

You should know...



North Dakota Public Service Commission

Issue PUD-2, March 2009



Participation and Process in Major Utility Cases

Rate Case? Merger? Alternative Regulation Plan? Buy/Sell?

North Dakota Public
Service Commission

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GETTING INVOLVED

- The general public can get involved in any matter pending before the Commission by calling, writing, e-mailing, attending a public input session or attending a formal hearing. Anyone may testify or comment at any Commission hearing.
- Letters, questions and comments may be sent to Darrell Nitschke, Executive Director, Public Service Commission, State Capitol, 600 East Boulevard Avenue, Bismarck, ND 58505-0480. Comments can also be sent via e-mail to the Executive Director at dnitschk@nd.gov. The Commission's phone number is 701-328-2400; fax number 701-328-2410; and Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify the Executive Secretary.

DECIDING ON PARTICIPATION

Comments made at Public Input Sessions are not made under oath and are not subject to cross-examination. They will not become part of the formal record on which the decision will be based, but may form the basis for investigation and testimony that becomes part of the formal record. Testimony and comments made at a formal or technical hearing must be made under oath and will be subject to cross-examination.

- Interested parties may not cross-examine witnesses or conduct discovery

unless they are granted *Intervenor* status. Once a party becomes an intervenor, that party may cross-examine other witnesses and conduct discovery. Contact the Commission about how to intervene in any case.

- Applicants, complainants, respondents and intervenors will be served with all pleadings, filings and decisions in the case. Others who want to receive copies of any of these documents should make a request at the address above, or search the Commission's website for the information.

FILING

When a major utility case is filed, staff reviews the information and outlines the issues for Commission consideration. The Commission sets up a procedural time frame for investigating, receiving public input and holding a technical hearing. The Commission also appoints some staff members as advocates in the case and other staff members as Commission advisors.

INVESTIGATION

The investigation is conducted primarily by the staff advocates. These persons review the materials filed by the applicants and request other necessary information in order to better analyze the issues. The staff advocates may request that the Commission retain outside professionals to help with the investigation. Sometimes other parties intervene and in that case, often the intervenor conducts its own investigation. Also, sometimes the applicant conducts an investigation of the staff or intervenor's case.

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(cont.)

PUBLIC NOTICE

Early in the process the Commission schedules public hearings on the case and issues a notice. The notice contains the questions the Commission will examine and specific information on the hearings. It is published in the daily newspapers in the affected areas, and mailed to those who have asked to be on the mailing list. Notices may be issued separately for the technical hearings and the public input sessions, or one notice may be issued for both.

PUBLIC INPUT SESSIONS

Public input sessions are intended to be held early enough in the process to allow the staff time to investigate the issues that are raised by the public at the session. Usually these are held in the affected area of the state, or via interactive television in several affected areas simultaneously. Public input sessions are informal, no sworn testimony is taken and no one is cross-examined. Interested persons are encouraged to comment or ask questions at these sessions. Interested persons may also write to, e-mail, or call the Commission concerning the case.

TECHNICAL OR FORMAL HEARINGS

Later in the process the Commission will hold a technical or formal hearing, where the applicants, staff and intervenors will present technical testimony on the issues. The public is welcome at the technical hearing, but the main purpose of the technical hearing is to produce a record of

evidence about the issues, which the Commission will then use to make its decision. Witnesses at the technical hearing are sworn and are subject to cross-examination. Usually these are held in Bismarck, but may be held in other affected areas in the state.

DELIBERATIONS AND WORKING SESSIONS

After the hearings, the Commission will take the matter under advisement. The Commission will then hold an open working session in which it will sit down with its advisory staff and discuss the case. These sessions are open to the public, but participation is usually limited to Commissioners and staff. After one or more working sessions, the Commission will direct its advisory staff to draft an order that reflects the discussion from the working sessions. Once the order is prepared, the matter is put on the Commission's formal meeting agenda for a final decision.

TRADE SECRET REQUESTS

Sometimes parties in the case will have information which for competitive reasons they do not want to disclose publicly, but which can be disclosed to those who have a need to know and who sign a nondisclosure agreement concerning the information. When such requests are made, the staff responds with a recommendation concerning the request and the Commission determines whether or not to grant the request. The decision must be based on the trade secret protections found in the North Dakota Rules of Evidence.