

**ADMINISTRATIVE PROCEDURES ACT
FISCAL NOTE
Prepared by Submitting Agency**

	CODE	NAME
DEPARTMENT	10	Department of Labor
DIVISION	109	Public Utilities Commission
PROGRAM		

PROPOSED RULES: 20:10:22:01, 20:10:22:04, 20:10:22:05, 20:10:22:12, 20:10:22:13, 20:10:22:14, 20:10:22:15, 20:10:22:16, 20:10:22:17, 20:10:22:18, 20:10:22:30, 20:10:22:33.01, 20:10:22:33.02, 20:10:22:35 and 20:10:22:40

Hearing Date: November 1, 2005

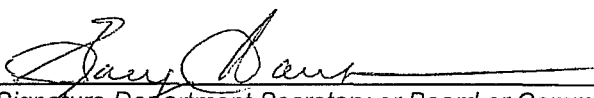
FISCAL NOTE SUMMARY:

List state agencies of local governmental subdivisions affected.

COST INCREASES (DECREASES)

State Agencies:	First-Year Impact	Continuous-Yearly Impact
TOTAL	0	0
Local Subdivisions:		
TOTAL	0	0
Revenue Increases (Decreases) State & Local:		
TOTAL	0	0

APPROVED


Signature Department Secretary or Board or Commission Chairman

DATE 9/28/05

ATTACH: Copy of proposed rules; separate sections for: 1) explanation of rules effect, i.e. what procedures, schedules, activities, etc. will change with its adoption 2) statistics used, and their source, 3) assumptions that were made to arrive at fiscal impact, 4) computations that were made.

CHAPTER 20:10:22

ENERGY FACILITY SITING RULES

Section

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20:10:22:23	Community impact.
20:10:22:24	Employment estimates.
20:10:22:25	Future additions and modifications.
20:10:22:26	Nature of proposed energy conversion facility.
20:10:22:27	Products to be produced.
20:10:22:28	Fuel type used.
20:10:22:29	Proposed primary and secondary fuel sources and transportation.
20:10:22:30	Alternate energy resources.
20:10:22:31	Solid or radioactive waste.
20:10:22:32	Estimate of expected efficiency.
20:10:22:33	Decommissioning.
20:10:22:33.01	<u>Decommissioning of wind energy facilities -- Funding for removal of facilities.</u>
20:10:22:33.02	<u>Information concerning wind energy facilities.</u>
20:10:22:34	Transmission facility layout and construction.
20:10:22:35	Information concerning transmission facilities.
20:10:22:36	Additional information in application.
20:10:22:37	Statement required describing gas or liquid transmission line standards of construction.

20:10:22:38 Gas or liquid transmission line description.
20:10:22:39 Testimony and exhibits.
20:10:22:40 Application for party status.

Declaratory Ruling: The Public Utilities Commission has filed a declaratory ruling with the Legislative Research Council in the Matter of the City of Flandreau Proposed Transmission Line. The City has asked if the proposed project is within the SDCL 49-41B-2.1 definition of a transmission line and associated facility, thereby requiring a SDPUC permit. On June 22, 1999, at its regularly scheduled meeting, the commission determined that the proposed 115kV transmission line is exempt from its siting jurisdiction because the entire line will be installed within the existing right-of-way on S.D. Highway 32 and the Industrial Park Road with the exception of the guying equipment for a corner pole. Declaratory Ruling EL99-010 dated June 25, 1999.

The Public Utilities Commission has filed a declaratory ruling with the Legislative Research Council. West River Electric Association, Inc., requested a ruling from the Commission regarding its jurisdiction over the siting of a new 115 kV transmission line near Rapid City. In the ruling, the Commission ordered that WREA's proposed transmission line is subject to the Commission's siting jurisdiction. Public Utilities Commission Declaratory Ruling EL00-030 dated December 14, 2000.

20:10:22:01. Definitions. Terms defined in SDCL 49-41B-2 have the same meaning in this chapter. Other terms in this chapter mean:

(1) "Affected area," that area which may be affected environmentally, socially, ~~aesthetically~~, or economically by the location of a facility at a proposed site;

(2) "Applicant," a person or persons who apply for a permit to construct a facility in the state of South Dakota under SDCL 49-41B. For projects with more than one participant, the person or persons designated by and acting on behalf of the participants;

(3) "Application," an application for a permit submitted to the commission pursuant to SDCL 49-41B;

(4) "Plant site," the site of and that area immediately adjacent to a proposed energy conversion facility and to those associated facilities to be constructed in conjunction with the proposed energy conversion facility;

(5) "Transmission site," that affected area on either side of and adjacent to a proposed transmission facility or associated facility;

(6) "Wind energy site," the site of and the area immediately adjacent to a proposed wind energy facility and any associated facilities.

Source: 5 SDR 1, effective July 25, 1978; 7 SDR 41, effective November 3, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-41B-35.

Law Implemented: SDCL 49-41B-11.

20:10:22:04. General format of application for permit. The applicant shall file its application for a permit under SDCL 49-41B-11 in the following format:

(1) The applicant shall file ~~25~~ ten copies of its application with the commission and any additional copies the commission requires. The applicant shall also provide a copy of the application in a digitized format and medium acceptable to the commission;

(2) The application shall be typed, printed, or otherwise legibly reproduced on paper which is 8 1/2 inches by 11 inches in size. Maps, drawings, charts, or other documents which are bound in the application shall be cut or folded to 8 1/2 inches by 11 inches. Maps, drawings, or charts may accompany an application as separate exhibits;

(3) Typed or offset materials shall have a margin of one and one-half inches on the binding side or left-hand side and a margin of one inch on all other sides;

(4) All pages in an application shall be consecutively numbered. Maps, drawings or charts accompanying the application as exhibits shall be identified as "Exhibit _____";

(5) The truth and accuracy of the application shall be verified by the applicant. Each application shall be considered to be a continuing application, and the applicant must immediately notify the commission of any changes of facts or applicable law materially affecting the application. This duty continues up to and includes the date on which the permit is issued or denied;

(6) When this chapter requires information concerning the facility to be submitted to the commission and the applicant is required to submit the same or similar information to another state, federal, or local agency having jurisdiction, the applicant may submit the information to the commission in the same format as it is or will be submitted to the other agency; and

(7) Any amendments to the application shall be filed in the same format required of the applications.

Source: 5 SDR 1, effective July 25, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-41B-35.

Law Implemented: SDCL 49-41B-11.

20:10:22:05. Application contents. The application for a permit for a facility shall contain the applicable information specified in §§ 20:10:22:06 to 20:10:22:25, inclusive, 20:10:22:36, and 20:10:22:39. If the application is for a permit for an energy conversion facility, it shall also contain the information specified in §§ 20:10:22:26 to 20:10:22:33, inclusive. If the application is for a permit for a transmission facility as defined in SDCL 49-41B-2(9)(a) and (b) 49-41B-2.1(1) and (2), it shall also contain the information in §§ 20:10:22:34 and 20:10:22:35. If

the application is for a permit for a transmission facility as defined in SDCL 49-41B-2(9)(e) 49-41B-2.1(3), it shall also contain the information in §§ 20:10:22:37 and 20:10:22:38. If the application is for a permit for a wind energy facility, it shall also contain the information in §§ 20:10:22:30, 20:10:22:33.01, and 20:10:22:33.02.

The application for a permit for a facility shall contain a list of all permits that are needed from any other state or federal entity. The list shall state when any permit applications will be filed. The application shall also list all notifications that are required to be made to any other state or federal entity.

Source: 5 SDR 1, effective July 25, 1978; 7 SDR 41, effective November 3, 1980; 12 SDR 86, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-41B-35.

Law Implemented: SDCL 49-41B-11.

20:10:22:12. Alternative sites. The applicant shall present information related to its selection of the proposed site for the facility, including the following:

- (1) The general criteria used to select alternative sites, how these criteria were measured and weighed, and reasons for selecting these criteria;
- (2) An evaluation of alternative sites considered by the applicant for the facility;
- (3) An evaluation of the proposed plant, wind energy, or transmission site and its advantages over the other alternative sites considered by the applicant, including a discussion of the extent to which reliance upon eminent domain powers could be reduced by use of an alternative site, alternative generation method, or alternative waste handling method.

Source: 5 SDR 1, effective July 25, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-41B-35.

Law Implemented: SDCL 49-41B-11(6), 49-41B-21, 34A-9-7(4).

20:10:22:13. Environmental information. The applicant shall provide a description of the existing environment at the time of the submission of the application, estimates of changes in the existing environment which are anticipated to result from construction and operation of the proposed facility, and identification of irreversible changes which are anticipated to remain beyond the operating lifetime of the facility. The environmental effects shall be calculated to reveal and assess demonstrated or suspected hazards to the health and welfare of human, plant and animal communities which may be cumulative or synergistic consequences of siting the proposed facility in combination with any operating energy conversion facilities, existing or under construction. The applicant shall provide a list of other major industrial facilities under regulation which may have an adverse affect of the environment as a result of their construction or operation in the transmission site, wind energy site, or siting area.

Source: 5 SDR 1, effective July 25, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-41B-35.

Law Implemented: SDCL 49-41B-11(11), 49-41B-21, 49-41B-22.

20:10:22:14. Effect on physical environment. The applicant shall provide information describing the effect of the proposed facility on the physical environment. The information shall include:

- (1) A written description of the regional land forms surrounding the proposed plant or wind energy site or through which the transmission facility will pass;
- (2) A topographic map of the plant, wind energy, or transmission site ~~or siting area~~;
- (3) A written summary of the geological features of the ~~siting area~~ plant, wind energy, or transmission site using the topographic map as a base showing the bedrock geology and surficial geology with sufficient cross-sections to depict the major subsurface variations in the siting area;
- (4) A description and location of economic deposits such as lignite, sand and gravel, scoria, and industrial and ceramic quality clay existent within the ~~plan~~ plant, wind energy, or transmission site;
- (5) A description of the soil type at the plant, wind energy, or transmission site;
- (6) An analysis of potential erosion or sedimentation which may result from site clearing, construction, or operating activities and measures which will be taken for their control;
- (7) Information on areas of seismic risks, subsidence potential and slope instability for the ~~siting area~~ plant, wind energy, or transmission site; and
- (8) An analysis of any constraints that may be imposed by geological characteristics on the design, construction, or operation of the proposed facility and a description of plans to offset such constraints.

Source: 5 SDR 1, effective July 25, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-41B-35.

Law Implemented: SDCL 49-41B-11, 49-41B-22.

20:10:22:15. Hydrology. The applicant shall provide information concerning the hydrology in the area of the proposed plant, wind energy, or transmission site and the effect of the proposed site on surface and groundwater. The information shall include:

- (1) A map drawn to scale of the plant, wind energy, or transmission site showing surface water drainage patterns before and anticipated patterns after construction of the facility;

(2) Using plans filed with any local, state, or federal agencies, indication on a map drawn to scale of the current planned water uses by communities, agriculture, recreation, fish, and wildlife which may be affected by the location of the proposed facility and a summary of those effects;

(3) A map drawn to scale locating any known surface or groundwater supplies within the siting area to be used as a water source or a direct water discharge site for the proposed facility and all offsite pipelines or channels required for water transmission;

(4) If aquifers are to be used as a source of potable water supply or process water, specifications of the aquifers to be used and definition of their characteristics, including the capacity of the aquifer to yield water, the estimated recharge rate, and the quality of ground water;

(5) A description of designs for storage, reprocessing, and cooling prior to discharge of heated water entering natural drainage systems;

(6) If deep well injection is to be used for effluent disposal, a description of the reservoir storage capacity, rate of injection, and confinement characteristics and potential negative effects on any aquifers and groundwater users which may be affected.

Source: 5 SDR 1, effective July 25, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-41B-35.

Law Implemented: SDCL 49-41B-11, 49-41B-21, 49-41B-22.

20:10:22:16. Effect on terrestrial ecosystems. The applicant shall provide information on the effect of the proposed facility on the terrestrial ecosystems, including existing information resulting from biological surveys conducted to identify and quantify the terrestrial fauna and flora potentially affected within the transmission site, wind energy site, or siting area; an analysis of the impact of construction and operation of the proposed facility on the terrestrial biotic environment, including breeding times and places and pathways of migration; important species; and planned measures to ameliorate negative biological impacts as a result of construction and operation of the proposed facility.

Source: 5 SDR 1, effective July 25, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-41B-35.

Law Implemented: SDCL 49-41B-11, 49-41B-21, 49-41B-22.

20:10:22:17. Effect of aquatic ecosystems. The applicant shall provide information of the effect of the proposed facility on aquatic ecosystems, and including existing information resulting from biological surveys conducted to identify and quantify the aquatic fauna and flora, potentially affected within the transmission site, wind energy site, or siting area, an analysis of the impact of the construction and operation of the proposed facility on the total aquatic biotic

environment and planned measures to ameliorate negative biological impacts as a result of construction and operation of the proposed facility.

Source: 5 SDR 1, effective July 25, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-41B-35.

Law Implemented: SDCL 49-41B-11, 49-41B-21, 49-41B-22.

20:10:22:18. Land use. The applicant shall provide the following information concerning present and anticipated use or condition of the land:

(1) A map or maps drawn to scale of the ~~siting area~~ plant, wind energy, and or transmission site identifying existing land use according to the following classification system:

- (a) Land used primarily for row and nonrow crops in rotation;
- (b) Irrigated lands;
- (c) Pasturelands and rangelands;
- (d) Haylands;
- (e) Undisturbed native grasslands;
- (f) Existing and potential extractive nonrenewable resources;
- (g) Other major industries;
- (h) Rural residences and farmsteads, family farms, and ranches;
- (i) Residential;
- (j) Public, commercial, and institutional use;
- (k) Municipal water supply and water sources for organized rural water districts; and
- (l) Noise sensitive land uses;

(2) Identification of the number of persons and homes which will be displaced by the location of the proposed facility;

(3) An analysis of the compatibility of the proposed facility with present land use of the surrounding area, with special attention paid to the effects on rural life and the business of farming; and

(4) A general analysis of the effects of the proposed facility and associated facilities on land uses and the planned measures to ameliorate adverse impacts.

Source: 5 SDR 1, effective July 25, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-41B-35.

Law Implemented: SDCL 49-41B-11, 49-41B-22.

20:10:22:30. Alternate energy resources. The applicant shall provide information concerning the alternate energy resources considered in the construction of the energy conversion or wind energy facility. The applicant shall also discuss the reasons for selecting the proposed energy resource rather than an alternative resource.

Source: 5 SDR 1, effective July 25, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-41B-35.

Law Implemented: SDCL 49-41B-11, 49-41B-21, 34A-9-7(4).

20:10:22:33.01. Decommissioning of wind energy facilities -- Funding for removal of facilities. The applicant shall provide a plan regarding the action to be taken upon the decommissioning and removal of the wind energy facilities. Estimates of monetary costs and the site condition after decommissioning shall be included in the plan. The commission may require a bond, guarantee, insurance, or other requirement to provide funding for the decommissioning and removal of a wind energy facility. The commission shall consider the size of the facility, the location of the facility, and the financial condition of the applicant when determining whether to require some type of funding. The same criteria will be used to determine the amount of any required funding.

Source:

General Authority: SDCL 49-41B-35.

Law Implemented: SDCL 49-41B-11.

20:10:22:33.02. Information concerning wind energy facilities. If a wind energy facility is proposed, the applicant shall provide the following information:

(1) Configuration of the wind turbines, including the distance measured from ground level to the blade extended at its highest point, distance between the wind turbines, type of material, and color;

(2) The number of wind turbines, including anticipated additions of wind turbines within the next five years;

(3) The lighting of the wind turbines, including whether the lighting will meet the requirements of the Federal Aviation Administration;

(4) Setback distances from off-site buildings, right-of-ways of public roads, and property lines;

(5) Anticipated noise levels during construction and operation;

(6) Anticipated electromagnetic interference during operation of the facilities;

(7) The proposed wind energy site and major alternatives as depicted on overhead photographs and land use culture maps;

(8) Reliability and safety;

(9) Right-of-way or condemnation requirements;

(10) Necessary clearing activities;

(11) Configuration of towers and poles for any electric interconnection facilities, including material, overall height, and width;

(12) Conductor configuration and size, length of span between structures, and number of circuits per pole or tower for any electric interconnection facilities; and

(13) If any electric interconnection facilities are placed underground, the depth of burial, distance between access points, conductor configuration and size, and number of circuits.

Source:

General Authority: SDCL 49-41B-35.

Law Implemented: SDCL 49-41B-11.

20:10:22:35. Information concerning transmission facilities. If a transmission facility is proposed, the applicant shall provide the following information as it becomes available to the applicant:

(1) Configuration of the towers and poles, including material, overall height, and width;

(2) Conductor configuration and size, length of span between structures, and number of circuits per pole or tower;

(3) The proposed transmission site and major alternatives as depicted on overhead photographs and land use culture maps;

(4) Reliability and safety;

(5) Right-of-way or condemnation requirements;

(6) Necessary clearing activities; and

(7) If the transmission facility is placed underground, the depth of burial, distance between access points, conductor configuration and size, and number of circuits.

Source: 5 SDR 1, effective July 25, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-41B-35.

Law Implemented: SDCL 49-41B-11.

20:10:22:40. Application for party status. A governmental agency, person, or nonprofit organization, as specified in SDCL 49-41B-17(2) and (3), shall be granted party status in a proceeding commenced pursuant to SDCL 49-41B upon applying in writing to the commission on a form provided by the commission.

The application shall contain the following:

- (1) Date;
- (2) Verified signature of the applicant;
- (3) A statement requesting party status.

The application shall be filed within 60 days from the date the ~~energy~~ facility siting application is filed.

Source: 9 SDR 55, effective November 7, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-41B-35.

Law Implemented: SDCL 49-41B-17.

EXPLANATION OF RULES EFFECT

The Public Utilities Commission will hold a public hearing in Room 412, fourth floor, State Capitol, Pierre, South Dakota, on November 1, 2005, at 9:30 a.m., to consider the adoption and amendment of proposed rules numbered §§ 20:10:22:01, 20:10:22:04, 20:10:22:05, 20:10:22:12, 20:10:22:13, 20:10:22:14, 20:10:22:15, 20:10:22:16, 20:10:22:17, 20:10:22:18, 20:10:22:30, 20:10:22:33.01, 20:10:22:33.02, 20:10:22:35 and 20:10:22:40.

The effect of the proposed rule changes will be to set forth the requirements for filing an application for a permit to construct wind energy facilities and amend some requirements applying to the siting of energy conversion and transmission facilities.

One of the reasons for the proposed rule changes is to change the Commission's siting rules to be consistent with recent statutory changes regarding the siting of wind energy facilities. In order to construct wind energy facilities, a person must file an application with the Commission for approval of the construction of the facility. The siting rules generally inform an applicant of the information that is required to be filed with the Commission. The proposed changes will add wind energy facilities to the siting rules and list the specific requirements for a wind energy facility application. In addition, one of the proposed rules, 20:10:22:33.01, sets forth the requirements for the removal of wind energy facilities and possible bonding or other financial requirements to ensure removal. Another proposed rule change, 20:10:22:04, decreases the required number of paper copies of an application and requires the application to be filed electronically. Another proposed rule change, 20:10:22:05, requires applications to list all permits needed from any state or federal entity.

There are no fiscal impacts on state agencies or local governmental subdivisions.