

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Siting  
Rulemaking**

**Case No. PU-10-128**

**Public Service Commission  
Electric  
Rulemaking**

**Case No. PU-10-129**

**Public Service Commission  
Practice and Procedure  
Rulemaking**

**Case No. AD-10-167**

**ORDER SUBMITTING RULES TO ATTORNEY GENERAL**

**September 22, 2010**

**Appearances**

Commissioners Tony Clark, Kevin Cramer, and Brian P. Kalk

**Preliminary Statement**

On June 2, 2010 the North Dakota Public Service Commission (Commission) issued a formal Notice of Proposed Rulemaking and an Abbreviated Notice proposing to revise several sections to the North Dakota Administrative Code. The proposed rules are summarized as follows:

**Siting - Case No. PU-10-128**

Siting proposed rules incorporate a minor change relating to determining corridor size, a proposed rule concerning requests for jurisdictional determinations, and a proposed rule concerning letters of intent. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

**Electric: Case No. PU-10-129**

The renewable electricity and recycled energy tracking proposed rule standardizes the content and format of required annual reports of electric retail providers. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

### **Practice and Procedure: Case No. AD-10-167**

The proposed amendment repeals language regarding practice before the Commission that is inconsistent with the North Dakota Admission to Practice Rules. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

### **Public Hearing and Comments**

The Abbreviated Notice was published once in 51 official county newspapers the week of June 13 through June 19, 2010. The Ashley Tribune published the Notice on June 30, 2010. The notices were also forwarded to the Legislative Council for publication at least 30 days in advance of the hearing.

A public hearing was noticed for and held at 1:30 p.m., July 14, 2010. The hearing was held in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until July 26, 2010, during which data, views, or oral arguments concerning the proposed rulemaking could be received by the Commission and made a part of the rulemaking record to be considered by the Commission.

The only written comments filed were received at the hearing and were those of Commission staff.

### **Discussion**

#### **Siting - Case No. PU-10-128**

Staff prepared and filed a statement regarding the regulatory analysis, takings assessment, and small entity regulatory analysis.

Staff testified that the proposed changes incorporate a minor change relating to determining corridor size, a proposed rule concerning requests for jurisdictional determinations, and a proposed rule concerning letters of intent. One proposed change would clarify that the Commission can designate a smaller corridor without first receiving a request from the applicant. The rest of the proposed changes to the siting rules are intended to separate requests for jurisdictional determination from the letter of intent process.

No other comments were received and no changes are being made to the rules as originally proposed.

**Electric: Case No. PU-10-129**

Staff prepared and filed a statement regarding the regulatory analysis, takings assessment, and small entity regulatory analysis.

Staff testified that the proposed changes standardize the content and format of required annual reports of electric retail providers.

No other comments were received and no changes are being made to the rules as originally proposed.

**Practice and Procedure: Case No. AD-10-167**

Staff prepared and filed a statement regarding the regulatory analysis, takings assessment, and small entity regulatory analysis.

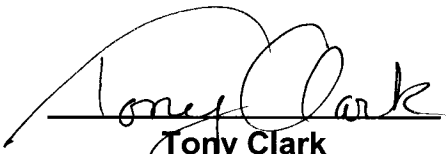
Staff testified that the proposed amendment repeals language regarding practice before the Commission that is inconsistent with the North Dakota Admission to Practice Rules.

No other comments were received and no changes are being made to the rules as originally proposed.

**Order**

The Commission orders the proposed changes to the North Dakota Administrative Code, as attached to and made a part of this order, be submitted to the Attorney General for an opinion that the rules are approved as to legality.

**PUBLIC SERVICE COMMISSION**

  
Tony Clark  
Commissioner

  
Kevin Cramer  
Chairman

  
Brian P. Kalk  
Commissioner

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Public Utilities - Siting  
Rulemaking**

**Case No. PU-10-128**

**CHAPTER 69-06-02.1  
REQUESTS FOR JURISDICTIONAL DETERMINATION**

**Section**

**69-06-02.1-01**

**Filing**

**69-06-02.1-02**

**Contents**

**69-06-02.1-01. Filing.** A utility planning to construct an energy conversion or transmission facility may request a jurisdictional determination from the commission. A request for jurisdictional determination must be in writing.

**History:** Effective \_\_\_\_\_.

**General Authority:** NDCC 49-22-18

**Law Implemented:** NDCC 49-22-07.1

**69-06-02.1-02. Contents.** A request for a jurisdictional determination must contain:

- 1. A description of the size of the facility.**
- 2. A description of the type of the facility.**
- 3. A description of the area to be served.**
- 4. A map of the study area for the proposed site or corridor.**
- 5. A description of the ownership and operation responsibility of the facility.**
- 6. A description of the facilities and equipment that will be used and how they will be maintained.**
- 7. A description of the owner's or operator's plans for selling, transmitting or distributing the output of the plant.**
- 8. A description of how the facility will be physically and electronically interconnected with other energy conversion, transmission, and distribution facilities.**

9. A description of the owner's and operator's economic evaluation of the facility, and
10. A description of how the site will be leased or other rights of access will be obtained.

**History:** Effective \_\_\_\_\_.

**General Authority:** NDCC \_\_\_\_\_

**Law Implemented:** NDCC \_\_\_\_\_

## 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 requested in writing and 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.~~

**History:** Amended effective \_\_\_\_\_.

**General Authority:** NDCC 49-22-18

**Law Implemented:** NDCC 49-22-07.1

**69-06-03-02. Contents.** ~~All letters~~ A letter of intent shall ~~shall~~ must 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.

**History:** Amended effective \_\_\_\_\_.

**General Authority:** NDCC 49-22-18

**Law Implemented:** NDCC 49-22-07.1

## **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 otherwise determined 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.

**History:** Amended effective \_\_\_\_\_.

**General Authority:** NDCC 49-22-18

**Law Implemented:** NDCC 49-22-08

**STATE OF NORTH DAKOTA  
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**Case No. PU-10-129**

**CHAPTER 69-09-08  
RENEWABLE ELECTRICITY AND RECYCLED ENERGY TRACKING SYSTEM**

**Section**

69-09-08-01	Purpose, Application, and Effective Date
69-09-08-02	Definitions
69-09-08-03	Renewable Energy Certificates Tracking Program
69-09-08-04	Facilities Eligible for Participation in the Renewable Energy Certificates Tracking Program
69-09-08-05	Responsibilities of Program Administrator
69-09-08-06	Production and Transfer of Renewable Energy Certificates
69-09-08-07	Registration and Certification of Renewable Energy Facilities
<u>69-09-08-08</u>	<u>Annual Reporting Requirements for Retail Providers</u>

**69-09-08-01. Purpose, application, and effective date.** This chapter establishes a program to include tracking, recording, and verifying, and reporting the transactions associated with certificates and credits for electricity generated from renewable electricity sources as defined by North Dakota Century Code section 49-02-25 among electric generators, utilities, and other interested entities within this state and with similar entities in other states. This chapter applies to all public utilities, electric cooperatives, and municipal electric utilities. The tracking program will be effective as specified in the commission's order that designates a program administrator and implements these rules.

**History:** Effective July 1, 2006; \_\_\_\_\_.

**General Authority:** NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26

**Law Implemented:** NDCC 49-02-24, 49-02-25, 49-22-26



69-09-08-08. Annual reporting requirements for retail providers. The annual progress report required by North Dakota Century Code section 49-02-34 must be filed in the form and detail the commission may require.

**History:** Effective \_\_\_\_\_.

**General Authority:** NDCC 49-02-34

**Law Implemented:** NDCC 49-02-34

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PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Practice and Procedure  
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**Case No. AD-10-167**

**69-02-01-06. Practice before the commission.**

1. **Party in own interest.** Any party may appear before the commission in the party's own right.
2. **Attorneys.** Attorneys at law who are admitted to practice in North Dakota and, with the commission's permission, attorneys admitted to practice in any other jurisdiction may practice before the commission.
3. **Other persons.** Any other person who possesses the necessary legal or technical qualifications to enable the person to render valuable service may, with the commission's permission, practice before the commission.
4. **Rules of conduct.** All persons appearing before the commission must conform to the standards of ethical conduct required of practitioners before the courts of the state of North Dakota. The commission or a hearing officer may bar a person from appearing before the commission for improper conduct.

**History:** Amended effective September 1, 1992, \_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-01-07