

**TITLE 49
PUBLIC UTILITIES**

**CHAPTER 49-01
PUBLIC SERVICE COMMISSION**

49-01-01. Definitions.

In this title, unless the context or subject matter otherwise requires:

1. "Commission" means the public service commission.
2. "Commissioner" means one of the members of the public service commission.
3. "Public utility" includes any association, person, firm, corporation, limited liability company, or agency engaged or employed in any business enumerated in this title.
4. "Rate" means and includes 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 2, 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 chairman 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 ninety-nine thousand four hundred thirty-five dollars through June 30, 2014, and one hundred two thousand four hundred eighteen 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 a commissioner shall not participate in any hearing or proceeding in which that commissioner 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 the 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.

**CHAPTER 49-02
POWERS OF COMMISSION GENERALLY**

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 eighteen thousand local exchange subscribers. However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual telecommunications company or has fewer than eighteen thousand local exchange subscribers is subject to sections 49-21-01.4, 49-21-02.4, 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 granted under chapters 49-03 and 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 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 be deducted from the application fee paid by the public utility involved. The commission shall ascertain the costs and expenditures. The application fees received by the commission under chapter 49-05 must be deposited in a special account within the public service commission. All moneys deposited in the account are appropriated on a continuing basis to the commission to pay expenses incurred in the processing of cases in which application fees are required. The commission shall refund the portion of a fee collected under chapter 49-05 which exceeds the expenses incurred for processing the case for which the fee was paid.
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. Information received by the commission which was developed or obtained by the market monitor of the midwest independent system operator, incorporated, or its successor, is exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.
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.

49-02-08. 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 for meters.

The commission shall make such rules 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.

49-02-23. 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.

49-02-24. Renewable electricity and recycled energy credit trading and tracking system.

Notwithstanding any other provision of law, the commission by rule may establish or participate in a program to track, record, and verify the trading of credits for electricity generated from renewable and recycled heat sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states. This section applies to all public utilities, electric cooperatives, and municipal electric utilities.

49-02-25. Renewable electricity and recycled energy defined.

As used in section 49-02-24, renewable electricity and recycled energy include electricity generated from facilities using the following sources:

1. Solar, using the sun as the source of energy for producing electricity.
2. Wind, using the wind as the source of energy for producing electricity.
3. Hydroelectric, using water as the source of energy for producing electricity.
4. Biomass, using agricultural crops and agricultural wastes and residues, wood and wood wastes and residues, animal wastes, and landfill gas as the fuel to produce electricity.
5. Geothermal, using energy contained in heat that continuously flows outward from the earth as the source of energy to produce electricity.
6. Hydrogen, provided that the hydrogen is generated from a source listed in this section.
7. Recycled energy systems producing electricity from currently unused waste heat resulting from combustion or other processes into electricity and which do not use an additional combustion process. The term does not include any system whose primary purpose is the generation of electricity unless the generation system consumes wellhead gas that would otherwise be flared, vented, or wasted.

49-02-26. Qualifying for renewable electricity and recycled energy credits - Exception for certain hydroelectric facilities.

Except as otherwise provided in this section, for purposes of qualifying for renewable electricity and recycled energy credits, electricity must be generated from a source identified in section 49-02-25. For electricity generated from hydroelectric facilities, the hydroelectric facility must have an inservice date of January 1, 2007, or later, or be new hydroelectric generation obtained from repowering or efficiency improvements to hydroelectric facilities existing on August 1, 2007.

49-02-27. Decommissioning of wind energy conversion facilities.

1. The commission shall adopt rules governing the decommissioning of commercial wind energy conversion facilities. The rules must address:
 - a. The anticipated life of the project;
 - b. The estimated decommissioning costs in current dollars;
 - c. The method and schedule for updating the costs of the decommissioning and restoration;
 - d. The method of ensuring that funds will be available for decommissioning and restoration;
 - e. The anticipated manner in which the project will be decommissioned and the site restored; and
 - f. Present and future natural resource development.
2. The facility owner or operator of a commercial wind energy facility shall record the location of any portion of underground foundation not removed during decommissioning with the county recorder in the county in which any such underground foundation is located.

49-02-28. State renewable and recycled energy objective.

The legislative assembly establishes a state renewable and recycled energy objective that ten percent of all electricity sold at retail within the state by the year 2015 be obtained from renewable energy and recycled energy sources. The objective must be measured by qualifying megawatt-hours delivered at retail or by certificates representing credits purchased and retired to offset nonqualifying retail sales. This objective is voluntary and there is no penalty or sanction for a retail provider of electricity that fails to meet this objective. The objective applies to all retail providers of electricity in the state, regardless of the ownership status of the electricity retailer. Municipal and cooperative utilities that receive wholesale electricity through a municipal power agency or generation and transmission cooperative may aggregate their renewable and recycled energy objective resources to meet this objective.

49-02-29. Qualifying for renewable electricity and recycled energy objective.

For purposes of qualifying for the renewable electricity and recycled energy objective contained in section 49-02-28, electricity, except for electricity generated from a hydroelectric facility with an inservice date before January 1, 2007, and electricity that is not obtained from repowering or efficiency improvements to a hydropower facility existing on August 1, 2007, regardless of the source's inservice date, qualifies for meeting the statewide objective provided that the source meets the requirements of North Dakota public service commission's rules for tracking, recording, and verifying renewable energy certificates.

49-02-30. Application of electricity generated from existing hydroelectric facilities in calculating the renewable and recycled energy objective.

For purposes of calculating the amount of electricity from renewable energy and recycled energy sources needed to meet the renewable and recycled energy objective, a retail provider may deduct from its baseline of total retail sales the proportion of electricity obtained from hydroelectric facilities with an inservice date before January 1, 2007.

49-02-31. Purchase and retirement of renewable energy and recycled energy certificates to meet the objective.

A portion or all of the renewable energy and recycled energy objective may be met by the purchase and retirement of renewable energy and recycled energy certificates representing credits from qualified sources and facilities as defined in sections 49-02-26 and 49-02-30. Renewable energy and recycled energy certificates do not need to be acquired from an in-state facility.

49-02-32. Use of renewable and recycled energy - Economic evaluation.

Before using new renewable and recycled energy after August 1, 2007, to meet the objective, the retail provider or its generation supplier shall make an economic evaluation to determine if the use of new renewable and recycled energy is cost-effective considering other electricity alternatives. After evaluating the renewable and recycled energy objective and economic evaluation, the retail provider or its generation supplier may use the electricity alternative that best meets its resource or customer needs.

49-02-33. Verification of generation and of purchase of renewable energy and recycled energy certificates.

Electricity generation applied to the renewable energy and recycled energy objective, as well as certificate purchases and certificate retirements, must be independently verified through a third-party credit tracking system selected by the public service commission.

49-02-34. Public reporting on progress toward meeting the renewable energy and recycled energy objective.

Commencing on June 30, 2009, retail providers shall report annually on the provider's previous calendar year's energy sales. This report must include information regarding qualifying electricity delivered and renewable energy and recycled energy certificates purchased and retired as a percentage of annual retail sales and a brief narrative report that describes steps taken to meet the objective over time and identifies any challenges or barriers encountered in meeting the objective. The last annual report must be made on June 30, 2016. Retail providers shall report to the public service commission, which shall make data and narrative reports publicly available and accessible electronically on the internet. Distribution cooperatives may aggregate their reporting through generation and transmission cooperatives and municipal utilities may aggregate their reporting through a municipal power agency.

**CHAPTER 49-03
ELECTRIC UTILITY FRANCHISE**

49-03-01. Certificate of public convenience and necessity - Secured by electric public utility.

1. An electric public utility may not begin construction or operation of a public utility plant or system, or of an extension of a plant or system without first obtaining from the commission a certificate that public convenience and necessity require or will require the construction and operation. This section does not require an electric public utility to secure a certificate for an extension within any municipality within which the electric public utility 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.
2. An electric transmission provider may not begin construction or operation of an electric transmission line interconnecting with an existing electric transmission line owned or operated by an electric public utility without first obtaining a certificate that public convenience and necessity require or will require the construction or operation.

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.

1. If any electric public utility or electric transmission provider 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 the electric public utility or electric transmission provider from constructing or extending its interfering lines, plant, or system. In addition to the restraint imposed, the commission shall prescribe any terms and conditions as the commission deems reasonable and proper.
2. This section does not prohibit or limit any person, who has been injured in the person's business or property by reason of a violation of sections 49-03-01 through 49-03-01.5 by any electric public utility, electric transmission provider, 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 provider" means either an electric public utility or a rural electric cooperative.
2. "Electric public utility" means a privately owned supplier of electricity offering to supply or supplying electricity to the general public.
3. "Electric transmission line" means facilities for conducting electric energy at a design voltage of one hundred fifteen kilovolts or greater phase to phase and more than one mile [1.61 kilometers] long.
4. "Electric transmission provider" means an owner or operator, other than a rural electric cooperative, of a transmission line the costs of which are recovered directly or indirectly through transmission charges to an electric public utility.
5. "Person" includes an individual, an electric public utility, a corporation, a limited liability company, an association, or a rural electric cooperative.
6. "Rural electric cooperative" includes 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.
7. "Service area" means a defined geographic area containing existing or future service locations established by an agreement among electric providers and approved by the commission.
8. "Service area agreement" means an agreement between electric providers establishing service areas and designating service locations to be served by each provider under section 49-03-06.
9. "Service location" means the structures, facilities, or improvements on a parcel of real property to which electric service may be provided.

49-03-02. Prerequisites to issuance of certificate of public convenience and necessity.

1. 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, must be filed with the commission. At the hearing on the application after notice as provided in this title, the utility 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 for authority. The commission shall have the power, after notice and hearing, to:

- a. Issue the certificate prayed for;
 - b. Refuse to issue the certificate;
 - c. Issue the certificate for the construction or operation of a portion only of the contemplated facility, line, plant, system, or extension of the same; or
 - d. 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 terms and conditions as in the judgment of the commission the public convenience and necessity may require.
2. Notwithstanding any other provision of this section, the commission may grant a certificate if an interested party, including any local electric cooperative, has not requested a hearing on an application after receiving at least twenty days' notice of opportunity to request such hearing. In addition, the commission may not issue a certificate to an electric transmission provider for construction or operation of an electric transmission line that will interconnect with an electric transmission line owned or operated by an electric public utility if the electric public utility is willing and able to construct and operate a similar electric transmission line.
 3. The commission may impose an application fee of up to one hundred seventy-five thousand dollars for an application under this chapter. With the approval of the emergency commission, the commission may impose an additional amount. The commission shall pay the expenses of processing an application under this chapter from the application fee paid by the public utility in accordance with section 49-02-02.

49-03-03. Franchise not to be exercised without certificate.

A public utility or electric transmission provider may not exercise any right or privilege under any franchise or certificate 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 the right or privilege.

49-03-04. Replacement or renewal of franchise - Certificate of public convenience and necessity not necessary.

A public utility or electric transmission provider does not need to secure a renewal of the certificate of public convenience and necessity under this chapter in order to exercise rights under an ordinance if either has not suspended operation of its plant and where the franchise merely replaces or renews an expiring or expired franchise.

49-03-05. Complaint upon violation of chapter.

If a public utility or electric transmission provider 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 if a public utility or electric transmission provider 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 acting on the complaint, 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 the 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 an order with respect to the public utility or electric transmission provider and prescribe terms and conditions as are just and reasonable.

49-03-06. Service agreements among electric providers.

1. This section authorizing service area agreements is intended to encourage harmony and operational efficiency among electric providers, promote safety, discourage unreasonable duplication of electric facilities, assure adequate and reliable electric service for all consumers and territories within the state, and provide antitrust immunity to electric providers that negotiate service area agreements in accordance with this section.
2. An electric provider may enter into agreements with other electric providers having adjacent or intermingled electric supply facilities for the purpose of establishing service areas and designating the service locations to be served by each electric provider. The designated service locations may include all or any portion of the service locations within a service area that are being served by the electric providers at the time of the agreement, or that could be economically served by the then existing facilities of the electric providers, or by reasonable and economic extensions of such existing facilities. The service area agreement must provide that it is subject to the continuing jurisdiction of the commission to settle all service location disputes between the contracting electric providers arising under the agreement.
3. Electric providers may enter into written agreements for the sale, transfer, exchange, or lease of equipment or facilities used to serve the areas that are the subject of a service area agreement. Any sale, exchange, transfer, or lease of equipment, plant, or facilities made under this subsection is subject to sections 49-04-05 and 10-13-08.1.
4. A service area agreement shall be promptly filed with the commission which must give notice of the filing within thirty days. Upon the commission's order, or if an affected electric consumer or electric provider requests a hearing within twenty days of the notice, the commission shall hold a hearing on the service area agreement.
5. The public service commission shall approve or disapprove a service area agreement. The commission may not revise a service area agreement except by mutual consent of the parties to the agreement.
6. A service area agreement shall be valid and enforceable if the commission, after notice as provided in subsection 4, approves the agreement and finds that the agreement complies with this section and is in the public interest.
7. Upon approval of a service area agreement, the commission shall issue its order and any necessary certificates of public convenience and necessity authorizing an electric public utility to extend its plant and system and to provide electric service to service locations within the service areas.
8. The governing board of a city may require approval or disapproval of a service area agreement between electric providers to the extent the agreement encompasses service locations within the city. Nothing in this chapter shall be construed to limit the authority of a governing board of a city to exercise its franchise authority under section 40-05-01.

CHAPTER 49-03.1
FRANCHISE FOR CERTAIN PUBLIC UTILITIES

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 do not apply to electric public utilities, telecommunications companies that are not incumbent telecommunications companies under chapter 49-21, 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.

49-03.1-04. Factors to be considered by commission in granting or denying a certificate.

Before granting a certificate of public convenience and necessity, the commission shall take into consideration:

1. Need for the service.
2. Fitness and ability of applicant to provide service.
3. Effect on other public utilities providing similar service.
4. Adequacy of proposed service.
5. The technical, financial, and managerial ability of the applicant to provide service.

49-03.1-05. Prerequisites to issuance of certificate of public convenience and necessity - Waiver of hearing.

Before any certificate may be issued under this chapter, a certified copy of the articles of incorporation, 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.

49-03.1-09. Registration of telecommunications companies that are not incumbent telecommunications companies - Penalty.

1. Before providing service in this state or collecting payment for service in advance of providing the service for which payment was collected, a telecommunications company that is not an incumbent telecommunications company under chapter 49-21 shall register with the commission in a form satisfactory to the commission.
2. Registration must include, at a minimum, the following information, updated within fifteen days after any change:
 - a. The company's name, complete address, and telephone number;
 - b. All names under which the company does business;
 - c. All names under which the company has registered with the secretary of state;
 - d. The company's secretary of state system identification number;
 - e. The name, title, address, and telephone number of an authorized representative to whom the commission may make inquiries;
 - f. A toll-free telephone number to which consumer inquiries or complaints may be made; and
 - g. Whether the company has ever had its authority to provide service revoked, and if so, the date and jurisdiction of revocation.
3. As part of the registration process, the commission may require by rule the posting of a surety bond in an amount determined by the commission. In addition to any other

penalties provided by law, a violation of this subsection or any rule or order under this subsection is a class C felony if the accumulated customer loss resulting from a violation is greater than five thousand dollars.

4. The commission may revoke a company's registration, after notice and hearing under chapter 28-32, for violation of any law, rule, or order of the commission.
5. A company's registration is void if the company is voluntarily dissolved, involuntarily dissolved, or forfeits its authority to transact business under state law. The registration of a company that is involuntarily dissolved or that forfeits its authority to transact business is void effective with the effective date of involuntary dissolution under subsection 7 of section 10-19.1-146 or forfeiture under subsection 8 of section 10-19.1-146.
6. 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 has not complied with this section and is requiring that customers pay for service in advance of receiving that service. The cease and desist order must be:
 - a. Directed against the telecommunications company's advance payment requirements, 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.
7. Subsections 3 through 6 do not apply to a facilities-based company providing commercial mobile radio service, as defined in title 47, Code of Federal Regulations, part 20, section 20.3.

CHAPTER 49-04 DUTIES OF PUBLIC UTILITIES

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 or telecommunications services or the transmission or distribution of crude oil, gas, petroleum products, steam, or water by pipeline.
2.
 - a. Notwithstanding the provisions of section 41-09-30 and sections 41-09-72 through 41-09-97, 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.

49-04-20. Notification before discontinuance of utility service.

1. A public utility shall provide notice to a customer of the utility's intention to discontinue utility service for payment delinquency in accordance with commission rules.
2. A public utility shall provide notice to a third party designated by a customer of the utility's intention to discontinue electric or natural gas service to the customer for payment delinquency. The customer shall designate the third party on a form provided by or approved by the public utility. The public utility may elect to provide notice to a designated third party by mail or electronic means. Notice by mail must be made not less than five days before discontinuance and notice by electronic means must be made not less than three days before discontinuance. A public utility is immune from civil liability for failing to provide notice or providing incorrect notice to a third party of its intention to discontinue utility service to a customer.

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

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

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 - Fee.

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 commission shall ask to have produced as evidence at the hearing.
11. An application fee in the amount of one hundred seventy-five thousand dollars. Upon request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the application process by the commission. The commission shall pay the expenses of investigating a rate increase application under this section from the application fee paid by the public utility in accordance with section 49-02-02. The commission may waive or reduce the fee.

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.

49-05-04.2. Rate adjustment - Federal environmental mandate costs.

1. The commission may approve, reject, or modify a tariff filed under section 49-05-06, which provides for an adjustment of rates to recover jurisdictional capital costs and associated operating expenses incurred by a public utility to comply with federal environmental mandates on existing electricity generating stations. For purposes of this section, federal environmental mandates are limited to any requirements under the Clean Air Act, the Clean Water Act, or any other federal law or rule designed to protect the environment. Associated operating expenses are costs incurred by the public utility to comply with the environmental mandate. The tariff must:
 - a. Allow the public utility to recover on a timely basis its investment in capital costs and associated operating expenses incurred to meet federal environmental mandates not reflected in the utility's general rate schedule.
 - b. Allow a return on the public utility's investment made to meet federal environmental mandates at the level approved in the utility's most recent general rate case.
 - c. Provide a current return on construction work in progress to meet federal environmental mandates provided the cost recovery from retail customers of the allowance for funds used during construction is not sought through any other means.
 - d. Terminate cost recovery after the public utility's costs and expenses to meet federal environmental mandates have been recovered fully or have been reflected in the utility's general rate tariffs.

2. Rate adjustments filed under the tariff must be accompanied by:
 - a. A description and quantification of the costs and expenses incurred by the public utility to meet federal environmental mandates which are subject to recovery;
 - b. A schedule for implementation of the applicable projects;
 - c. Calculations to establish that the rate adjustment is consistent with the terms of the tariff; and
 - d. An application fee in the amount of one hundred thousand dollars. Upon request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the application process by the commission. The commission may waive or reduce the fee.
3. Upon receipt of a rate adjustment filed under the tariff, the commission shall approve the rate adjustment to become effective unless, after notice and opportunity for hearing and comment, the commission determines the rate adjustment does not comply with the tariff or the incurred costs and expenses to meet federal environmental mandates are not reasonable and prudent. The commission shall pay the expenses of investigating a rate adjustment to meet federal environmental mandates under this section from the application fee paid by the public utility in accordance with section 49-02-02. The public utility has the burden of proving that the rate adjustment complies with the tariff and that the costs and expenses incurred to meet federal environmental mandates are reasonable and prudent.

49-05-04.3. Rate adjustment - Transmission facility costs.

1. The commission may approve, reject, or modify a tariff filed under section 49-05-06 which provides for an adjustment of rates to recover jurisdictional capital and operating costs incurred by a public utility for new or modified electric transmission facilities. For purposes of this section, an electric transmission facility includes an electric transmission line as defined in chapter 49-21.1 and other transmission line equipment, including substations, transformers, and other equipment constructed to improve the power delivery capability or reliability of the electric transmission system; and operating costs include federally regulated costs charged to or incurred by the public utility to increase regional transmission capacity or reliability. The tariff must:
 - a. Allow the public utility to recover on a timely basis its investment and associated costs for new or modified electric transmission facilities not reflected in the utility's general rate schedule;
 - b. Allow a return on the public utility's investment made for new or modified electric transmission facilities at the level approved in the utility's most recent general rate case;
 - c. Provide a current return on construction work in progress for new or modified electric transmission facilities, provided the cost recovery from retail customers of the allowance for funds used during construction is not sought through any other means; and
 - d. Terminate cost recovery after the public utility's costs for new or modified electric transmission facilities have been recovered fully or have been reflected in the utility's general rate tariffs.
2. Rate adjustments filed under the tariff must be accompanied by:
 - a. A description and quantification of the costs incurred by the public utility for new or modified electric transmission facilities which are subject to recovery;
 - b. A schedule for implementation of the applicable transmission facility projects;
 - c. Calculations to establish that the rate adjustment is consistent with the terms of the tariff; and
 - d. An application fee in the amount of one hundred thousand dollars. Upon request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the application process by the commission. The commission may waive or reduce the fee.

3. Upon receipt of a rate adjustment filed under the tariff, the commission shall approve the rate adjustment to become effective unless, after notice and opportunity for hearing and comment, the commission determines the rate adjustment does not comply with the tariff or the incurred costs for new or modified electric transmission facilities are not reasonable and prudent. The commission shall pay the expenses of investigating a rate adjustment for recovery of transmission facility costs under this section from the application fee paid by the public utility in accordance with section 49-02-02.

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.

1. 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 six 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.
2. Notwithstanding that the commission may suspend a filing and order a hearing, a public utility may file for interim rate relief as part of its general rate increase application and filing. If interim rates are requested, the commission shall order that the interim rate schedule take effect no later than sixty days after the initial filing date and without a public hearing. The interim rate schedule must be calculated using the proposed test year cost of capital, rate base, and expenses, except that the schedule must include:
 - a. A rate of return on common equity for the public utility equal to that authorized by the commission in the public utility's most recent rate proceeding;
 - b. Rate base or expense items the same in nature and kind as those allowed by a currently effective commission order in the public utility's most recent rate proceeding; and
 - c. No change in existing rate design.
3. In ordering an interim rate schedule, the commission may require a bond to secure any projected refund required by subsection 4. The terms of the bond, including the amount and surety, are subject to the commission's approval.
4. As ordered by the commission, the utility shall promptly refund to persons entitled thereto all interim rate amounts collected by the public utility in excess of the final rates approved by the commission plus reasonable interest at a rate to be determined by the commission.

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 the person may tend to incriminate the person or subject the person 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 the person 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.

49-05-16. Advance determination of prudence.

In this section, unless the context otherwise requires, resource addition means construction, modification, purchase, or lease of an energy conversion facility, renewable energy facility, demand response system, transmission facility, or a contract to acquire energy, capacity, or demand response for the purpose of providing electric service. A public utility that intends to make a resource addition may file an application with the commission for an advance determination of prudence regarding the resource addition. The commission shall pay the expenses associated with investigating the application made by the public utility for prudence of a resource addition from the application fee paid by the public utility in accordance with section 49-02-02.

1. The commission may issue an order approving the prudence of a resource addition if:
 - a. The public utility files with its application a projection of costs to the date of the anticipated commercial operation of the resource addition;
 - b. The public utility files with its application a fee in the amount of one hundred seventy-five thousand dollars. Upon request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the application process by the commission. The commission may waive or reduce the fee.
 - c. The commission provides notice and holds a hearing, if appropriate, in accordance with section 49-02-02; and
 - d. The commission determines that the resource addition is prudent. For facilities located or to be located in this state the commission, in determining whether the resource addition is prudent, shall consider the benefits of having the resource addition located in this state.
2. The commission order must be rendered no later than seven months after the public utility files its application requesting a prudence determination of a resource addition.
3. A resource addition approved by the commission is subject to reporting requirements until commercial operation of the resource addition. The public utility shall provide periodic reports, as directed by the commission, which must include a description of the status of the resource addition and any changes in material circumstances affecting the resource addition.
4. The commission's order determining prudence of the resource addition is binding for ratemaking purposes.

5. Following an initial commission order, the commission may, upon notice and hearing, if appropriate, in accordance with section 49-02-02 determine that continuation of a resource addition is no longer prudent or that its prior order should be modified. Expenses incurred in processing the case must be paid from the fee, including any previously made refund thereof, filed with the prudence determination application for the resource addition.
6. The public utility may recover in its rates, and in a timely manner consistent with the public utility's financial obligations, the amounts the public utility reasonably incurred or obligated on a prudent resource addition, including accrued allowance for funds used during construction, even though the resource addition may never be fully operational or used by the public utility to serve its customers. The cost amortization period for a discontinued resource addition may not exceed five years from the date commencement of the recovery is approved by the commission. No return on amounts incurred or obligated by the public utility may be authorized for the period after the resource addition is discontinued. The public utility may request an order from the commission for deferred accounting treatment for costs incurred for a discontinued resource addition.
7. There is a rebuttable presumption that a resource addition located in the state is prudent.

CHAPTER 49-06
VALUATION OF PUBLIC UTILITY PROPERTY

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 goodwill not to be considered in ratemaking.

The value of public utility property for ratemaking purposes shall not include or be affected by goodwill 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 the 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 the public utility. If within thirty days after the filing of the 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 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. The 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 the final order are less than the rates charged, received, and collected by the public utility during the period of the investigation, the 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 the 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 the bond for the benefit of the 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 the utility for the service over and above the amounts that such customer, patron, or user would have paid during that time had the rates fixed, determined, and prescribed in the final order been in effect during that period. The bond or undertaking shall be filed with the commission within thirty days after the service of the order upon such public utility. Service of the order may be made by personal service upon the public utility or by registered or certified mail, and if by registered or certified mail, service shall be deemed completed when the registered or certified mail is delivered to the public utility, as evidenced by the return receipt for the 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

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 rule - Assessment of civil penalty.

Any person who violates any statute, commission order, or commission rule which applies to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, 24-09, 32-25, and 51-05.1, titles 60 and 64, and title 49 except for chapters 49-22 and 49-23, shall, in addition to any other penalty provided, be subject to a civil penalty of not to exceed five thousand dollars. A violation occurring under chapter 49-23, in addition to any other penalty, is subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall develop policies for the assessment of penalties under chapter 49-23 which will take into consideration the severity of damages and the conduct of the offender. 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 that person's 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 a rule or order of 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 two hundred thousand dollars for each violation for each day that the violation continues, except that the maximum penalty may not exceed two million dollars for any related series of violations. A civil penalty may be compromised by the commission. In determining the amount of a civil penalty, or the amount agreed upon in compromise, the commission shall consider the appropriateness of the 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 good faith of the person charged in attempting to achieve compliance, after notification of a violation, and such other matters as justice may require. The amount of the 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

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, subject to chapter 32-15, 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 [7079.21 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 has, subject to chapter 32-15, 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 are 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 lesser 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

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, when 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 49-21.1 ELECTRIC TRANSMISSION LINES

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 chapter 57-33.2, 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

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:
 - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter or on which a facility was constructed before April 9, 1975, if:
 - (1) The activities are within the boundaries of:
 - (a) A previously issued certificate or permit;
 - (b) For an energy conversion facility constructed before April 9, 1975, the geographic location on which the facility was built; or
 - (c) For a transmission facility constructed before April 9, 1975, a width of three hundred fifty feet [106.68 meters] on either side of the centerline;
 - (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area; and
 - (3) Before conducting any activities, the utility certifies in writing to the commission that the activities will not affect any known exclusion or avoidance area and the utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
 - b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:
 - (1) Certifies in writing to the commission that:
 - (a) The activities will not affect any known exclusion area; and
 - (b) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;
 - (2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area

expected to be impacted and the reasons why impact cannot be avoided; and

- (3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission does not approve impacting the avoidance area, the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.
 - c. Incident to preliminary engineering or environmental studies.
 4. "Corridor" means the area of land in which a designated route may be established for a transmission facility.
 5. "Energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:
 - a. Generation by wind energy conversion exceeding one-half megawatt of electricity;
 - b. Generation by any means other than wind energy conversion exceeding fifty megawatts of electricity;
 - c. 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;
 - d. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
 - e. 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 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:
 - (1) A temporary transmission line loop that is:
 - (a) Connected and adjacent to an existing transmission facility that was sited under this chapter;
 - (b) Within the corridor of the sited facility and does not cross known exclusion or avoidance areas; and
 - (c) In place for less than one year; or
 - (2) A transmission line that is less than one mile [1.61 kilometers] long.
 - 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:
 - (1) An oil or gas pipeline gathering system;
 - (2) A pipeline with an outside diameter of four and one-half inches [11.43 centimeters] or less that will not be trenched and will be plowed in with a power mechanism having a vertical knife or horizontally directionally drilled, and its associated facilities; or
 - (3) A pipeline that is less than one mile [1.61 kilometers] long.
- For purposes of this chapter, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport, or pipelines and

associated facilities used to collect gas from the well to the gas processing facility at which end-use consumer-quality gas is produced, with or without the addition of odorant.

- 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 develop a ten-year plan as specified in this section and submit the plan to the commission on or before July first of each even-numbered year. The utility shall update its plan every second year after its initial submission. 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.

1. A utility may not begin construction of an energy conversion facility or transmission facility in the state 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.
2. 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.

Repealed by S.L. 2013, ch. 365, § 3.

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 database, 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.

49-22-16.3. Route adjustment before or during construction for gas or liquid transmission line.

1. Before or during construction, a utility, without any action by the commission, may adjust the route of a gas or liquid transmission line within the designated corridor if, before conducting any construction activities associated with the adjustment, the utility files with the commission certification and supporting documentation that:
 - a. The construction activities will be within the designated corridor;
 - b. The construction activities will not affect any known exclusion or avoidance areas within the designated corridor; and
 - c. The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route.
2. Before or during construction, a utility may adjust the route of a gas or liquid transmission line within the designated corridor that may affect an avoidance area if, before conducting any construction activities associated with the adjustment, the utility:
 - a. Files with the commission certification and supporting documentation that:
 - (1) The construction activities are within the designated corridor;
 - (2) The construction activities will not affect any known exclusion areas within the designated corridor;
 - (3) The construction activities are expected to impact an avoidance area with a specific description of the avoidance area expected to be impacted;

- (4) Each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment, unless the utility previously received authorization from the commission for the impact to the avoidance area;
 - (5) For an impact for which the utility does not already have approval or has not filed the approval in paragraph 4, the utility has good cause and a specific reason to impact the avoidance area, and a reasonable alternative does not exist; and
 - (6) The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route.
 - b. Receives the commission's written authorization that the utility may impact the avoidance area. If the commission does not authorize the impact to the avoidance area, the utility must obtain siting authority for the affected portion of the route adjustment. If the commission fails to act within ten working days of receipt of the utility's filing of the certification and supporting documentation under subdivision a of subsection 2, the route adjustment is deemed approved.
3. Before or during construction, a utility, without any action by the commission, may adjust the route of a gas or liquid transmission line outside the designated corridor if, before conducting any construction activities associated with the adjustment, the utility:
 - a. Files with the commission certification and supporting documentation that:
 - (1) The construction activities will not affect any known exclusion or avoidance areas;
 - (2) The route outside the corridor is no longer than one and one-half miles [2.41 kilometers];
 - (3) The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route; and
 - (4) Each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment.
 - b. Files detailed field studies indicating exclusion and avoidance areas for an area encompassing the route outside the designated corridor equal to the length of the adjustment of the proposed corridor.
4. Before or during construction, a utility may adjust the route of a gas or liquid transmission line outside the designated corridor that may affect an avoidance area if, before conducting any construction activities associated with the adjustment, the utility:
 - a. Files with the commission certification and supporting documentation that:
 - (1) The construction activities will not affect any known exclusion areas;
 - (2) The construction activities are expected to impact an avoidance area with a specific description of the avoidance area expected to be impacted;
 - (3) The utility has good cause and a specific reason to impact the avoidance area, and a reasonable alternative does not exist;
 - (4) The route outside the corridor is no longer than one and one-half miles [2.41 kilometers];
 - (5) The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route; and
 - (6) Each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment.
 - b. Files detailed field studies indicating exclusion and avoidance areas for an area encompassing the route outside the designated corridor equal to the length of the adjustment of the proposed corridor.
 - c. Receives the commission's written authorization that the utility may impact the avoidance area. If the commission does not authorize the impact to the avoidance area, the utility must obtain siting authority for the affected portion of the route adjustment. If the commission fails to act within ten working days of

receipt of the utility's filing of the certification and supporting documentation under subdivisions a and b of subsection 4, the route adjustment is deemed approved.

5. The commission may not be required to hold a public hearing or publish a notice of opportunity for a public hearing for any route adjustment under this section.

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

- 1. Every applicant under this chapter shall pay to the commission an application fee:
 - a. An applicant for a certificate of site compatibility shall pay an amount equal to five hundred dollars for each one million dollars of investment in the proposed facility as defined in the federal energy regulatory commission uniform system of accounts.
 - b. An applicant for a certificate of corridor compatibility shall pay an amount equal to five thousand dollars for each one million dollars of investment in the proposed facility as defined in the federal energy regulatory commission uniform system of accounts.
 - c. An applicant for a waiver shall pay the amount which would be required for an application for a certificate of site or corridor compatibility for the proposed facility. If a waiver is not granted for a proposed facility, such application fee paid shall be allowed as a credit against fees payable under this section in connection with an application under this chapter for a certificate or permit for the proposed facility.
 - d. An applicant for a transfer of a certificate or permit shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.
 - e. An applicant certifying to the commission under subsection 3 of section 49-22-03 shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.
 - f. The application fee under this subsection shall not be less than five thousand dollars nor more than one hundred thousand dollars.
- 2. At the request of the commission and with the approval of the emergency commission, 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. 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. A siting process expense recovery fund is established in the state treasury. The commission shall deposit payments received under subsections 1 and 2 in the siting process expense recovery fund. All moneys deposited in the fund are appropriated on a continuing basis to the commission to pay expenses incurred in the siting process. The commission shall specify the time and method of payment of any fees and shall

refund the portion of fees collected under subsections 1 and 2 which exceeds the expenses incurred for the evaluation and designation process.

49-22-23. Transfer.

Repealed by S.L. 1977, ch. 447, § 16.

49-22-24. Safety.

Every utility that owns or operates electric generation of any size for the primary purpose of resale shall comply with the standards of the national electrical safety code in effect at the time of construction of the generation.

CHAPTER 49-23 ONE-CALL EXCAVATION NOTICE SYSTEM

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 showing the approximate horizontal location, including all lines, line direction, intersections, tees, and lateral facilities.
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 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, pipeline, cable, facility, system, and its appurtenances used to produce, store, convey, gather, transmit, or distribute communications, data, electricity, power, television signals, heat, gas, oil, petroleum products, carbon dioxide, 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 management, 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 management. 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;
 - (3) An identifiable roadway or roadway intersection; or
 - (4) 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.
- h. If the location of the excavation is too large or complex to be clearly and adequately identified by description in the location request, the excavator shall provide additional location information by one or more of the following means: white marking, project staking, geographic information system shape file, detailed drawing, map, or other appropriate means. An excavator may not be required to provide additional location information if the excavator plans a meeting with the affected operators at the location of the excavation before beginning any excavation, or if the notice given under this section includes a specific street address or reference to a platted lot number of record of the location of the excavation.
 - i. A request for location is limited to the area to be excavated during the twenty-one-day period following the location request.
 - j. An excavator may begin excavation in a location if the location period has passed without notification of a requested extension or prior to the expiration of the location period if the excavator has received notice that all facilities have been located or cleared.
- 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 twenty-one 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 excavation has not occurred within the initial twenty-one days of the locate, the excavator shall request that the facility be relocated before excavating unless other arrangements have been made with the underground facility owner. Upon the third locate request at the same excavation site where no excavation has occurred after the initial two locates, the excavator is responsible for reasonable costs associated with relocating facilities in that location.
 - i. If a relocate request is made for an area which includes areas where excavation has been completed, a request for relocate must be modified from the original locate request to reflect only the area to be excavated during each subsequent twenty-one-day period, otherwise the excavator is responsible for reasonable costs associated with relocating facilities in the location.
 - j. 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.
 - k. 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.
 - l. An underground facility owner shall make all new facilities locatable.
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, use reasonable efforts to maintain markings during excavation, 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 subsection 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.