

## CHAPTER 49-22.1 ENERGY CONVERSION AND TRANSMISSION FACILITIES

### 49-22.1-01. 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 a clearing of land, excavation, or other action affecting 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 for the construction of the same type of facility as the existing type of facility as identified in subsection 6 or 7 and the activities are:
      - (a) Within the geographic boundaries of a previously issued certificate or permit;
      - (b) For a gas or liquid energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
      - (c) For a gas or liquid transmission facility constructed before April 9, 1975, within 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;
    - (3) The activities are for the construction:
      - (a) Of a new gas or liquid energy conversion facility;
      - (b) Of a new gas or liquid transmission facility;
      - (c) To improve the existing gas or liquid energy conversion facility, or gas or liquid, transmission facility; or
      - (d) To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and
    - (4) Before conducting any activities, the utility certifies in writing to the commission that:
      - (a) The activities will not affect a known exclusion or avoidance area;
      - (b) The activities are for the construction:
        - [1] Of a new gas or liquid energy conversion facility;
        - [2] Of a new gas or liquid transmission facility;
        - [3] To improve the existing gas or liquid energy conversion or gas or liquid transmission facility; or
        - [4] To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and
      - (c) 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:
      - (a) The activities will not affect any known exclusion area;
      - (b) The activities are for the construction:
        - [1] Of a new gas or liquid energy conversion facility;
        - [2] Of a new gas or liquid transmission facility;

- [3] To improve the existing gas or liquid energy conversion facility or gas or liquid facility; or
    - [4] To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and
  - (c) 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 where a designated route may be established for a gas or liquid transmission facility.
- 5. "Facility" means a gas or liquid energy conversion facility, gas or liquid transmission facility, or both.
- 6. "Gas or liquid energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:
  - a. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas or hydrogen per day, regardless of the end use of the gas;
  - b. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
  - c. Enrichment of uranium minerals.
- 7. "Gas or liquid transmission facility" means any of the following:
  - a. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, hydrogen, or carbon dioxide. This subdivision does not apply to:
    - (1) An oil or gas pipeline gathering system;
    - (2) A natural gas distribution system;
    - (3) Carbon dioxide storage facility underground equipment, including a flow line, subject to chapter 38-22;
    - (4) A pipeline with an outside diameter of four and one-half inches [11.43 centimeters] or less which 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
    - (5) 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.
  - b. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.
- 8. "Permit" means the permit for the construction of a gas or liquid transmission facility within a designated corridor issued under this chapter.

9. "Person" includes an 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.
10. "Road use agreement" means permits required for extraordinary road use, road access points, approach or road crossings, public right-of-way setbacks, building rules, physical addressing, dust control measures, or road maintenance and any repair mitigation plans.
11. "Route" means the location of a gas or liquid transmission facility within a designated corridor.
12. "Site" means the location of a gas or liquid energy conversion facility.
13. "Utility" means a person engaged in and controlling the generation, manufacture, refinement, or transmission of gas, liquid hydrocarbons, or liquid hydrocarbon products, including 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 gas or liquid energy conversion facility.

#### **49-22.1-02. Statement of policy.**

The legislative assembly finds the construction of energy conversion facilities and transmission facilities affects the environment and the welfare of the citizens of this state. It is necessary to ensure the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and the welfare of the citizens of this state by prohibiting energy conversion facilities and transmission facilities from being located, constructed, or operated within this state without a certificate of site compatibility or a route permit acquired under this chapter. The policy of this state is to site energy conversion facilities and to route transmission facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. Sites and routes must be selected to minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and fulfilling energy needs in an orderly and timely fashion.

#### **49-22.1-03. 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 oil and gas 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 also may include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.

#### **49-22.1-04. Certificate of site compatibility or route permit required.**

A utility may not begin construction of a gas or liquid energy conversion facility or gas or liquid 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.

#### **49-22.1-05. Waiver of procedures and time schedules.**

Any utility that proposes to construct a gas or liquid energy conversion facility or a gas or liquid 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, upon a finding that the proposed facility is of a length, design, location, or purpose that it will produce minimal adverse effects, or, upon a

finding that a demonstrable emergency exists, may issue an order waiving specified procedures and time schedules required by this chapter or by the rules adopted pursuant to this chapter, including 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.

**49-22.1-06. Application for a certificate - Notice of filing - Amendment - Designation of a site or corridor.**

1. An application for a certificate must be in the form prescribed by the commission containing the following information:
  - a. A description of the size and type of facility.
  - b. A summary of any studies that 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 gas or liquid energy conversion facility.
  - e. An identification of the location of the preferred corridor for any gas or liquid 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 49-22.1-09 and the criteria established pursuant to section 49-22.1-03.
  - i. Any other information as the applicant considers relevant or the commission may require.
2. After determining the application is complete, the commission shall serve a notice of filing of the application on those persons and agencies the commission deems 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 must 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 must be in the form and contain the information as the commission prescribes.
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 must 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 49-22.1-03, and the considerations set out in section 49-22.1-09 in a finding with reasons for the designation, and must 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 does 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 the terms, conditions, or modifications deemed necessary.

**49-22.1-07. Application for a permit - Notice of filing - Amendment - Designation of a route.**

1. An application for a route permit for a gas or liquid transmission facility within a designated corridor must be filed no later than two years after the issuance of the certificate and must be in the form the commission prescribes, 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 49-22.1-09 and the criteria established pursuant to section 49-22.1-03.
  - 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. Any other information the utility considers relevant or the commission requires.
2. After determining the application is complete, the commission shall serve a notice of filing of the application on those persons and agencies the commission deems 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 must 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 must be in the form and contain the information the commission prescribes.
5. The commission shall designate a route for the construction of a gas or liquid transmission facility following the study and hearings provided for in this chapter. This designation must 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 49-22.1-03, and the considerations set out in section 49-22.1-06 in a finding with reasons for the designation, and must 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 does 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 the terms, conditions, or modifications deemed necessary.

**49-22.1-08. Combining application.**

A utility may file a separate application for a certificate or a permit, or combined into one application.

**49-22.1-09. Factors to be considered in evaluating applications and designation of sites, corridors, and routes.**

The commission is guided by, but is not limited to, the following considerations, when 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 gas or liquid energy conversion and gas or liquid transmission technologies and systems designed to minimize adverse environmental effects.

3. The potential for beneficial uses of waste energy from a proposed gas or liquid energy conversion facility.
4. Adverse direct and indirect environmental effects that cannot be avoided should the proposed site or route be designated.
5. Alternatives to the proposed site, corridor, or route that 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 that are unique because of biological wealth or because the site or route is a habitat for rare and endangered species.
11. Problems raised by federal agencies, other state agencies, and local entities.

**49-22.1-10. 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. If the commission determines there is an emergency that would prevent an in-person hearing in the county in which any portion of a site, corridor, or route is proposed, a remote public hearing may be held. 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 49-22.1-03, and the factors to be considered pursuant to section 49-22.1-09. If the commission determines there are no adequate facilities to conduct a public hearing within the county in which any portion of a site, corridor, or route is proposed to be located in, the public hearing must be held in the nearest adequate location. 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 may not be consolidated if five or more affected landowners in that county file a petition with the commission within ten days of the publication of the notice of hearing.
2. The commission is not 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. If 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 must 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 49-22.1-03.
  - b. A substantial or material change in the rules adopted pursuant to section 49-22.1-17.
  - c. The revocation or suspension of a certificate or permit.
4. Notice of a public hearing must be given by the commission by service on those persons the commission deems appropriate and twice by publication, at a reasonable interval before the 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 amendment of a certificate or permit, or a waiver must be given at the expense of the applicant.

#### **49-22.1-11. 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 must be composed of as many persons as may be appointed by the commission, but must 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 a gas or liquid energy conversion facility or gas or liquid transmission facility is proposed to be located. Members of advisory committees are entitled to be reimbursed, within the limits of legislative appropriations, for any necessary expenses in the amounts provided by law for state officials.

#### **49-22.1-12. Cooperation with state and federal agencies and political subdivisions.**

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. The commission shall cooperate and exchange technical information with directly impacted political subdivisions as outlined in subsection 2 of section 49-22.1-13.

#### **49-22.1-13. 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 is, subject to subsections 2 and 3, the sole site or route approval required to be obtained by the utility.
2.
  - a. A certificate of site compatibility for a gas or liquid energy conversion facility may not supersede or preempt any local land use; zoning; or building rules, regulations, or ordinances, and a site may not be designated which violates local land use; zoning; or building rules, regulations, or ordinances.
  - b. Except as provided in this section, a permit for the construction of a gas or liquid transmission facility within a designated corridor supersedes and preempts any local land use or zoning regulations.
  - c. Before a gas or liquid transmission facility is approved, the commission shall require the applicant to comply with the road use agreements of the impacted political subdivision. A permit may supersede and preempt the requirements of a political subdivision if the applicant shows by a preponderance of the evidence the regulations or ordinances are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of their location, or are in direct conflict with state or federal laws or rules.
  - d. When an application for a certificate for a gas or liquid transmission facility is filed, the commission shall notify the townships with retained zoning authority, cities, and counties in which any part of the proposed corridor is located. The commission may not schedule a public hearing sooner than forty-five days from the date notification is sent by mail or electronic mail. Upon notification, a political subdivision shall provide a listing to the commission of all local requirements identified under this subsection. The requirements must be filed at least ten days before the hearing or the requirements are superseded and preempted.
  - e. An applicant shall comply with all local requirements provided to the commission pursuant to subdivision d, which are not otherwise superseded by the commission.
3. Utilities subject to this chapter shall obtain state permits that may be required to construct and operate gas or liquid energy conversion facilities and gas or liquid transmission facilities. A state agency in processing a utility's facility permit application is bound to the decisions of the commission with respect to the site designation for the gas or liquid energy conversion facility or the corridor or route designation for the gas

or liquid transmission facility and with respect to other matters for which authority has been granted to the commission by this chapter.

4. A site or route may not 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 must clearly state whether the site, corridor, or route being considered for designation will be in compliance with the agency's rules. For purposes of this chapter it is presumed a proposed facility will be in compliance with a state agency's rules if that agency fails to present its position on the proposed site, corridor, or route at the appropriate public hearing.

**49-22.1-14. 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 may 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 a person 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, by order, shall declare the easements void and may order any compensation paid therefor returned to the offending utility, or allow the landowner to retain the 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 plaintiff if the court rules in favor of the plaintiff.
4. Upon a determination by the court that the utility involved did knowingly allow, encourage, or operate in active consort or participation with a person utilizing an 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.

**49-22.1-15. 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 is not required to hold a public hearing or publish a notice of opportunity for a public hearing for any route adjustment under this section.

#### **49-22.1-16. Improvement of sites or locations.**

Utilities that have acquired a gas or liquid energy conversion facility site or gas or liquid transmission line route in accordance with 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 49-22.1-13; provided, that if the construction and improvement commences more than four years after a certificate or permit for the site or route has been issued, the utility must certify to the commission that the site or route continues to meet the conditions upon which the certificate of site compatibility or gas or liquid transmission facility construction permit was issued.

#### **49-22.1-17. Rules and regulations.**

The commission shall adopt rules in conformity with this chapter and prescribe methods and procedures required therewith.

#### **49-22.1-18. Hearing - Judicial review.**

Any party aggrieved by the issuance of a certificate of site compatibility or gas or liquid 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 must be conducted pursuant to chapter 28-32. There is a right of appeal to the district court from any adverse ruling by the commission.

#### **49-22.1-19. Revocation or suspension of certificate or permit.**

A certificate of site compatibility or permit for the construction of a gas or liquid 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 in the certificate or permit.
3. Violations of this chapter or rules adopted pursuant to this chapter by the commission.
4. A determination by a district court pursuant to section 49-22.1-14.

#### **49-22.1-20. Penalties.**

1. Any person required by this chapter to have a certificate or permit who willfully begins construction of a gas or liquid energy conversion facility or gas or liquid transmission facility without previously securing a certificate or permit as prescribed by this chapter, or who willfully constructs, operates, or maintains a gas or liquid energy conversion facility or gas or liquid transmission facility other than in compliance with the certificate or permit and any terms, conditions, and modifications contained in the certificate or permit 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 is guilty of a class A misdemeanor.
3. Any person who willfully engages in any of the following conduct is subject to a civil penalty of not to exceed ten thousand dollars for each violation for each day the

violations persist, except the maximum penalty may not exceed two hundred thousand dollars for any related series of violations:

- a. Begins construction of a gas or liquid energy conversion facility or a gas or liquid transmission facility without having been issued a certificate or permit pursuant to this chapter.
  - b. Constructs, operates, or maintains a gas or liquid energy conversion facility or a gas or liquid 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.
4. The civil penalty provided for in subsection 3 may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise must be deposited in the general fund and, if not paid, may be recovered in a civil action in the courts of the state.
  5. Notwithstanding any other provision of this chapter, the commission may, by injunctive procedures, without bond or other undertaking, proceed against any person that willfully engages in any conduct described in subsection 3. No liability may accrue to the commission or its authorized representative in proceeding against any person pursuant to this section.

**49-22.1-21. 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 facility.
  - 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 facility.
  - c. An applicant for a waiver shall pay the amount that 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, the application fee paid must 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 requesting an amendment to a certificate or permit, or certifying to the commission under subsection 3 of section 49-22.1-01 or obtaining siting authority under subdivision b of subsection 2 or subdivision c of subsection 4 of section 49-22.1-15, shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.
  - f. The application fee under subdivision a, b, or c may not be less than ten thousand dollars nor more than one hundred thousand dollars.
  - g. An applicant may agree to pay additional fees that are reasonably necessary for completion of the site, corridor, or route evaluation and designation process.
2. If an applicant does not agree to pay additional fees reasonably necessary for completion of the site, corridor, or route evaluation and designation process, at the request of the commission and with the approval of the emergency commission, the applicant shall pay any additional fees as are reasonably necessary for completion of the gas or liquid energy conversion facility site, gas or liquid transmission facility corridor, or gas or liquid transmission facility route evaluation and designation process by the commission. The application fee under subsection 1 and any additional fees required of the applicant under this subsection may not 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 gas or liquid 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.
  4. Every applicant for a certificate of site compatibility, certificate of corridor compatibility and route permit, and transfer of a certificate or permit under this chapter shall pay to the commission an administrative fee equal to two hundred dollars for each one million dollars of original investment, not to exceed fifty thousand dollars. The administrative fee must be deposited into the public service commission program fund.

**49-22.1-22. Safety.**

Repealed by S.L. 2021, ch. 347, § 13.

**49-22.1-23. Approval for temporary operation or variance.**

1. The commission may approve temporary operation of facilities or a temporary variance from approved construction, operation, or maintenance of facilities upon a showing of good cause and receipt of a utility certification that the activities will have no adverse impacts upon the welfare of the citizens of this state or the environment.
2. The commission may issue a temporary approval or variance without the necessity of notice, publication, or public hearing with any additional terms, conditions, or modifications deemed necessary to minimize impacts.

**49-22.1-24. Protection of cultural or historic site data.**

The commission may limit access to, and release of, information that contains data that specifically identifies the location of cultural, archaeological, historical, or paleontological sites.