

PUBLIC UTILITIES

CHAPTER 319

H. B. No. 724

(Lundene, Dick, Frank, Jungroth, Lang, Erickson (Mountrail),
(Myhre, Hoffner, Strand, Tough, Bier, Opedahl)

EXTENSION OF PUBLIC UTILITY SERVICE

AN ACT

To amend and reenact sections 49-03-01 and 49-03-05 of the North Dakota Century Code, relating to certificates of public convenience and necessity and complaints thereto, and for limitations on electric public utilities serving customers in designated areas.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 49-03-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-03-01. Certificate of Public Convenience and Necessity—Secured by Public Utility.) No 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. This section shall not be construed to require any such public utility to secure such certificate for an extension within any municipality within which it has lawfully commenced operations. The provisions of this section shall not be construed to exempt a public utility, operating an oil or gas pipeline gathering system for the purpose of collecting oil or gas at the well producing the oil or gas and transporting such products to another destination, from obtaining a certificate of public convenience and necessity from the public service commission prior to extending such pipelines to provide service to any wells in an oil or gas field not presently served, unless such oil or gas field borders within three miles of an oil or gas field presently being served. If any 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 public utility, or any electric co-operative corporation, the commission on complaint of the public utility or the electric co-operative corporation claiming to be injuriously affected, after notice and hearing as provided in this

title, may make such order enforcing this section with respect to such public utility and prescribe such terms and conditions as are just and reasonable.

§ 2. 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 public service commission of the state of North Dakota 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.

§ 3. Limitation on Issuance of Orders and Certificates of Public Convenience and Necessity to Electric Public Utilities.) The public service commission of the state of North Dakota shall not issue its order or a certificate of public convenience and necessity to any electric public utility to extend its electric distribution lines beyond the corporate limits of a municipality or to serve a customer whose place to be served is located outside the corporate limits of a municipality unless the electric co-operative corporation with lines or facilities nearest the place where service is required shall consent in writing to such extension by such electric public utility, or unless, upon hearing before the commission, called upon notice, it shall be shown that the service required cannot be provided by an electric co-operative corporation. Such certificate shall not be necessary if the public service commission approves an agreement between a public utility and the rural electric co-operative serving the area which includes the station to be served and which agreement designates said station to be in an area to be served by the public utility.

§ 4. Exclusions from Limitations on Electric Distribution Lines, Extension and Service and on Issuance of Certificates of Public Convenience and Necessity.) This Act 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 co-operative or another electric public utility within such municipality; and provided duplication of services is not deemed unreasonable by the public service commission; and

This Act 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 upon the effective date of this Act; provided, however, that within ninety days after the effective date of this Act, 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 public service commission of the state of North Dakota 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 the effective date of this Act. After ninety days from the effective date of this Act, 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 upon the effective date hereof and cannot be served until after compliance with the provisions of sections 2 and 3 hereof.

§ 5. Enforcement of Act.) If any electric public utility violates or threatens to violate any of the provisions of this Act or interferes with or threatens to interfere with the service or system of any other electric public utility or rural electric co-operative, the public service commission of the state of North Dakota, after complaint, notice and hearing as provided in chapter 28-32 of the North Dakota Century Code, shall make its order restraining and enjoining said electric public utility from constructing or extending its interfering lines, plant or system. In addition to the restraint imposed, the public service commission shall prescribe such terms and conditions as it shall deem reasonable and proper.

Provided, further, that nothing herein contained shall be construed to prohibit or limit any person, who has been injured in his business or property by reason of a violation of this Act by any electric public utility or electric co-operative corporation, from bringing an action for damages in any district court of this state to recover such damages.

§ 6. Definitions.) When used in this Act the following terms shall mean:

1. An electric public utility shall mean a privately owned supplier of electricity offering to supply or supplying electricity to the general public.
2. A rural electric co-operative shall include any electric co-operative organized under the provisions of the Electric Co-operative Act of the state of North Dakota. An electric co-operative, composed of members as prescribed by law, shall not be deemed to be an electric public utility.
3. A person shall include an individual, an electric public utility, a corporation, an association, or a rural electric co-operative.

Approved March 20, 1965.

CHAPTER 320

H. B. No. 547
(Tweten, Hertz, Bergman)
(From LRC Study)

PUBLIC UTILITY RATE CHANGES

AN ACT

To amend and reenact sections 49-05-04, 49-05-06, and 49-06-01 of the North Dakota Century Code, relating to public utility rate changes.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

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

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

1. The original cost of all its property;
2. The date of the acquisition of said property;
3. The amount of money invested in said property;
4. The amount of stock outstanding;
5. The amount of bonds outstanding against said property;

6. All books, papers, and memoranda of the utility showing the financial condition thereof;
7. Its total monthly salaries and wage expense for such time as the commission may request;
8. An itemized statement of its expenditures;
9. The details of its profit and loss account; and
10. All other books, papers, vouchers, and accounts which the said commission shall ask to have produced as evidence at the hearing.

§ 2. **Amendment.**) Section 49-05-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-05-06. Hearing by Commission on Proposed Change of Rates.) Whenever a notice or any schedule stating an individual or joint rate, classification, contract, practice, rule, or regulation, increasing or decreasing, or resulting in an increase or decrease in any rate, shall be filed with the commission, the commission may suspend by motion such rate, classification, contract, practice, rule or regulation, but the period of suspension thereof shall not extend more than seven months for common carriers by rail and motor vehicle and for other public utilities eleven 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 such rate, classification, contract, practice, rule, or regulation. On such hearing, the commission shall establish the rates, classifications, contracts, practices, rules, or regulations proposed, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable. At any such hearing, the burden to show that the increased rate or proposed change of rate, classification, regulation, rule or practice is just and reasonable shall be upon the public utility making application therefor. All such rates, classifications, contracts, practices, rules, or regulations not so suspended, on the expiration of thirty days from the time of filing the same with the commission, or of such lesser time as the commission may grant, shall go into effect and be the established and effective rates, classifications, contracts, practices, rules, and regulations, subject to the power of the commission, after a hearing had on its own motion or upon complaint, to alter or modify the same.

§ 3. **Amendment.**) Section 49-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-06-01. Valuation of Property as Basis for Determining Reasonableness of Rates—Railroads and Motor Carriers May Be Excepted.) 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 such franchise or right, and exclusive of any value of the right by reason of a monopoly or merger. The value of the property of railroads and motor carriers may, in the discretion of the commission, be required in establishing just and reasonable rates and charges. However, unless the commission determines that the value of the property of railroads and motor carriers is pertinent and essential in the establishment of just and reasonable rates and charges, such valuation shall not be made. The commission shall prescribe the details of the inventory of the property of each public utility to be valued.

Approved March 20, 1965.

CHAPTER 321

S. B. No. 98

(Morgan, Luick, Sinner)

GRAIN HOLD POINTS

AN ACT

Granting authority to the public service commission to require that railroads establish and maintain hold points for grain at designated locations.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Requiring Establishment and Maintenance of Hold Points.) Any railroad operating in the state of North Dakota shall establish and maintain at such locations within the state as may be designated by the public service commission, such hold points as may be determined by the commission to be necessary and in the public interest for the sampling of grain shipments originating within the state of North Dakota.

Approved March 10, 1965.

CHAPTER 322

H. B. No. 548
(Tweten, Hertz, Bergman)
(From LRC Study)

TRANSPORTATION SAFETY REQUIREMENTS

AN ACT

To create and enact section 49-18-46, and to amend and reenact sections 49-11-16 and 49-13-06 of the North Dakota Century Code, relating to rail and motor carrier safety and equipment requirements and to repeal sections 49-13-01, 49-13-03, 49-18-27, 49-18-28, 49-18-29, and 49-18-30 of the North Dakota Century Code, relating to rail and motor carrier safety and equipment requirements.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 49-11-16 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-11-16. Caution Signs—Specifications—Posting at Crossings.) Every railroad corporation operating a line of road within this state must erect suitable signs of caution at each crossing of its road with a public highway, which signs shall be lettered in accordance with standards and rules prescribed, after notice and opportunity of hearing, by the commission. The height of such signs shall be approximately eight feet six inches above the level of the traveled roadway to the cross-arms but this may be varied to provide the best view to persons approaching the crossing.

§ 2. Amendment.) Section 49-13-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-13-06. Clearance Required Over Tracks.) No person, firm, or corporation, including a railroad corporation, unless authorized by the commission shall erect or maintain on any standard gauge road on its line or on any standard gauge side-track used in connection therewith, any:

1. Coal chute, stock pen, pole, mail crane, standpipe, hog drencher, embankment of earth or natural rock, or any fixed or permanent structure or obstruction upon its line of railroad or on any side-track used in connection therewith, at a distance less than eight feet, measured from the center line of the track, which said structure or obstruction adjoins on standard gauge roads; nor

2. Overhead wires, bridges, viaducts, or other obstructions passing over and above its tracks at a less height than twenty-one feet, measured from the top of the track rail.

The public service commission, upon application after a thorough investigation and hearing in any particular case, may permit any railroad corporation to which this section applies to erect or reconstruct and maintain any such railroad facility at a lesser clearance than herein provided for when in the judgment of said commission the compliance with the clearance prescribed herein would be unreasonable or unnecessary and when a lesser clearance than that hereinbefore provided for would not create a condition unduly hazardous to the employees of such railroad corporation or any other person or corporation. Station freight house platforms which have a vertical height of not more than four feet, measured from the top of the track rail, may be erected and maintained at a less distance from the center of the track which they adjoin than herein specified.

§ 3.) Section 49-18-46 of the North Dakota Century Code is hereby created and enacted to read as follows:

49-18-46. Commission to Prescribe Safety Rules and Regulations.) The public service commission, for the protection of persons and property, shall promulgate and establish safety rules and regulations governing the working hours, age limits, physical and mental conditions, medical examinations, and records of employees; the adequacy, condition, construction, inspection, maintenance, purpose, and use of equipment; and any other necessary rules and regulations pertaining to the operations of carriers subject to the provisions of this chapter which are deemed necessary to promote the safety and protection of persons and property. To this end the commission may adopt in whole or in part the safety rules and regulations of the interstate commerce commission, by reference or otherwise, as now prescribed or which may from time to time be prescribed for the type of carriers subject to the provisions of this chapter engaged in interstate or foreign commerce.

§ 4. **Repeal.)** Sections 49-13-01, 49-13-03, 49-18-27, 49-18-28, 49-18-29, and 49-18-30 of the North Dakota Century Code are hereby repealed.

Approved March 2, 1965.