deposit, the person making the request shall promptly pay any amount in excess of the deposit.

4. After compliance with all requirements provided for in this section, the official in charge of the electric supply or communication lines shall proceed to raise or lower the lines to permit the movement of buildings or other bulky objects at the time agreed upon, or as specified in the final advance notice.
5. The person in charge of the movement of a building or other bulky object shall notify the official in charge of electric supply or communication lines in advance of the specified time of crossing of any probable delay in arriving at the proposed crossings. Likewise, the official in charge of the lines shall promptly notify the mover of any unavoidable delay in raising or lowering lines at the proposed crossings.
6. Any person required to pay for the raising or lowering and restoring of electric supply or communication lines shall, upon request, be furnished an itemized statement showing in detail all costs incurred.
7. If any charge is made for the raising or lowering and restoring of electric supply or communication lines, the official in charge of said lines shall make and keep, for a period of not less than one year, a record of all direct costs incurred each time the lines under the official's supervision are raised or lowered to permit the movement of a building or other bulky object. However, if the cost of raising or lowering and restoring a particular line exceeds fifty dollars, records shall be made and kept, for a period of not less than one year, showing the following additional information:
 - a. The original written request for crossings, if submitted in writing, and a notation of the day and hour received.
 - b. A memorandum of an oral request for crossing, noting thereon the day and hour received, and any other pertinent information.
 - c. The location of the crossing, or crossings.
 - d. The estimated cost of the crossings, if quoted; and the amount of deposit received, if any.
 - e. The day and hour the electric supply or communication lines were ready for crossing.
 - f. The day and hour the crossing was completed.
 - g. The number of wires involved, whether wires were raised or lowered to permit crossing, and any other pertinent information regarding work performed and time required to complete the job.

- h. The vertical clearance in feet [meters] of lowest wire aboveground before wires were raised, if the owner or mover of the building or other object requests that information.
 - i. If an electric supply line, the normal voltage between wires, and whether line was deenergized.
 - j. Names of crew members assigned to job; hours worked by each crew member; method of transportation, indicating miles [kilometers] traveled or time required; and a list of materials used on the job.
- 8. The charges which may be assessed for the raising or lowering and restoring of electric supply or communication lines shall be the direct cost incurred.
- 9. Any official in charge of electric supply or communication lines who fails, except for good cause, to have the lines raised or lowered to permit the movement of buildings or other bulky objects at the time specified, as provided for in this section, shall be deemed to have violated this chapter.

General Authority: NDCC 49-02-21

Law Implemented: NDCC 49-02-21

69-09-02-37. Electric master metering prohibited - Exception.

- 1. Applicability. This section is applicable to any new or substantially remodeled commercial or residential building containing more than one unit or any other multiple use facility in which the occupant of each unit has control over a portion of the electric energy used in the building or facility. This section is applicable to those buildings or facilities on which construction or substantial remodeling is commenced on or after November 1, 1980. This section is not applicable to hotels, motels, dormitories, nursing homes, homes for the elderly, or similar facilities, or to low income rental housing in which the cost of electricity is included in the rent and where the amount of the rental payment is based upon the tenant's ability to pay.
- 2. Master metering of electric service in new or substantially remodeled buildings is prohibited, except to the extent determined appropriate by the commission pursuant to subsection 3.
- 3. An owner or builder of a new or substantially remodeled building may petition the commission for approval of master metering of electric service. The commission may approve the petition if the owner or builder

affirmatively demonstrates to the satisfaction of the commission that the costs of purchasing and installing separate meters in such building exceed the longrun benefits of separate metering to the customers in such building.

History: Effective October 1, 1980.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-38. Advertising by electric utilities.

1. Definitions. For purposes of this section:
 - a. "Advertising" means the commercial use, by an electric utility, of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to the utility's electric customers.
 - b. "Institutional advertising" means advertising which has as its primary objective the enhancement or preservation of the corporate image of the utility and to present it in a favorable light to the general public and investors.
 - c. "Political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.
 - d. Promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of an electric utility or the selection or installation of any appliance or equipment designed to use the utility's service.
 - e. "Institutional advertising", "political advertising", and "promotional advertising" do not include:
 - (1) Advertising which informs electric customers how they can conserve energy or can reduce peak demand for electric energy.
 - (2) Advertising required by law or regulations.
 - (3) Advertising relating to service interruptions, safety measures, or emergency conditions.

- (4) Advertising concerning employment opportunities with an electric utility.
 - (5) Advertising which promotes the conservation of limited resources, the use of more plentiful resources, or the use of energy efficient appliances, equipment, or services.
 - (6) Any explanation or justification of existing or proposed rate schedules, or notifications of hearings thereon.
 - (7) Advertising determined by the commission to benefit customers and serve the public interest.
- 2. Any expenditure by the utility for institutional, promotional, or political advertising shall be excluded from operating expenses in the cost of service determination for ratemaking purposes.
- 3. Advertising expenditures which are reasonable in amount and which are not excluded by the provisions of this section may be included as operating expenses in the cost of service determination for ratemaking purposes.

History: Effective October 1, 1980.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

69-09-02-39. Automatic adjustment clauses.

- 1. As used in this section, the term "automatic adjustment clause" means a tariff provision that provides for increases or decreases, or both, without prior hearing, in rates reflecting increases or decreases, or both, in energy costs incurred by an electric utility.
- 2. An automatic adjustment clause that does not conform to the principles set out in this section may not be in the public interest. This section contemplates that the filing of a proposed rate tariff that includes a nonconforming automatic adjustment clause may result in suspension of all or part of the tariff.
- 3. The automatic adjustment clause must be in a form that provides for periodic adjustments per kilowatt-hour of sales equal to the difference between the energy cost per kilowatt-hour of sales in the base period and in the current period in accordance with the following formula:

$$\text{Adjustment Factor} = (F_m - S_m) - (F_b - S_b)$$

For the purposes of this formula: "Fm" is the expense of fossil and nuclear fuel in the current period; "Fb" is the expense of fossil and nuclear fuel in the base period; "Sm" is the kilowatt-hour sales in the current period; and "SY" is the kilowatt-hour sales in the base period. The energy costs per kilowatt-hour for the current period shall be calculated from data covering actual costs from the most recent four-month period as follows: Energy costs for actual months 1, 2, 3, and 4 plus unrecovered (or less overrecovered) prior cumulative energy costs divided by kilowatt-hour sales for actual months 1, 2, 3, and 4 equals the energy cost adjustment for month 6.

4. Energy costs (F) are the cost of:
 - a. Fuel consumed in the utility's own plants, and the utility's share of fossil and nuclear fuel consumed in jointly owned or leased plants;
 - b. The actual identifiable fuel costs associated with energy purchased for reasons other than those identified in subdivision c;
 - c. The net energy cost of energy purchases, exclusive of capacity or demand charges, irrespective of the designation assigned to such transaction, when such energy is purchased:
 - (1) On an economic dispatch basis. Included therein may be such costs as the charges for economic energy purchases and the charges as a result of scheduled outage, all such kinds of energy being purchased by the buyer to substitute for its own higher cost energy;
 - (2) From a renewable energy source, including hydropower, wood, windpower, and biomass; and
 - (3) From a qualifying facility as defined in 18 CFR part 292;
 - d. Less the cost of fuel recovered through intersystem sales including the fuel costs related to economy energy sales and other energy sold on an economic dispatch basis.
5. Sales (S) are all kilowatt-hours sold, excluding intersystem sales. Where for any reason, billed system sales cannot be coordinated with fuel costs for the billing period, sales may be equated to the sum of:
 - a. Generation;
 - b. Purchases;
 - c. interchange-in; less

- d. Energy associated with pumped storage operations; less
 - e. Intersystem sales referred to in subdivision d of subsection 4; less
 - f. Total system losses.
- 6. The adjustment factor developed according to this procedure must be modified to properly allow for losses (estimated if necessary) associated only with wholesale sales for resale.
 - 7. The cost of fuel other than nuclear may include only those items listed in Account 151 of the Uniform System of Accounts for Public Utilities and Licensees. The cost of nuclear fuel is that in Account 518, to the extent that the cost has not already been included in the cost of other fuel.
 - 8. If the current price of fuels is in litigation or otherwise being collected subject to refund, the utility shall advise the commission and shall keep a separate account of amounts paid that are subject to refund, and shall advise the commission of the final outcome.
 - 9. Notice of change in the adjustment must be filed with the commission prior to billing. The notice must include:
 - a. Workpapers calculating the adjustment; and
 - b. To the extent possible, an explanation of market and other factors causing the change.
 - 10. If a particular circumstance prevents the use of a standard or its use would result in an undue burden, the commission may for good cause shown, permit deviation from a standard.
 - 11. The commission may review an automatic adjustment clause at any time to ensure the maximum economies in those operations and purchases which affect the rates to which the clause applies. The commission's review may include an evidentiary hearing. In making this review, the commission may examine and, if appropriate, cause to be audited, the practices of a utility relating to costs subject to an automatic adjustment clause, and may require any filings and reports that may be necessary to carry out the review, including volumes, prices, and contracts for all fuel and electric energy from all sources and a disclosure of any affiliation between the electric utility and the seller of fuel, electric energy, or other items to the utility.

12. Each utility shall cause an independent audit of its automatic adjustment clause to be performed annually. A copy of the auditor's report must be filed annually with the commission.

History: Effective October 1, 1980; amended effective February 1, 1995.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

**CHAPTER 69-09-05
STANDARDS OF SERVICE - TELEPHONE**

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69-09-05-00.1 Definitions.

1. “Competitive local exchange company” means any telecommunications company providing local exchange service, other than an incumbent local exchange carrier, whether by its own facilities, interconnection, or resale.
2. “Eligible telecommunications carrier” means a telecommunications company designated under section 214(e) of the Telecommunications Act of 1996 as eligible to receive universal service support in accordance with section 254 of the Telecommunications Act of 1996.
3. “End user” means a person who uses telecommunications service for the person’s own use.
4. “Incumbent local exchange company” means a telecommunications company that meets the definition of section 251(h) of the Telecommunications Act of 1996.
5. “Lifeline service” means a retail local telecommunications offering for which qualifying low-income consumers pay reduced recurring charges for universal service.

6. "Link-up service" means a reduction in the carrier's customary charge for commencing telecommunications service for a single telecommunications connection at a consumer's principal place of residence.
7. "Local exchange company" means an incumbent or competitive local exchange company.
8. "Telecommunications Act of 1996" means the Telecommunications Act of 1996 [Pub. L. 104-104; 110 Stat. 56; 47 U.S.C. 151 et seq.].

History: Effective January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-21, 49-21-01.7

69-09-05-01. Lowest priced service alternatives. Upon request of a residential customer or prospective customer for service, the utility shall ask if such customer wishes to be informed of the lowest priced service alternatives available from the utility, and upon an affirmative response shall inform such customer of the lowest priced service alternatives available from the utility at the customer's location, giving full consideration to grades of service, equipment options, and installation charges incident thereto.

History: Amended effective January 1, 2001.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11, 49-21-01.4

69-09-05-02. Discontinuance of telecommunications services. A utility may not discontinue telecommunications services, except as provided in this section.

1. A utility may discontinue the essential services it provides:
 - a. If the customer is delinquent in payment for essential services, then essential services may be discontinued even though discontinuing the services results in the discontinuance of all telecommunications services.
 - b. If the customer is delinquent in payment for long-distance services rendered by a local exchange company or another company and billed by the local exchange company, then the local exchange company may deny the customer all forms of access to the network of the telecommunications company to which the customer is delinquent in payment. However, if, due to technical limitations, a

local exchange company must also deny the customer all forms of access to the long-distance networks of all telecommunications companies, including its own, in order to deny the customer access to the network of the company to which the customer is delinquent, the local exchange company may do so.

2. A utility may discontinue nonessential services:
 - a. If the customer is delinquent in payment for nonessential services.
 - b. If the customer is delinquent in payment for long-distance telecommunications services rendered by another company and billed by the local exchange company, then the local exchange company may deny the customer all forms of access to the network of the telecommunications company to which the customer is delinquent in payment. However, if, due to technical limitations, a local exchange company must also deny the customer all forms of access to the long-distance networks of all telecommunications companies, including its own, in order to deny the customer access to the network of the company to which the customer is delinquent, the local exchange company may do so.
3. A utility may discontinue service to a customer for failure to comply with regulations of the utility on file with the commission pertaining to installation and use of equipment, or for use of equipment which interferes with or adversely affects the service to other customers, provided the customer has first been notified and afforded reasonable opportunity to change or disconnect such equipment.
4. A utility may not discontinue service to a customer for failure of the customer to pay for merchandise purchased from the utility, to pay for a different class of service furnished by the utility, to pay for service rendered to a previous occupant of the premises, or to pay the bill of another customer as guarantor thereof.
5. A utility may not discontinue service to a customer for failure to pay for service until the utility first gives the customer notice of its intention to discontinue such service on account of delinquency. The notice must:
 - a. Be sent by first-class mail addressed to the billing name and address of the affected account.
 - b. Show the amount of the delinquency.
 - c. Include the telephone number of the public service commission.

- d. Advise the customer of the customer's rights and remedies, including the customer's right to work out a satisfactory deferred installment agreement for delinquent accounts.
 - e. Inform the customer that service will be discontinued if the delinquent account is not paid within ten calendar days from the date of mailing or personal delivery of the notice, or if a satisfactory installment agreement is not made with the utility for payment of the delinquent bill. The utility may discontinue service without further notice if the customer fails to pay the delinquent account by the due date.
- 6.
- a. A deferred installment agreement for essential services may not be combined with a deferred installment agreement for any other services.
 - b. A utility may not discontinue essential services if the utility and the customer make a mutually agreed upon deferred installment agreement for essential services. A utility may discontinue essential services without further notice if the customer fails to pay the delinquent account in accordance with the deferred installment agreement.
 - c. A utility may not discontinue nonessential services if the utility and the customer make a mutually agreed upon deferred installment agreement for nonessential services. A utility may discontinue nonessential services without further notice if the customer fails to pay the delinquent account in accordance with the deferred installment agreement.
7. The customer may pay the delinquent account at any time prior to the actual discontinuance of service.
8. Whenever service has been discontinued for nonpayment of a bill, service must be resumed if the customer:
- a. Pays the fee for resuming service established in the utility's rate schedules;
 - b. Makes a deposit under section 69-09-05-03 (if required by the company); and
 - c. Makes a satisfactory settlement for the delinquent bill and for the service rendered to the date the service was discontinued.

Interexchange carriers are not required to resume long-distance service if local service is not connected.

9. If the customer disputes the amount of a bill for service, the customer may, to prevent discontinuance for nonpayment, pay the disputed bill under protest to the utility. Alternatively, the customer may request a formal hearing pursuant to section 69-02-02-02 in which case the utility may not discontinue service for nonpayment of the disputed bill until a final decision has been issued by the commission. The utility shall immediately give the commission notice of the dispute and the commission may investigate the dispute. The utility shall refund to the customer any part of such payment made under protest found by the commission to be excessive.
10. The commission may order the discontinuance of services where a reseller or operator services provider violates commission rules. The commission will provide ten days' notice of a deficiency or violation and provide an opportunity for the noncomplying reseller, or operator services provider to respond or correct the deficiency. A reseller or operator services provider disputing the alleged violation or discontinuance may request a formal hearing under section 69-02-02-02, in which case the discontinuance will be stayed until final decision by the commission.
11.
 - a. Except for discontinuance due to delinquency, a competitive local exchange company may not discontinue service to a customer without first providing the customer with twenty days' written notice of the intent to discontinue service. The notice of intent to discontinue service shall inform the customer of its right to choose between local exchange companies, if more than one local exchange company is providing essential services.
 - b. A telecommunications company may not interfere with a competitive local exchange company's obligation to provide notice to a customer; provided that a telecommunications company may disconnect service to a competitive local exchange company under the terms of a resale or interconnection agreement.
12. Except in the case of discontinuance for nonpayment, if a telecommunications company providing interexchange service intends to discontinue service or is forced to discontinue service due to abandonment, acquisition, bankruptcy, or for other reasons, the company must provide reasonable advance notice of the discontinuance to each customer. The notice must inform the customer that the customer must choose another primary interexchange carrier or use an alternative service.

History: Effective April 1, 1985; amended effective January 1, 1993; May 1, 1996; July 1, 1997, amendments voided by the Administrative Rule Committee, effective August 16, 1997; January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-21, 49-21-01.4, 49-21-01.7, 49-21-07

69-09-05-02.1. Determination of delinquency. For the purpose of discontinuing or resuming telecommunications service:

1. If a customer's partial payment on outstanding charges for telecommunications services excluding payments on a deferred installment agreement is less than the outstanding charges for essential services and federal access charges, the customer is delinquent in payment for essential services.
2. If a customer's partial payment on outstanding charges for telecommunications services excluding payments on a deferred installment agreement is equal to or greater than the outstanding charges for essential services and federal access charges, the customer is not delinquent in payment for essential services.

History: Effective January 1, 1993.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-21, 49-21-01.4, 49-21-01.7, 49-21-07

69-09-05-03. Deposits and guarantees.

1. Each telephone utility subject to the public service commission's jurisdiction may require each applicant for service to make a deposit not to exceed two times the estimated amount of one month's average bill. The utility shall each year pay interest on such deposit at the rate paid by the Bank of North Dakota on a six-month certificate of deposit. Such rate will be determined as of the first business day of each year on a six-month certificate of deposit with the smallest deposit required. The interest may be paid to the depositor or may be deducted from the depositor's indebtedness to the utility for telephone service. The payment or deduction for interest must be made during each calendar year, or whenever a deposit is refunded or service discontinued. The utility may accept in lieu of a cash deposit a contract signed by a guarantor, satisfactory to the utility, whereby the payment of a specified sum not to exceed the required cash deposit is guaranteed. The term of such contract must be indeterminate, but it must automatically terminate when the customer gives notice of service discontinuance to the utility or a change in location covered by the guarantee agreement or thirty days

after written request for termination is made to the utility by the guarantor. However, no agreement may be terminated without the customer having made satisfactory settlement for any balance which the customer owes the utility. Upon termination of a guarantee contract, a new contract or a cash deposit may be required by the utility.

2. An eligible telecommunications carrier may not collect a service deposit in order to initiate lifeline service, if the qualifying low-income consumer voluntarily elects toll blocking from the carrier, where available. If toll blocking is unavailable, the carrier may charge a service deposit.

History: Effective April 1, 1985; amended effective August 1, 1994; January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-21, 49-21-01.4, 49-21-01.7, 49-21-07

69-09-05-04. Rules for resale of telecommunications services.

1. Definitions.
 - a. "Premise cable" means telecommunications cable or channels on the reseller's side of the point of connection to the local exchange company (demarcation point).
 - b. "Prepayment" means payments made by customers of a reseller in advance of receiving service.
 - c. "Resale" means the subscription to local or long distance telecommunications services and facilities by one entity, and reoffered for profit or with markup to others with or without enhancements. Where reoffered service is part of a package, and the package is offered for profit or markup, it is resale.
 - d. "Reseller" means a person reselling local or long distance telecommunications services. The definition does not include pay telephone providers, but does include cellular and personal communication service providers who resell wireline service as part of their cellular or personal communication service.
 - e. "Same continuous property" is contiguous real estate owned by the same individual, group of individuals, or other legal entity having title to the property. The property may be traversed by streets, ditches, or other similar manmade or natural terrain features provided that, but for terrain features, the property would be contiguous and provided that such terrain features are of a nature

and dimension that it is reasonable to treat the property as contiguous.

- f. "Shared tenant service provider" means a person reselling telecommunications services to the tenants of a building complex on the same continuous property or to parties with a community of interest.

2. A reseller may not operate in North Dakota except in compliance with applicable laws and rules. A reseller shall:

- a. Obtain a certificate of registration from the commission, on a form provided by the commission, authorizing the provision of local resale or long-distance resale services in the state of North Dakota.
- b. If a reseller requires prepayment for service, it shall:
 - (1) Submit a performance bond in an amount specified by the commission; or
 - (2) Establish an escrow account in a North Dakota bank containing an amount equal to the prepayments collected at any given time, and file monthly reports showing escrow account activities and call completion data.
 - (3) The requirements of paragraphs 1 and 2 are waived for any company that has provided cellular or personal communication service in North Dakota for one year without a formal complaint having been filed against it. The commission may revoke the waiver after notice and opportunity for hearing if necessary to protect the public interest.
 - (4) The requirements of paragraphs 1 and 2 are subject to a twenty-five thousand dollar minimum for resellers of local service other than by means of a prepaid calling card.
- c. Forfeit its registration certificate if it is voluntarily dissolved or involuntarily dissolved under North Dakota law. A reseller may not operate and its registration certificate is void on the effective date of involuntary dissolution under North Dakota Century Code section 10-23-02.2.

3. A reseller may not be identified as an optional intrastate interexchange carrier without a certificate of registration from the commission.

4. Except for residents of dormitories or residence halls of schools, colleges, or universities, the end user has the unrestricted right to choose service from the incumbent local exchange company.
5. A shared tenant service provider shall allow the tenant to use the shared tenant service provider's premise cable and wire in the event an end user wants to receive service from the local exchange company.
6. The reseller is responsible for the charges incurred for telecommunications services to which it subscribes for serving its end users.
7. A reseller is subject to reregulation by the commission, revocation of its certificate, and the penalties provided in North Dakota Century Code chapter 49-07 for violation of any applicable law or rule.

History: Effective March 1, 1989; amended effective August 1, 1991; December 1, 1993; February 1, 1995; July 1, 1997; January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7, 49-21-07

69-09-05-04.1 Identification of intraLATA interexchange carriers.

1. A local exchange carrier shall not identify a telecommunications company as an optional intrastate interexchange carrier unless the telecommunications company provides the local exchange company with evidence of an effective certificate of public convenience and necessity or a current certificate of registration authorizing the provision of intrastate interexchange service.
2. A telecommunications company shall immediately notify in writing all local exchange companies for which it has requested identification as an optional intrastate interexchange carrier if the telecommunications company's authority to provide interexchange service is revoked or abandoned. A local exchange company shall cease to identify a telecommunications company as an optional intrastate interexchange carrier upon receipt of a written notice that the telecommunications company's authority to provide interexchange service has been revoked or abandoned.

History: Effective February 1, 1995; amended effective January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21

69-09-05-04.2 Unauthorized service changes. A telecommunications company may not change a customer's local or long-distance carrier without authorization from the customer.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-21, 49-21.01.7, 49-21-02.4, 49-21-07

69-09-05-05. Rules for the provision of operator services.

1. Definitions.

- a. "End user" means the person to whom operator service is provided.
- b. "Operator service" means service provided to assist in the completion or billing of telephone calls through the use of a live operator or automated equipment. "Operator service" does not include completion of calls through an 800 number or an access code when billed to an account previously established with the carrier by the end user, or the automated operator services provided by pay telephone sets with built-in automated operator messages.
- c. "Operator service provider" means the person providing operator service.

2. Operator service providers shall:

- a. Obtain a certificate of registration from the commission authorizing the provision of operator services in the state of North Dakota.
- b. Provide written material for use in disclosing to the end user the name and toll free telephone number of the operator service provider. This material must be provided to all coin telephone operators, motels, hospitals, and any other locations where end users may use telephone service not billable to their home or business telephones without operator service.
- c. Require operators to clearly identify the operator service provider to all end users and when requested, provide rate information.
- d. Provide emergency call service that is equal to that provided by the local exchange telephone company and, if unable to meet this

requirement, provide emergency call service by immediate transfer of such calls to the local exchange company.

- e. For billing purposes, itemize, identify, and rate calls from the point of origination to the point of termination. No call may be transferred to another carrier by an operator service provider which cannot or will not complete the call, unless the call can be billed in accordance with this subsection.
- f. Not charge for incompleting calls.
- g. Disclose their names on bills which include charges for services they provided.

History: Effective March 1, 1989; amended effective August 1, 1991; May 1, 1996, January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7, 49-21-07

69-09-05-06. Rules for pay telephones. Repealed effective August 1, 1994.

69-09-05-07. Customer trouble reports. When a customer's service is found to be out of order or a customer reports trouble, the local exchange telecommunications company shall test its facilities to determine if the problem is with the local exchange company's facilities. If it is, the local exchange company shall correct the trouble promptly. There may be no charge to the customer to test determine if the problem is on the local exchange company's facilities or to correct a problem on the local exchange company's facilities. A local exchange company shall inform a customer in advance what charges will be assessed to identify or correct a problem located on the customer's facilities.

History: Effective August 1, 1991 amended effective January 1, 2001.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-11

69-09-05-08. Adoption of regulations. The following parts of title 47, Code of Federal Regulations in effect as of July 17, 1997, are adopted by reference:

Part 54 - Universal Service, Subpart F - Universal Service Support for Schools and Libraries.

Copies of these regulations may be obtained from:

Public Service Commission
State Capitol
Bismarck, North Dakota 58505-0480

History: Effective March 1, 1998.

General Authority: N.D.C.C. 28-32-02, 49-02-01

Law Implemented: N.D.C.C. 49-21

69-09-05-09. 911 and E-911 service. Each competitive local exchange company shall provide 911 or E-911 service that is comparable to the 911 or E-911 service provided by the incumbent local exchange company operating in each respective service area in which the competitive local exchange company offers service.

History: Effective January 1, 2001.

General Authority: 28-32-02, 49-21-01.7

Law Implemented: 49-21, 49-21-01.7, 49-21-07, 49-21-24

69-09-05-10. Certificate of registration - Procedure.

1. A reseller applying for a certificate of registration shall file an application on a form provided by the commission. The application shall include evidence of the applicant's authority to do business in North Dakota.
2. An applicant for a certificate of registration as a reseller shall follow the procedure set forth in section 69-09-05-04.
3. When the holder of a certificate of registration intends to assign the authority to provide telecommunications service in North Dakota to another entity, the assignee must first obtain a certificate of registration from the commission.
4. A reseller may voluntarily, without commission approval, surrender its certificate of registration by notifying the commission in writing.

History: Effective January 1, 2001.

General Authority: 28-32-02, 49-21-01.7

Law Implemented: 49-03.1-01, 49-03.1-03, 49-21

69-09-05-11. Certificate of public convenience and necessity - Procedure.

1. An applicant for a certificate of public convenience and necessity shall file an application with the commission which includes evidence of the applicant's authority to do business in North Dakota, conforms to the commission's rules of practice and procedure under article 69-02, and which identifies:
 - a. The type of service the applicant intends to provide.
 - b. The service area or areas in which the applicant intends to provide service.
 - c. How the applicant meets the issues to be considered in the application.
2. An applicant for a certificate of public convenience and necessity must also file consolidated financial statements for the most recent year available, including:
 - a. A balance sheet of the form and style usually followed in the industry.
 - b. An income statement of the form and style usually followed in the industry.
 - c. If available, an independent accountant's financial opinion.
 - d. Any other information requested by the commission.
3. In order to implement North Dakota Century Code chapter 49-03.1 consistent with the Telecommunications Act of 1996, issues to be considered in an application for a certificate of public convenience and necessity for a facilities-based provider of telecommunications services are:
 - a. Fitness and ability of the applicant to provide service.
 - b. Adequacy of the proposed service.
 - c. The technical, financial, and managerial ability of the applicant to provide service.
4. If the application is to be decided on a notice of opportunity for hearing, the applicant shall file affidavits sufficient to meet the applicant's burden of proof on the issues.

5. When the holder of a certificate of public convenience and necessity intends to assign the authority to provide telecommunications service in North Dakota to another entity, the assignee must first obtain a certificate of public convenience and necessity from the commission.
6. Abandonment of a certificate of public convenience and necessity for a competitive local exchange company requires prior written notice to the commission and thirty days prior written notice to the company's customers. Abandonment of a certificate of public convenience and necessity for an incumbent local exchange company requires prior commission approval.

History: Effective January 1, 2001.

General Authority: 28-32-02, 49-21-01.7

Law Implemented: 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7(7)

69-09-05-12. Eligible carrier applications and advertising.

1. Eligible carrier applications:
 - a. A telecommunications company that desires designation as an eligible carrier as that term is defined in the Telecommunications Act of 1996 shall make application for such designation with the commission.
 - b. An application for designation as an eligible carrier must specifically identify:
 - (1) The applicant's service area;
 - (2) How the applicant meets the requirements for designation as an eligible carrier,
 - (3) Whether the applicant requires a waiver of any eligible carrier requirement; and
 - (4) If a waiver is required, the specific reasons for the waiver and the length of time for which the waiver is required.
2. Eligible carrier advertising. The following forms of advertising of the availability of universal service are required of an eligible carrier:

- a. A full description of available services in the eligible carrier's official telephone directory, including the process to be used by customers to qualify for lifeline and link-up service.
- b. Advertising of the availability of universal services in media of general circulation in each eligible carrier's service areas. Availability may be advertised in newspapers, company newsletters, company or civic internet sites, bill stuffers, direct mailings, or other means intended to convey availability throughout the service area.

History: Effective January 1, 2001.

General Authority: 28-32-02, 49-21-01.7

Law Implemented: 49-21, 49-21-01.7, 49-21-07

69-09-05-13. Essential service provider bills. A provider of essential service, on any bill issued for the provision of essential services, shall:

1. Clearly disclose its name, business address, and a toll-free customer inquiry telephone number. The company name and business address must also be made available via the toll-free customer inquiry number;
2. Clearly and separately identify the essential services for which the bill is issued;
3. Clearly identify all taxes, fees, and surcharges associated with the essential services for which the bill is issued; and
4. Disclose that the provision of essential services may not be discontinued by the provider for nonpayment of charges for nonessential services or use other language that complies with federal billing rules.

History: Effective January 1, 2001.

General Authority: 28-32-02, 49-02-01.1, 49-21-01.7

Law Implemented: 49-21, 49-21-01.4, 49-21-01.7, 49-21-07

CHAPTER 69-09-05.1 ACCOUNTING PRACTICES

Section

69-09-05.1-01 Accounting Practices - Rate Regulated
Telecommunications Companies

69-09-05.1-01. Accounting practices - Rate regulated telecommunications companies. The system of accounts used by all North Dakota telecommunications companies subject to rate regulation by the commission shall conform to the uniform system of accounts set forth in title 47, Code of Federal Regulations, part 32, prescribed by the federal communications commission by order of May 1, 1986, which is adopted by reference.

History: Effective March 1, 1988; amended effective August 1, 1994.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-12

CHAPTER 69-09-06
PROHIBITION ON SALE AND DIRECT INDUSTRIAL USE OF NATURAL
GAS FOR OUTDOOR LIGHTING

[Repealed effective January 1, 1988]

CHAPTER 69-09-07 SMALL POWER PRODUCTION AND COGENERATION

Section

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69-09-07-13	Exemption for Qualifying Facilities

69-09-07-01. Definitions. As used throughout this chapter, except where otherwise indicated:

1. "Avoided costs" means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.
2. "Backup power" means electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the facility.
3. "Biomass" means any organic material not derived from fossil fuels.
4. "Bottoming-cycle cogeneration facility" means a cogeneration facility in which the energy input to the system is first applied to a useful thermal energy process, and the reject heat emerging from the process is then used for power production.
5. "Cogeneration facility" means equipment used to produce electric energy and forms of useful thermal energy, such as heat or steam, used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy.

6. "Commission" means the public service commission, or such other department, bureau, or commission as may lawfully succeed to the powers and duties of that commission.
7. "Electric utility" means an "electric public utility" as defined in subsection 1 of North Dakota Century Code section 49-03-01.5.
8. "Interconnection costs" means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent such costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs.
9. "Interruptible power" means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions.
10. "Maintenance power" means electric energy or capacity supplied by an electric utility during the scheduled outages of the qualifying facility.
11. "Natural gas" means either natural gas unmixed, or any mixture of natural gas and artificial gas.
12. "Oil" means crude oil, residual fuel oil, natural gas liquids, or any refined petroleum products.
13. "Primary energy source" means the fuel or fuels used for the generation of electric energy, except that such term does not include the minimum amounts of fuel required for ignition, startup, testing, flame stabilization, and control uses, and the minimum amounts of fuel required to alleviate or prevent unanticipated equipment outages, and emergencies, directly affecting the public health, safety or welfare, which would result from electric power outages.
14. "Purchase" means the purchase of electric energy or capacity or both from a qualifying facility by an electric utility.
15. "Qualifying cogeneration facility" means a cogeneration facility that is a qualifying facility under subsection 2 of section 69-09-07-03.

16. "Qualifying cogenerator" means the owner or operation of a qualifying cogeneration facility.
17. "Qualifying facility" means a cogeneration facility or a small power production facility which is a qualifying facility under section 69-09-07-03.
18. "Qualifying small power producer" means the owner or operator of a qualifying small power production facility.
19. "Qualifying small power production facility" means a small power production facility that is a qualifying facility under subsection 1 of section 69-09-07-03.
20. "Rate" means any price, rate, charge, or classification made, demanded, observed, or received with respect to the sale or purchase of electric energy or capacity, or any rule, regulation, or practice respecting any such rate, charge, or classification, and any contract pertaining to the sale or purchase of electric energy or capacity.
21. "Sale" means the sale of electric energy or capacity or both by an electric utility to a qualifying facility.
22. "Small power production facility" means a facility which produces electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources, or any combination thereof, and has a power production capacity which, together with any other facilities located at the same site, is not greater than eighty megawatts.
23. "Supplementary firing" means an energy input to the cogeneration facility used only in the thermal process of a topping-cycle cogeneration facility, or only in the electric generating process of a bottoming-cycle cogeneration facility.
24. "Supplementary power" means electric energy or capacity supplied by an electric utility, regularly used by a qualifying facility in addition to that which the facility generates itself.
25. "System emergency" means a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.
26. "Topping-cycle cogeneration facility" means a cogeneration facility in which the energy input to the facility is first used to produce useful power output, and the reject heat from power production is then used to provide useful thermal energy.

27. "Total energy input" means the total energy of all forms supplied from external sources other than supplementary firings to the facilities.
28. "Total energy output" of a topping-cycle cogeneration facility is the sum of the useful power output and useful thermal energy output.
29. "Useful power output" of a cogeneration facility means the electric or mechanical energy made available for use, exclusive of any such energy used in the power production process.
30. "Useful thermal energy output" of a topping-cycle cogeneration facility means the thermal energy made available for use in any industrial or commercial process, or used in any heating or cooling application.
31. "Waste" means byproduct materials other than biomass.

History: Effective June 1, 1981.

General Authority: NDCC 49-02-02

Law Implemented: NDCC 49-02-02

69-09-07-02. Scope - Applicability - Negotiated rates or terms.

1. Applicability. This chapter applies to the regulation of sales and purchases between qualifying facilities and electric utilities.
2. Negotiated rates or terms. Nothing in this chapter:
 - a. Limits the authority of any electric utility or any qualifying facility to agree to a rate for any purchase, or terms or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be required by this chapter; or
 - b. Affects the validity of any contract entered into between a qualifying facility and an electric utility for any purchase.

History: Effective June 1, 1981.

General Authority: NDCC 49-02-02

Law Implemented: NDCC 49-02-02

69-09-07-03. Qualifying facilities - General requirements for qualification.

1. Small power production facilities. A small power production facility is a qualifying facility if it:
 - a. Meets the maximum size criteria specified in subsection 1 of section 69-09-07-04;
 - b. Meets the fuel use criteria specified in subsection 2 of section 69-09-07-04; and
 - c. Meets the ownership criteria specified in section 69-09-07-06.
2. Cogeneration facilities. Unless excluded under subsection 3, a cogeneration facility is a qualifying facility if it:
 - a. Meets any applicable operating and efficiency standards specified in subsections 1 and 2 of section 69-09-07-05; and
 - b. Meets the ownership criteria specified in section 69-09-07-06.
3. Any cogeneration facility which is a new diesel cogeneration facility may not be a qualifying facility. A new diesel cogeneration facility is a cogeneration facility:
 - a. Which derives its useful power output from a diesel engine; and
 - b. The installation of which began on or after March 13, 1980.
4. Any cogeneration facility which is a new dual-fuel cogeneration facility which seeks to obtain qualifying status must follow the procedures set forth in subsection 2 of section 69-09-07-06. A new dual-fuel cogeneration facility is a cogeneration facility:
 - a. Which derives its useful power output from an internal combustion piston engine capable of changing automatically between gas and oil operation; and
 - b. The installation of which began on or after May 15, 1980.

History: Effective June 1, 1981.

General Authority: NDCC 49-02-02

Law Implemented: NDCC 49-02-02

69-09-07-04. Criteria for qualifying small power production facilities.

1. Size of the facility.
 - a. Maximum size. The power production capacity of the facility for which qualification is sought, together with the capacity of any other facilities which use the same energy resource, are owned by the same person, and are located at the same site, may not exceed eighty megawatts.
 - b. Method of calculation.
 - (1) For purposes of this subsection, facilities are considered to be located at the same site as the facility for which qualification is sought if they are located within one mile [1.61 kilometers] of the facility for which qualification is sought and, for hydroelectric facilities, if they use water from the same impoundment for power generation.
 - (2) For purposes of making the determination in paragraph 1, the distance between facilities shall be measured from the electric generating equipment of a facility.
 - c. Waiver. The commission may modify the application of subdivision b for good cause.
2. Fuel use.
 - a. The primary energy source of the facility must be biomass, waste, renewable resources, or any combination thereof, and more than seventy-five percent of the total energy input must be from these sources. Any primary energy source which, on the basis of its energy content, is fifty percent or more biomass shall be considered biomass.
 - b. Use of oil, natural gas, and coal by a facility may not, in the aggregate, exceed twenty-five percent of the total energy input of the facility during any calendar year period. Energy input in the case of energy in the form of natural gas or oil is to be measured by the lower heating value of the natural gas or oil.

History: Effective June 1, 1981.

General Authority: NDCC 49-02-02

Law Implemented: NDCC 49-02-02

69-09-07-05. Criteria for qualifying cogeneration facilities.

1. Operating standard for topping-cycle facilities. For any topping-cycle cogeneration facility, the useful thermal energy output of the facility must, during any calendar year period, be no less than five percent of the total energy output.
2. Efficiency standard for topping-cycle facilities.
 - a. For any topping-cycle cogeneration facility for which any of the energy input is natural gas or oil, and the installation of which began on or after March 13, 1980, the useful power output of the facility plus one-half the useful thermal energy output, during any calendar year period, must:
 - (1) Subject to paragraph 2, be no less than forty-two and one-half percent of the total energy output of natural gas and oil to the facility; or
 - (2) If the useful thermal energy output is less than fifteen percent of the total energy output of the facility, be no less than forty-five percent of the total energy input of natural gas and oil to the facility.
 - b. For any topping-cycle cogeneration facility not subject to subdivision a, there is no efficiency standard.
3. Efficiency standard for bottoming-cycle facilities.
 - a. For any bottoming-cycle cogeneration facility for which any of the energy input as supplementary firing is natural gas or oil, and the installation of which began on or after March 13, 1980, the useful power output of the facility must, during any calendar year period, be no less than forty-five percent of the energy input of natural gas and oil for supplementary firing.
 - b. For any bottoming-cycle cogeneration facility not covered by subdivision a, there is no efficiency standard.

4. Waiver. The commission may waive any of the requirements of this section upon a showing that the facility will produce significant energy savings.

History: Effective June 1, 1981.

General Authority: NDCC 49-02-02

Law Implemented: NDCC 49-02-02

69-09-07-06. Ownership criteria.

1. General rule. A cogeneration facility or small power production facility may not be owned by a person primarily engaged in the generation or sale of electric power, other than electric power solely from cogeneration facilities or small power production facilities.
2. Ownership test. For purposes of this section, a cogeneration or small power production facility shall be considered to be owned by a person primarily engaged in the generation or sale of electric power, if more than fifty percent of the equity interest in the facility is held by an electric utility or utilities, or by a public utility holding company, or companies, or any combination thereof. If a wholly or partially owned subsidiary of an electric utility or public utility holding company has an ownership interest in a facility, the subsidiary's ownership interest shall be considered as ownership by an electric utility or public utility holding company.

History: Effective June 1, 1981.

General Authority: NDCC 49-02-02

Law Implemented: NDCC 49-02-02

69-09-07-07. Procedures for obtaining qualifying status.

1. Qualification. A small power production facility or cogeneration facility which meets the criteria for qualification set forth in section 69-09-07-03 is a qualifying facility. The owner or operator of any facility qualifying under this subsection shall furnish notice to the commission providing the information set forth in paragraphs 1 through 4 of subdivision b of subsection 2.
2. Optional procedure.
 - a. Application for commission certification. Pursuant to the provisions of this subsection, the owner or operator of the facility may file with the commission an application for commission certification that the facility is a qualifying facility.

- b. General contents of application. The application shall contain the following information:
 - (1) The name and address of the applicant and the location of the facility;
 - (2) A brief description of the facility, including a statement indicating whether such facility is a small power production facility or a cogeneration facility;
 - (3) The primary energy source used or to be used by the facility;
 - (4) The power production capacity of the facility; and
 - (5) The percentage of ownership by any electric utility or by any public utility holding company, or by any person owned by either.
- c. Additional application requirements for small power production facilities. An application by a small power producer for commission certification shall contain the following additional information:
 - (1) The location of the facility in relation to any other small power production facilities located within one mile [1.61 kilometers] of the facility, owned by the applicant which use the same energy source; and
 - (2) Information identifying any planned usage of natural gas, oil, or coal.
- d. Additional application requirements for cogeneration facilities. An application by a cogenerator for commission certification shall contain the following additional information:
 - (1) A description of the cogeneration system, including whether the facility is a topping or bottoming cycle and sufficient information to determine that any applicable requirements under section 69-09-07-05 will be met; and
 - (2) The date installation of the facility began or will begin.
- e. Commission action. Within ninety days of the filing of a complete application, the commission shall issue an order granting or denying the application, tolling the time for issuance of an order, or setting the matter for hearing. Any order denying certification shall identify the specific requirements which are not met. If no order is issued within ninety days of the filing of a complete application, the application shall be deemed to have been granted.

3. Notice requirements for facilities of five hundred kilowatts or more. An electric utility is not required to purchase electric energy from a facility with a design capacity of five hundred kilowatts or more until ninety days after the facility notifies the utility that it is a qualifying facility, or ninety days after the facility has applied to the commission under subsection 2.
4. Revocation of qualifying status.
 - a. The commission may revoke the qualifying status of a qualifying facility which has been certified under this section if such facility fails to comply with any of the statements contained in its application for commission certification.
 - b. Prior to undertaking any substantial alteration or modification of a qualifying facility which has been certified under this section, a small power producer or cogenerator may apply to the commission for a determination that the proposed alteration or modification will not result in a revocation of qualifying status.

History: Effective June 1, 1981.

General Authority: NDCC 49-02-02

Law Implemented: NDCC 49-02-02

69-09-07-08. Electric utility obligations.

1. Obligation to purchase from qualifying facilities. Each electric utility shall purchase, in accordance with section 69-09-07-09, any energy and capacity which is made available from a qualifying facility:
 - a. Directly to the electric utility; or
 - b. Indirectly to the electric utility in accordance with subsection 4.
2. Obligation to sell to qualifying facilities. Each electric utility shall sell to any qualifying facility, in accordance with section 69-09-07-10, any energy and capacity requested by the qualifying facility.
3. Obligation to interconnect. An electric utility shall make such interconnections with any qualifying facility as may be necessary to accomplish purchases or sales under this chapter. The obligation to pay for any interconnection costs shall be determined in accordance with section 69-09-07-11.

4. Transmission to other electric utilities. If a qualifying facility agrees, an electric utility which would otherwise be obligated to purchase energy or capacity from such qualifying facility may transmit the energy or capacity to any other electric utility. Any electric utility to which such energy or capacity is transmitted shall purchase such energy or capacity under this chapter as if the qualifying facility were supplying energy or capacity directly to such electric utility. The rate for purchase by the electric utility to which such energy is transmitted shall be adjusted up or down to reflect line losses pursuant to subdivision d of subsection 6 of section 69-09-07-09.
5. Parallel operation. Each electric utility shall offer to operate in parallel with a qualifying facility.

History: Effective June 1, 1981.

General Authority: NDCC 49-02-02

Law Implemented: NDCC 49-02-02

69-09-07-09. Rates for purchases.

1. Rates for purchases must:
 - a. Be just and reasonable to the electric consumer of the electric utility and in the public interest; and
 - b. Not discriminate against qualifying cogeneration and small power production facilities.
2. Relationship to avoided costs.
 - a. For purposes of this subsection, "new capacity" means any purchase from capacity of a qualifying facility, construction of which began on or after November 9, 1978.
 - b. Subject to subdivision c of this subsection and subdivision a of subsection 3, a rate for purchases satisfies the requirements of subsection 1 if the rate equals the avoided costs determined after consideration of the factors set forth in subsections 5 and 6.
 - c. A rate for purchases (other than from new capacity) may be less than the avoided cost if the commission determines a lower rate is consistent with subsection 1, and is sufficient to encourage cogeneration and small power production.

- d. Rates for purchases from new capacity must be in accordance with subdivision b, regardless of whether the electric utility making the purchase is simultaneously making sales to the qualifying facility.
 - e. When rates for purchases are based on estimates of avoided costs over the term of a contract or other legally enforceable obligation, the rates for the purchases do not violate this chapter if the rates for the purchases differ from avoided costs at the time of delivery.
3. Standard rates for purchases.
- a. Qualifying facilities with a design capacity of one hundred kilowatts or less are entitled to net energy billing where the output from the qualifying facility reverses the electric meter used to measure sales from the electric utility to the qualifying facility. For each qualifying facility opting for net energy billing:
 - (1) The purchasing electric utility shall file an annual report of total monthly energy produced with the commission.
 - (2) The purchasing electric utility may recover metering costs associated with production monitoring from the qualifying facility.
 - b. Each electric utility must have standard offer contracts for capacity payments, when required by subsection 6, to qualifying facilities operating as peaking units with a design capacity of one megawatt or less. These standard offer contracts:
 - (1) Must base payments for avoided capacity on the projected cost per kilowatt of a new peaking facility, and adjust the amount of payment to reflect the length of contract overlap into the projected lifetime of the new facility.
 - (2) Must be accompanied by an annually updated table of capacity payment per kilowatt as a function of contract length.
 - (3) Must be dependent upon the following capacity factor adjustment for determining capacity payment amounts:

Payment = (Qualifying facility's capacity factor/Projected capacity factor of the facility to be avoided) (Contracted capacity payment price)

"Capacity factor" means the average on peak period metered capacity delivered to the utility for the billing period divided by the greatest fifteen-minute metered capacity delivered for the on peak period of the same billing period.

- c. Each electric utility may have standard rates for purchases from qualifying facilities with a design capacity greater than in subdivisions a and b.
- d. The standard rates for purchases under subdivisions b and c of this subsection:
 - (1) Must be consistent with subsections 1, 5, and 6; and
 - (2) May differ based on the supply characteristics of various technologies.
- 4. Purchases "as available" or under a legally enforceable obligation. Each qualifying facility may either:
 - a. Provide energy the qualifying facility determines to be available, in which case the rates for the purchases shall be based on the purchasing utility's avoided costs calculated at the time of delivery; or
 - b. Provide energy or capacity under a legally enforceable obligation for the delivery of energy or capacity over a specified term, in which case the rates for the purchases must, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on either:
 - (1) The avoided costs calculated at the time of delivery; or
 - (2) The avoided costs calculated at the time the obligation is incurred.
- 5. Factors affecting rates for purchases. In determining avoided costs, the following factors shall, to the extent practicable, be taken into account:
 - a. The data provided under 18 CFR 292.302, including commission review of the data;
 - b. The availability of capacity or energy from a qualifying facility during the system daily and seasonal peak periods, including:
 - (1) The ability of the utility to dispatch the qualifying facility;

- (2) The expected or demonstrated reliability of the qualifying facility;
 - (3) The terms of any contract or other legally enforceable obligation, including the duration of the obligation, termination notice requirements and sanctions for noncompliance;
 - (4) The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the utility's facilities;
 - (5) The usefulness of energy and capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation;
 - (6) The individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system; and
 - (7) The smaller capacity increments and the shorter lead times available with additions of capacity from qualifying facilities.
 - c. The relationship of the availability of energy or capacity from the qualifying facility, as derived in subdivision b, to the ability of the electric utility to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use; and
 - d. The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a qualifying facility, if the purchasing electric utility generated an equivalent amount of energy itself or purchased an equivalent amount of electric energy or capacity; and
 - e. The costs or savings resulting from variations in total air polluting emissions from those that would have existed in the absence of purchases from a qualifying facility.
6. Qualifying facilities are entitled to payment for avoided capacity when utility load forecasts project capacity deficits within ten years and the qualifying facility has entered into a power supply contract with the utility that extends into projected deficit period.
7. Periods during which purchases not required.
- a. Any electric utility which gives notice under subdivision b will not be required to purchase electric energy or capacity during any period during which, due to operational circumstances, purchases from

qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases, but instead generated an equivalent amount of energy itself.

- b. Any electric utility seeking to invoke subdivision a of this subsection must notify, in writing, each affected qualifying facility in time for the qualifying facility to cease the delivery of energy or capacity to the electric utility, and must also send a copy of the notice to the commission.
- c. Any electric utility which fails to comply with the provisions of subdivision b will be required to pay the same rate for such purchase of energy or capacity as would be required had the period described in subdivision a not occurred.
- d. A claim by an electric utility that such a period has occurred or will occur is subject to verification the commission determines appropriate, either before or after the occurrence.
- e. This subsection does not apply to purchases made under subdivision a of subsection 3.

History: Effective June 1, 1981; amended effective May 1, 1991.

General Authority: NDCC 49-02-02

Law Implemented: NDCC 49-02-02

OBJECTION

THE LEGISLATIVE COUNCIL'S COMMITTEE ON ADMINISTRATIVE RULES OBJECTS TO CHANGES TO NORTH DAKOTA ADMINISTRATIVE CODE SECTION 69-09-07-09 ADOPTED BY THE PUBLIC SERVICE COMMISSION EFFECTIVE MAY 1991 RELATING TO THE RATES THAT ELECTRIC UTILITIES MUST PAY FOR POWER PURCHASED FROM QUALIFYING FACILITIES.

The committee objects to this rule because:

- 1. North Dakota Administrative Code Section 69-09-07-09 establishes rates that investor-owned utilities must pay for power purchased from qualified facilities and requires net energy billing.
- 2. 1991 Senate Bill No. 2463, which would have required net energy billing for sales involving investor-owned utilities and rural cooperatives, failed to pass the Senate on a vote of 6 to 43.

3. It is clearly a violation of legislative intent for the Public Service Commission to adopt rules requiring net energy billing by investor-owned utilities when the 1991 Legislative Assembly defeated a bill that would have required the same.

Section 28-32-03.3 provides that after the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment shall be rendered against the agency for court costs.

History: Effective August 9, 1991.

General Authority: NDCC 28-32-03.3

69-09-07-10. Rates for sales.

1. General rules.
 - a. Rates for sales:
 - (1) Shall be just and reasonable and in the public interest; and
 - (2) Shall not discriminate against any qualifying facility in comparison to rates for sales to other customers served by the electric utility.
 - b. Rates for sales which are based on accurate data and consistent systemwide costing principles shall not be considered to discriminate against any qualifying facility to the extent that such rates apply to the utility's other customers with similar load or other cost-related characteristics:
2. Additional services to be provided to qualifying facilities.
 - a. Upon request of a qualifying facility, each electric utility shall provide:
 - (1) Supplementary power;
 - (2) Backup power;
 - (3) Maintenance power; and
 - (4) Interruptible power.

- b. The commission may waive any requirement of subdivision a if, after notice in the area served by the electric utility and after opportunity for public comment, the electric utility demonstrates and the commission finds that compliance with such requirement will:
 - (1) Impair the electric utility's ability to render adequate service to its customers; or
 - (2) Place an undue burden on the electric utility.
- 3. Rates for sales of backup and maintenance power. The rate for sales of backup power or maintenance power:
 - a. Shall not be based upon an assumption (unless supported by factual data) that forced outages or other reductions in electric output by all qualifying facilities on an electric utility's system will occur simultaneously, or during the system peak, or both; and
 - b. Shall take into account the extent to which scheduled outages of the qualifying facilities can be usefully coordinated with scheduled outages of the utility's facilities.

History: Effective June 1, 1981.

General Authority: NDCC 49-02-02

Law Implemented: NDCC 49-02-02

69-09-07-11. Interconnection costs.

- 1. Obligation to pay. Each qualifying facility shall be obligated to pay any interconnection costs which the commission may assess against the qualifying facility on a nondiscriminatory basis with respect to other customers with similar load characteristics.
- 2. Reimbursement of connection costs. The commission shall determine the manner for payments of interconnection costs, which may include reimbursement over a reasonable period of time.

History: Effective June 1, 1981.

General Authority: NDCC 49-02-02

Law Implemented: NDCC 49-02-02

69-09-07-12. System emergencies.

1. Qualifying facility obligation to provide power during system emergencies. A qualifying facility shall be required to provide energy or capacity to an electric utility during a system emergency only to the extent:
 - a. Provided by agreement between such qualifying facility and electric utility; or
 - b. Ordered under section 202(c) of the Federal Power Act [16 U.S.C. 824a(c)].
2. Discontinuance of purchases and sales during system emergencies. During any system emergency, an electric utility may discontinue:
 - a. Purchases from a qualifying facility if such purchases would contribute to such emergency; and
 - b. Sales to a qualifying facility; provided, that such discontinuance is on a nondiscriminatory basis.

History: Effective June 1, 1981.

General Authority: NDCC 49-02-02

Law Implemented: NDCC 49-02-02

69-09-07-13. Exemption for qualifying facilities.

1. Applicability. This section applies to:
 - a. Any qualifying cogeneration facility;
 - b. Any qualifying small power production facility which has a power production capacity which does not exceed thirty megawatts; and
 - c. Any qualifying small power production facility which has a power production capacity over thirty megawatts if such facility produces electric energy solely by the use of biomass as a primary energy source.
2. A qualifying facility described in subsection 1 shall not be considered to be an "electric public utility" as defined in subsection 1 of North Dakota Century Code section 49-03-01.5.
3. Any qualifying facility shall be exempted, except as provided in subsection 4, from any state law or regulation respecting:
 - a. The rates of electric utilities; and

- b. The financial and organizational regulation of electric utilities.
- 4. A qualifying facility may not be exempted from the provisions of this chapter.

History: Effective June 1, 1981.

General Authority: NDCC 49-02-02

Law Implemented: NDCC 49-02-02